



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8230 OF 2024

District : Jalgaon

Manoj s/o.Rambhau Patil,
Age : 37 Years, Occ. Service as
Assistant Teacher (now terminated),
r/o. Uchande, Tq. Muktainagar,
Dist.Jalgaon

..Petitioner

Vs.

1. The Chairman,
Tapi Purna Parisar Vidya Prasarak Mandal,
Uchande, Tq.: Muktainagar, Dist.: Jalgaon.
2. The Head Master,
Ghate Ananda Shinkar Vidyalaya Va
Kanistha Mahavidyalaya, Uchande,
Tq.: Muktainagar, Dist.: Jalgaon.
3. The Education Officer (Secondary),
Zilla Parishad, Jalgaon.

..Respondents

Mr.V.S.Panpatte, Advocate for petitioner
Mr.P.G.Gunale, Advocate for respondent nos.1 and 2
Mr.K.B.Jadhavar, AGP for respondent no.3

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : AUGUST 17, 2026
PRONOUNCED ON : AUGUST 21, 2026

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. The petition is taken up for final disposal with the consent of learned advocate for the parties.

Subject-matter :

2. Feeling aggrieved by the judgment and order dated 26.03.2024, passed by learned Presiding Officer, School Tribunal, Nashik, in Appeal No.105 of 2016 at (Exh.M) so also the termination order dated 13.10.2016 issued by respondent no.1 Exh."L"), the petitioner has preferred this Writ Petition.

3. Brief facts:-

(i) The Petitioner was initially appointed as a part-time Assistant Teacher on a post that was reserved for Other Backward Class vide appointment order dated 15.10.2012. An advertisement was published to fill up a number of posts. Candidates attended the selection procedure and the Petitioner was appointed on one part-time post of Assistant Teacher. The Education Officer (Secondary), Zilla Parishad, Jalgaon accorded approval to Petitioner's appointment on 27.08.2014.

(ii) The approval was neither revoked nor set aside by any authority. As such, it needs to be accepted that the appointment on part-time basis was a lawful one.

(iii) There arose a vacancy of one full-time aided post of Assistant Teacher reserved for Other Backward Class.

The vacancy could arise on account of superannuation of one Ramchandra Chaudhari, whose services were approved already.

(iv) On 07-01-2013 i.e. well in advance prior to Mr.Chaudhari's retirement dated 31-05-2013, the school management moved a proposal to the Education Officer thereby seeking permission for filling up the ensuing vacancy. Copy of the proposal (page 28-Exh.`E') shows that it was received by the office of the Education Officer.

(v) It seems that the Education Officer did not respond the application. Considering the urgency to fill up the vacancy for welfare of the students, and that the education year was to start soon, the respondent management issued an advertisement on 28-05-2013 in daily "*Punya Pratap*".

(vi) Thereafter the Management resolved to accommodate the Petitioner on the full-time fully aided post of Shikshan-Sevak (Assistant Teacher) which had fallen vacant due to superannuation of Mr. Ramchandra Chaudhari. Accordingly, an appointment order was issued by the Management in the name of the Petitioner.

(vii) A proposal for approval was moved by the Management to the Education Officer, which merely remained pending.

On completion of the probation period, the Management appointed the Petitioner on regular pay scale, and a proposal was moved to the Education Officer for approval. The said proposal also remained pending for the reasons best known to the Education Officer.

(viii) On this backdrop, the management terminated Petitioner from the services for want of approval vide order dated 13-10-2016.

(ix) Petitioner assailed termination u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act 1977 [hereinafter 'the Act'] before the School Tribunal.

(x) The School Management supported the case that the Petitioner was lawfully appointed within the meaning of Section 5(1) of the Act, but took a safe stand that for want of approval and to avoid financial burden, the Petitioner was terminated.

(xi) Education Officer did not appear before the Tribunal despite having been served.

(xii) The Tribunal accepted the legal position that only for want of approval, a permanent employee cannot be terminated. However, the Tribunal went on to observe that the Petitioner was not lawfully appointed.

(xiii) Learned Presiding Officer of the Tribunal drew following observations:

- (i) Permission from the Education Officer was not found to fill up the subject-matter post;
- (ii) The appointment was against the ban imposed vide Government Resolution dated 02-5-2012;
- (iii) There was no material to show that the initial post of part-time teacher was a clear and vacant post. The subject-matter post was not a clear and vacant post;
- (iv) Petitioner was not appointed on the part-time post by following due procedure of law. Hence his subsequent appointment is also wrong.

(xiv) As against the Judgment and Order dated 26-03-2024, the Petitioner is before this Court. Respondents - School and Management are also present through their the advocates. The Education Officer has caused appearance through the learned Assistant Government Pleader and has also entered his reply affidavit.

4. Submissions and consideration:

- (i) Heard the learned advocates for Petitioner, Respondent nos. 1 and 2, and the learned Assistant Government Pleader for Respondent no.3. Perused the case papers and pleadings.

(ii) Mr. Panpatte relies upon the advertisement, the letter issued by the management to the Education Officer, the appointment order, initial approval on part-time basis, and subsequent proposal for his regular appointment. He submits that for want of approval, an employee cannot be terminated.

(iii) It is submitted on behalf of the Petitioner that the Tribunal has not considered the prevailing law. That, once the initial appointment was approved by the Education Officer, learned Member of the Tribunal was not justified in observing that the initial appointment was illegal. Thus, Mr. Panpatte prays to allow the petition with additional prayer to direct the Education Officer to accord approval.

(iv) Mr.P.G.Gunale, learned advocate representing the School Management candidly supports Petitioner's case so far as procedure for selection, qualification and legality of appointment is concerned. He submits that since the Education Officer did not accord approval, management terminated the Petitioner.

(v) Mr.Kiran Jadhavar, learned Assistant Government Pleader relies upon the reply affidavit filed by the Education Officer. He submits that the Management failed to timely inform the Education Officer about Petitioner's termination.

5. Discussion and consideration:

(a) It is not disputed by any party that the Petitioner belongs to Other Backward Class. A selection procedure was conducted by the Management to fill in one part-time post of Shikshan-Sevak reserved for Other Backward Class, at Respondent no.2 School. Two candidates including the Petitioner underwent the selection procedure. The other candidate subsequently expressed her disinclination for appointment. The Petitioner was possessing requisite qualification. Hence the Management resolved to appoint him on the said post. Accordingly the Petitioner was appointed as part-time Shikshan-Sevak on a seat reserved for Other Backward Class in the fully aided school i.e. Respondent no.2.

(b) Suffice to note, the Education Officer accorded approval to the appointment. The said approval was never revoked nor ever was set aside by any higher authority. Hence, it can be held as a conclusive proof that the appointment was made by due process of law and that the post was a clear and vacant post.

(c) Although the Education Officer did not participate in the proceeding before the Tribunal, he has filed his reply affidavit before this Court. Since it is reply affidavit by the Education Officer whose

assistance is of vital importance in such matters, I carefully went through the contents. The reply affidavit only objects that the Management never communicated to the Education Officer about Petitioner's termination. Paragraph Nos. 4 and 5 of the reply affidavit are reproduced as below:-

4) I say and submit that, the Respondent management Terminate the Service of Petitioner. Management even does not reported to the Respondent no. 3 at relevant time.

5) I say and submit that, it was later noticed, during administrative scrutiny, that the management had failed to communicate the termination of Petitioner to the higher authorities, which resulted in the non reflection of this action in the official records of the Respondent No.3.

(d) Thus, the Education Officer has agreed and accepted that Petitioner's initial appointment was lawful and on clear and vacant post. Education Officer avoided to comment anything on the point of Management's application that was filed for permission to initiate selection procedure to fill in full-time post. There is no denial to the contention of the Petitioner and the Management. This goes to show that Education Officer has no case to object that the appointment was in violation of the rules or any Government Resolution.

(e) So far as nature of the vacancy of full-time post of Shikshan-Sevak is concerned, it is a matter of record that the said post had fallen vacant on account of earlier employee's superannuation. The post was reserved for Other Backward Class, and the Petitioner also belongs to the same category. Hence the Tribunal erred in observing that there was nothing on record to show that the posts on which the Petitioner was initially appointed on part-time basis as also subsequently appointed on full-time basis, were clear and vacant posts.

(f) From the approval to the initial appointment, it is clear that the part-time post was clear and vacant. From the fact that the full-time post fell vacant due to retirement of earlier employee, it is also clear that the said post was also clear and vacant.

(g) This Court has consistently held that failure on the part of the Education Officer to take timely decision on Management's application seeking leave to initiate selection process, cannot penalize the employee who is otherwise lawfully appointed. This Court has also observed that such appointments must not be made as a precedent, and the higher authorities of the School Education Department must take stock of the cases pending before the education officers pan State seeking permission to fill in vacancies.

(h) The Education Officer did not appear before the Tribunal nor even disputed the approval granted to Petitioner's part-time appointment. Even before this court too, the Education Officer does not say so in his reply affidavit.

(i) Under these circumstances, I am constrained to observe that learned Member of the School Tribunal wrongfully held that Petitioner's initial appointment itself was faulty.

(j) Suffice to note, while disallowing the appeal, the Tribunal held that the initial appointment itself was faulty.

(k) So far as procedure is concerned, the Petitioner placed on record copy of the advertisement published in newspaper together with an application/intimation by the Management to the Education Officer that it seeks to fill in the full-time post that was fallen vacant due to superannuation of earlier employee.

(l) The vacancy on full-time post occurred due to superannuation of earlier employee. The Petitioner, who belonged to the same category to which the vacant post belonged, i.e. Other Backward Class and was holding adequate qualification, was accommodated from part-time post to full-time post.

(m) There is nothing on record nor anything in the discussion of the Tribunal that such appointment is forbidden by law. Hence, in the peculiar facts of the case I am of the opinion that Petitioner's accommodation on full-time post of Shikshan-Sevak cannot be said *per se* illegal.

(n) True that there was ban on new appointments in the year 2012. However, the subject-matter post was not a newly created post. The vacancy arose on account of superannuation of the earlier employee. This Court in the lead case of **Munoli Karabasappa Vs. State and ors. with connected Writ Petitions (W.P. No.8587 of 2016 with connected matters)** at Principle seat observed that the ban won't be applicable to, (a) where the recruitment process is already commenced prior to Government Resolution dated 02-05-2012, (b) where the appointments made for filling up vacancies in English, Mathematics, and Science; (c) where the recruitment is made to fulfill the backlog of reserved categories candidates.

(o) The Petitioner, as observed supra, falls under the category (c) as above.

(p) There is nothing on record to dispute that the Management filed a proposal with the Education Officer to fill in the

vacant full-time post. Such material was neither placed before the Tribunal, nor is placed before this court even though a reply on oath is filed.

(q) If so, the Education Officer incurs entire responsibility of the scenario and its effect, that the selection procedure was proper one and that there are no reasons to deny the approval to the Petitioner.

(r) This Court expected assistance from the Education Officer (Secondary), Zilla Parishad Jalgaon to explain as to (a) what happened to the proposal filed by the management; (b) whether such proposal was received or not; (c) if the Education Officer was of the opinion that the approval could not be granted, whether and why such communication was not intimated to the Petitioner and the Management; (d) why those things are not explained before the Tribunal or before this Court etc. Even assuming for the sake of arguments that the approval proposal was rejected by the Education Officer and that the Petitioner suppressed it, still the Education Officer could have demonstrated so before this court by filing reply affidavit. As observed supra, the reply affidavit even remotely not say so. The only objection, as recorded above, is that the management did not inform timely about Petitioner's termination.

(s) The Education Officers, are the government officers. They have to come forward and assist the courts by demonstrating the facts. In the failure of Education Officer to discharge such responsible duty, this Court is constrained to render the findings based upon the record placed before by the employee, the management and the findings of the Tribunal. A result in favor of an employee necessarily declares legality of the appointment and casts financial burden on the public fund through the Zilla Parishad. If the litigant employee was indeed appointed lawfully, he must get justice. However, to bring the court/Tribunal at right conclusion, the explanation/assistance from the Education Officer is of vital role.

(t) This Court expresses serious displeasure on the approach of the respondent Education Officer (Secondary), Zilla Parishad Jalgaon in not extended wholehearted and incumbent assistance to the Court. Learned Assistant Government Pleader suffered limitation to go beyond the reply affidavit filed by the Education Officer.

(u) Hence, I observe that in the light of the record placed before this court by the Petitioner and the extremely restricted submission by the Education Officer, Zilla Parishad, Jalgaon, has accepted that the Petitioner was lawfully appointed on the subject-

matter post within the meaning of the Act, and that the Education Officer merely sat on the approval proposal for the reasons best known to him/her.

(v) At this juncture, I beneficially place my hands over a Judgment and Order dated 02-12-2021 passed by this Court at Aurangabad, in very identical Writ Petition No.10834 of 2018 with connected matters. This Court while concluding the Judgment and Order, observed thus:-

18. While rejecting the appeals filed by the petitioners, the School Tribunal has failed to take into consideration the afore stated settled legal position. The Tribunal has erred in rejecting the appeals solely on the ground that the prior permission of the Education Officer and the Deputy Director of Education was not obtained before issuing the advertisement and filling up the posts. The Tribunal has ignored the representations forwarded by the Management to the Education Officer and the Deputy Director of Education and waiting for their response for more than one year and 10 months, the Management had also forwarded the representations to the Social Welfare Department as well as the Employment Exchange calling from them the names of the eligible candidates before issuing advertisement. In these circumstances, the Management was justified, so as to protect the interest of the students, to initiate and complete the process of filling up the posts by appointing the petitioners. It is not in dispute that the posts which are filled up by the Management were permanent clear vacant posts which were filled after following due procedure. The Management has also followed the reservation while filling up the said posts. These important aspects are ignored by the Tribunal while rejecting the appeals of the petitioners, hence the impugned order is vitiated and cannot be sustained.

19. In the result, the following order is passed :-

ORDER

- (i) The Writ Petition Nos. 10834/2018, 10835/2018, 10836/2018 and 10341/2019 are allowed.
- (ii) The impugned orders passed by the School Tribunal, Solapur in Appeal Nos. 65 of 2016, 66 of 2016, 67 of 2016 and 68 of 2016 are hereby quashed and set aside.
- (iii) The impugned termination orders are hereby set aside.
- (iv) The petitioners are reinstated in service as Shikshan Sevaks so as to complete the remaining tenure of their respective posts.
- (v) On reinstatement of the petitioners, the Respondent – Management shall forward the proposals for their approval within a period of two months to the Education Officer.
- (vi) The respondent No.2 – Education Officer is directed to grant approval to the petitioners' appointment with effect from 08.12.2014 and also allow grant of aid to the school for payment of honorarium to the petitioners with effect from the date of petitioners' appointment including all arrears upto date.
- (vii) Rule is made absolute in above terms. No order as to costs.

(w) Ordinarily, this court would not have extended directions to the Education Officer for grant of approval. However, in the peculiar facts and circumstances as are elaborately discussed by this court in *Ketan Jadhav* case (supra), I find that the Petitioner too deserves a similar order.

6. Conclusion:

Hence, I am of the considered view that the Petition must succeed. Accordingly, directions are also needful in the peculiar facts of the case where the termination itself was based for want of approval; and while the Education Officer did not answer anything on the proposal. It is also needful to intimate the higher authorities of

the Zilla Parishad and the School Education Department of the State to look into the issue of Education Officers' failure to pass appropriate and timely orders on the proposals received from the managements to fill up the posts. Directions are also necessary to the Education Officers to file comprehensive response before the Tribunal and the High Court explaining the true facts in the matters.

7. Hence, I pass the following order Order:-

O R D E R

- (i) The Writ Petition is allowed.
- (ii) The impugned order passed by the School Tribunal, Nashik in Appeal No.105 of 2016 is quashed and set aside.
- (iii) The impugned termination order is hereby set aside.
- (iv) The respondent - Management shall forthwith reinstate the petitioner, if not already reinstated.
- (v) Respondent No.3 - Education Officer (Secondary) is directed to grant approval to the petitioner's appointment with effect from the date of appointment on full-time post and also allow grant of aid to the school for payment to the petitioner with effect from date of petitioner's appointment including all arrears upto the date. If necessary, the Education Officer shall call upon the respondent - Management to forward a fresh comprehensive proposal for approval

of the petitioner's service, within a period of one months from the date of this order. The Education Officer shall issue approval within a period of three months from today.

(vi) Rule made absolute in above terms. No order as to costs.

[AJIT B. KADETHANKAR, J.]

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KBP