

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO. 3901 OF 2001

|                              |   |                |
|------------------------------|---|----------------|
| 1. Saraswati Shikshan Mandal | ) |                |
| Pandare, Tal/Baramati,       | ) |                |
| District : Pune.             | ) |                |
|                              | ) |                |
| 2. Head Master,              | ) |                |
| N.M.V. and Jr. College,      | ) |                |
| Pandare Pune.                | ) | ...Petitioners |

**Versus**

|                                       |   |                |
|---------------------------------------|---|----------------|
| 1. Shinde Sunil Tukaram               | ) |                |
| Age: 27 Yrs, Occ: Service             | ) |                |
| Residing at and Post, C/o             | ) |                |
| Professor Jaiprakash Bile,            | ) |                |
| Krishnai, Vidyanagar Karmala Solapur. | ) |                |
|                                       | ) |                |
| 2. Deputy Director of Education       | ) |                |
| 17 Dr. Ambedkar Road, Camp.           | ) |                |
| Pune 411 015.                         | ) |                |
|                                       | ) |                |
| 3. Education Officer (Sec.)           | ) |                |
| Zilla Parishad Pune.                  | ) | ...Respondents |

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Mr. Shekhar Jagtap a/w Ms. Sairuchita Chowdhary i/b J. Shekhar Associates for the Petitioners.

Ms. Bhagyashri R. Mangale for Respondent No.1.

Ms. Sulbha D. Chipade, AGP for Respondent Nos. 2 & 3/State.

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**CORAM : M.M. SATHAYE, J.**

**DATE : 7<sup>th</sup> OCTOBER, 2026**

**JUDGMENT. :**

1. The Petitioners (Management and Junior College) are challenging the judgment and order dated 26.04.2001 passed by the Presiding Officer, School Tribunal, Pune Region, Pune ('the Tribunal' for

short) in Appeal No. 65 of 1998. By the said impugned order, appeal filed by the Respondent No.1 challenging termination of his services on 11.06.1998, is allowed, directing to the Petitioners to reinstate him in services as Assistant Teacher w.e.f. 11.06.1998, with full backwages. A recommendation was made to State Government that backwages directed to be paid to Respondent No.1 may be deducted from grant-in-aid payable to the Management and paid directly to the employee.

### **BACKGROUND**

2. The Respondent No.1 filed appeal under Section 9 of the the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules of 1981 made thereunder ('said Act and said Rules' for short), contending *inter alia* as under:

2.1. That Respondent No.1 came to be appointed as Assistant Teacher under appointment order dated 07.06.1997, in clear and open vacancy. That appointment was on probation for a period of 2 academic years.

2.2. That his appointment was approved by the concerned education authority under letter dated 11.12.1997. That his work and behaviour were satisfactory. However, at the commencement of academic year 1998-99, Respondent No.1 was restrained from signing on the muster roll. Therefore, on 08.06.1998, he gave application to the management requesting to allow him to sign on the muster roll and work in the school as usual.

2.3. That on the next day (09.06.1998) again Respondent No. 1 requested the management similarly, however, the headmaster did not permit him and ultimately restrained him from signing muster roll and from teaching in the classes. That the said action amounts to otherwise

termination which is illegal.

3. The Petitioner No.1/Management resisted the appeal by filing reply contending *inter alia* as under:

3.1. It was denied that appointment of Respondent No.1 was clear and open vacancy. It was denied that he appointed was on probation.

3.2. It was contended that assuming without admitting that then in-charge management (group managing affairs of the institution) had issued appointment order dated 07.06.1997, the same was illegal and *void ab initio*. It was specifically contended in the written statement that the school in question is 100% grant-in-aid school and therefore, was bound to consider applicable rules and regulations including sanction of divisions, reservation policy, availability of surplus staff with the Education Authority. It was specifically contended that an additional division of 10<sup>th</sup> standard was sanctioned vide letter dated 29.10.1997. It was also specifically contended that during the relevant academic year 1997-98, the backlog in the institution was to the extent of 10 posts for ST candidates and 1 post for SC candidate. It was also specifically contended that the Petitioner/Management was making correspondence for the list of surplus candidates for the last about 2 to 3 years.

3.3. It was further specifically contended that the term of earlier managing body (In charge of the Management) was to expire and it is possible that an attempt to favor Respondent No. 1 was made. It is specifically contended that the proposal came to be submitted to education authority on 10.12.1997 and surprisingly the approval is issued next day on 11.12.1997. Specific doubt has been raised about this approval in written statement. It is further specifically contended that the proposal in respect of other employee dated 21.11.1997 was

still pending. Therefore, the aspect of legality of appointment was very much in issue.

3.4 It was contended that election of the society (Management-Institution) was held on 28.12.1997 and after elected body took over charge from 02.01.1998, in the meeting of management held on 25.02.1998, it was brought to the notice of new management that one new division of 10<sup>th</sup> standard is sanctioned. Since short time of 3 to 4 months was left for completion of academic year, the management passed resolution to continue/appoint Respondent No.1 on temporary basis from 02.01.1998 till the end of academic year. That therefore, the appointment of Respondent No.1 has come to an end by efflux of time at the end of academic year 1997-98.

3.5. It was further contended that even if Respondent No.1 conducted 2-3 classes in the new academic year, it will not change the nature of original appointment, which was illegal. That appeal is time-barred and there is no sufficient cause to condone the delay.

4. The Tribunal by the impugned order has allowed appeal as stated above. In these circumstances, the Petitioners filed the present petition. The Petition was admitted on 07.06.2002 and the impugned order was stayed. As such, the impugned order has been stayed for last 24 years.

5. Recently, on 20.01.2026, the Court was informed that after service of Respondent No.1 was terminated, he had joined another institution. On 23.06.2026, considering that the post involved was 100% grant-in-aid post and one of the contention of the management is that the appointment itself is illegal. Respondent No.3- Education Officer was directed to file reply.

6. The concerned Education Officer (Secondary) Zilla Parishad, Pune filed his affidavit-in-reply dated 29.08.2026, contending *inter alia* that when the appeal was heard by the Tribunal, notice was not properly served upon the Education Authority. It is submitted that at the relevant time, the appointment of Respondent No.1 was made without issuing any advertisement to fill the vacancy/post. That no interview was conducted. It is further contended that though approval was granted by the then Education Officer, the institution has not forwarded the pay/salary bill of Respondent No.1. That after the termination of Respondent No.1, he has joined Yashwantrao Chavan Mahavidyalaya Karmala District Solapur (another school). That the claim of deemed permanency is not correct. That the appointment of Respondent No.1 was not made by following due procedure contemplated under Section 5 of the said Act and said Rules thereunder. That appointment of Respondent No.1 was against post reserved for Scheduled Caste candidate and therefore the same was temporary till filling of the reserved post and till availability of SC category candidate.

### **SUBMISSIONS**

7. Learned counsel for the Petitioner/Management submitted that the appointment itself is made by the earlier management without following due procedure, without advertisement and without conducting interview and without considering the reservation policy. Hence, it is illegal and cannot create any right in favour of Respondent No.1. He submitted that the approval copy relied upon by the Petitioner dated 11.12.1997 was an incomplete document and its second page was not produced before the Tribunal. That the alleged approval dated 11.12.1197 seems to have been secured by the earlier management by misleading the authority, which is supported from the fact that the

proposal dated 10.12.1997 is approved in one day i.e. next day on 11.12.1997. He submitted that the correct / complete copy of approval indicates that second page is not signed by the Education Officer and the table in respect of reservation is kept blank. Therefore, the alleged approval is highly suspicious document. He submitted that therefore mere mention of word 'probation' or period of 'two academic years' in the order of appointment cannot be considered in favour of Respondent No.1. That the impugned order is completely based on the appointment letter which is considered completely ignoring the case of the management that the appointment itself is illegal. He submitted that in the written statement filed before the tribunal, clear stand was taken about illegality in appointment, which is not considered by the tribunal. He further contended that contention about the alleged approval letter dated 11.12.1997 amounting to fraud upon the Education Authority was specifically raised however, it is ignored. He submitted that the fraud played by Respondent No.1 and earlier management though raised as serious defence, has been perversely not considered. He finally submitted that since the Education Authority has now taken clear stand in this petition, in case the Court is not inclined to consider it, the matter may be remanded to Tribunal for fresh consideration. He relied upon following judgments in support of his case as under:

- i. Hindustan Education Society and Anr. Vs. SK. Kaleem SK. Gulam Nabi and Ors. (1997) 5 SCC 152.
- ii. Janta Education Society and Anr. Vs. Prakash Babarao Shingane and Anr. 2010 (1) Mh.L.J. 329.
- iii. Sanjay Gandhi Shikshan Prasark Mandal, through its President Shri Sakharam Malhari Kakade and Anr. Vs. Deputy Director of Education and Anr. 2022 SCC OnLine Bom 1111.

8. On the other hand, learned counsel for Respondent No. 1 submitted that Respondent No. 1 was appointed against clear/open vacancy on probation. That Respondent No. 1 was working continuously from 09.06.1997 till 10.06.1998. That there was no termination order or notice of termination bringing services to end. That it was incumbent upon the Petitioner/Management to follow the statutory procedure. That the appointment on probation was duly forwarded to the Education Officer for approval and it was approved by the concerned authority and therefore it was not open for the Management to restrain Respondent No. 1 from signing on muster. She submitted that the contention of the Petitioner/Management about alleged backdoor entry is not supported by material and the appointment was made by the Management which was sent for approval by the Management itself. She submitted that having permitted Respondent No. 1 to continue in service and having acted on the appointment order, the Management cannot take contrary stand subsequently. That in the absence of formal termination order, the continuous service of Respondent No. 1 with approval from the Education Officer and existence of open vacancy are material circumstances in favour of Respondent No. 1. That the Tribunal has passed the impugned order based on material available on record and no interference is required. That the Petitioner/Management has not produced any appointment order in support of its contention. That muster roll shows signature of Respondent No. 1 upto 01.05.1998. She submitted that Respondent No. 1 has retired from other school and therefore, Respondent No. 1 is seeking arrears of salary from 09.06.1997 to 20.06.2004 and continuation of service from 09.06.1997. She has relied on various documents including appointment order, approval dated 11.12.1997, correspondence with the Management and

sheets signed by students showing presence in the school from 08.06.1998 to 10.06.1998. She finally prayed for dismissal of the petition. She relied on following judgments in support of her case:

- i. Progressive Education Society and Anr. Vs. Rajendra and Anr. (Appeal (Civil) No.1318 of 2008, Judgment dated 15.02.2008, Hon'ble Supreme Court).
- ii National Education Society's High School and Junior College Vs. Lulomool Monachary 1987(2) BCR 521.
- iii. Smt. Prajwala Bhatu Khalane Vs. Mahatma Phule Vidya Prasarak Sanstha, Deopur, Taluka and District Dhule, through its President and Ors. (Writ Petition No. 6196 of 2015 with connected two petitions, Judgment pronounced on 31.08.2016, Bombay High Court, Aurangabad Bench).
- iv. Sachin s/o Suryakant Landage Vs. The President, Shahu Maharaj Shikshan Sanstha, Tuljapur, Tal. Tuljapur, Dist. Osmanabad and Ors. (Writ Petition No.1519 of 2019, Judgment pronounced on 20.04.2022, Bombay High Court, Aurangabad Bench.).

### REASONS AND CONCLUSION

9. I have considered the rival submissions and perused the record.

10. Considering the long time lapse during pendency of the petition and since the impugned order is very old which is stayed for last 24 years, I do not find it appropriate to remand the matter to the Tribunal for any reason. Therefore, I am considering the stand taken by the Education Authority by filing affidavit-in-reply in the present petition.

11. At the outset, it is necessary to note that there is nothing on record to show that appointment of Respondent No. 1 was made after following the procedure of issuing advertisement and conducting

interview. Respondent No. 1 has only relied on order of appointment dated 07.06.1997 signed by the then president of the Petitioner/institution. This appointment order states that Respondent No. 1 was appointed on probation for the year 1997-98 and 1998-99. The Petitioner/Management has taken clear stand in the written statement before the Tribunal that the election of the Petitioner/institution took place in December 1997 and the new managing body took the charge in January 1998 when it was found that the appointment of Respondent No. 1 was done by the then president of the earlier Management without following any procedure and in complete disregard to the reservation policy, without considering the aspect of backlog, student strength and permissible posts. In view of such clear stand taken by the Petitioner/Management, it was necessary for the Tribunal to consider the aspect of legality of appointment letter dated 07.06.1997.

12. The Petitioner/Management has seriously challenged the order of approval dated 11.12.1997 which is heavily relied upon by Respondent No. 1. Perusal of this approval order indicates that it is given on next day of proposal. Proposal is made on 10.12.1997 and approval is granted on 11.12.1997. It means that the concerned Education Officer who signed on said approval has processed the approval in one day. The unusual swiftness with which the approval is given to appointment of Respondent No. 1 clearly supports the case of the Petitioner/Management that the said approval was obtained by misleading the concerned Education Officer or for some other reason which is not justified either by learned AGP or learned counsel for Respondent No. 1.

13. It is important to note that in affidavit-in-reply filed in this

petition by the education authority, clear stand is taken that Respondent No. 1 was appointed without any advertisement, without taking interview and against the post reserved for scheduled caste candidate and it was made till filling of post by candidate belonging to SC category. In the teeth of this clear stand, it is necessary to consider whether Respondent No. 1 was really appointed by following necessary procedure. The Tribunal has not considered this aspect at all, though defence was raised by Petitioner/Management.

14. Considering that the post on which Respondent No. 1 was appointed was reserved for SC category, it cannot be said that the appointment was against clear vacancy. Therefore, even if the appointment letter mentions probation, Respondent No. 1 cannot claim deemed permanency. In this regard, the judgment of **Janata Education Society (Supra)** clearly supports the case of the Petitioner/Management. In the said judgment, learned Single Judge of this Court, while considering the appointment on probation, has held that a teacher cannot be appointed on probation unless there is clear vacancy. In the recent judgment of this court in **Sanjay Gandhi Shikshan Prasarak Mandal (Supra)**, it is held that the requirement of issuing advertisement even for making appointment in open category is to ensure that every eligible person is made aware of the vacancy available and it is bare minimum requirement of the concept of equality.

15. When the appointment itself is found to be made without following due procedure and disregarding the reservation policy as well as without issuing advertisement or conducting interview, it is not possible to sustain the impugned order which proceeds on the sole basis that appointment order appoints Respondent No.1 on probation

for 2 years.

16. It is material to note that second page of the approval letter dated 11.12.1997 which is heavily relied upon by Respondent No. 1, shows that the table giving details about reserved post is completely blank, which means that the so-called approval was granted without considering the reservation policy.

17. The documents relied upon by Respondent No. 1 in the form of various sheets signed by students and teaching/non-teaching staff indicating that from 08.06.1998 till 10.06.1998, Respondent No. 1 tried to attend the school and take classes, will not make the appointment legal. The defect in the appointment due to not following procedure and not considering the reservation, cannot be cured by such methods adopted by Respondent No. 1.

18. Perusal of the impugned order indicates that the Tribunal has only proceeded on the basis of appointment order dated 07.06.1997 mentioning probation for 2 years. The Petitioner/Management has produced resolution dated 25.02.1998 passed in the meeting of new Management. The Tribunal was conscious of the fact that the Management has changed in December 1997 and the new body took charge of the Management on 02.01.1998. The Tribunal was also aware of the submission that as per resolution of the new Management, Respondent No. 1 was permitted to continue only for academic year 1997-98. The Tribunal has held that the resolution does not indicate any reason why the appointment was only for academic year 1997-98, completely losing sight of the fact that the legality of the appointment itself was seriously challenged by the Petitioner/Management. The Tribunal has then considered approval dated 13.11.1997 giving approval to divisions in the school indicating that there was increase in

divisions for academic year 1997-98. The Tribunal therefore ought to have appreciated that appointment order relied by Respondent No.1 is of June 1997 which is prior to increase in divisions. The Tribunal has held that though according to the Petitioner/Management, the appointment was against reserved vacancy, there is no material on record to indicate so. In this respect, it is important to note that the approval order dated 11.12.1997 was produced before the Tribunal. Said order shows that the chart of reservation at the end of the approval order is kept blank and it is apparently given within one day of its proposal. This aspect ought to have been considered by the Tribunal. The Tribunal was not justified in holding that the appointment is against permanent vacancy, especially when the impugned order itself records that the additional division was sanctioned increasing staff strength in November 1997 i.e. after appointment order of June 1997.

19. Reliance placed by the Tribunal on the resolution of new Management dated 25.02.1998 for considering legality of appointment of Respondent No. 1, cannot be justified and sustained because the genesis of Respondent No. 1's claim lies in the appointment order dated 07.06.1997 and it ought to have been verified whether this appointment is legal or not.

20. The Tribunal could not have held that the appointment of Respondent No. 1 w.e.f. 02.01.1998 is on probation for the simple reason that the new Management has not issued any appointment letter and the appointment letter relied upon by Respondent No. 1 was issued by the President of the earlier Management without following due procedure.

21. In the aforesaid facts and circumstances, when it was found by

the new Management that the appointment itself was illegal at the hands of earlier Management, then it was justified, within the same academic year and in a short span of about 6 months, to restrict services of Respondent No. 1 till end of ongoing academic year (1997-89). No fault can be found with the stand taken by the new Management that Respondent No. 1 could not continue after the academic year 1997-98.

22. So far as reliance placed on judgment of **Sachin s/o Suryakant Landage (Supra)** is concerned, it is important to note that in the said judgment, learned Single Judge of this Court came to the conclusion that the Tribunal was not justified in entering into arena of legality of appointment and it was not an issue in appeal.

However, in the facts of the present case at hand, considering the specific defence raised in the written statement of the Petitioner/Management, the legality of appointment of Respondent No. 1 was very much an issue for consideration which has not been considered by the Tribunal. Therefore, the said judgment will not help Respondent No. 1.

23. So far as judgments in **Progressive Education Society (Supra)** and **Smt. Prajwala Bhatu Khalane (Supra)** relied by Respondent No.1 are concerned, both the judgments dealt with the aspect of termination of service of 'probationer'.

In the present case, the appointment as a probationer itself is found to be illegal, in as much as, there was no clear vacancy and no procedure was followed. It has come on record that the appointment was made against post reserved for SC category and therefore, the reservation policy was also not complied with. Therefore, mere use of

word 'probation' in the appointment order will not make Respondent No. 1 probationer to claim protection of strict adherence to applicable Rules for termination of a probationer.

24. So far as the Judgment of **National Education Society's High School and Junior College Vs. Lulomool Monachary (Supra)** is concerned, in the said case, there was vacancy created by exit of the permanent employee and therefore the new appointee filling such vacancy was presumed to be on probation. In that context, learned Single Judge of this Court held that new appointee cannot be treated as temporary employee.

The facts of the present case at hand are completely distinguishable, because in the present case, there was no clear vacancy. In fact, the post was reserved for SC candidate and neither reservation policy nor backlog nor availability of surplus teachers was considered. Therefore, the said Judgment will also not help Respondent No. 1.

25. For the reasons indicated above, the impugned order (which is already stayed for last 24 years) cannot be sustained and it requires interference.

26. **The petition is therefore allowed.** Impugned order dated 26.04.2001 passed in Appeal No. 65 of 1998 is quashed and set aside. Appeal No. 65 of 1998 is dismissed. Rule is made absolute in above terms. No order as to costs.

27. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

**(M.M. SATHAYE, J.)**