

Ajit

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8693 OF 2021

1] Shri Kiran Deoram Patole,
Age 30 Yrs, Occ. Nil,
Category (S.C.)
R/at Post - Talwade, Tal. Malegaon,
Dist. Nashik.

2] Shri Yogesh Sambhaji Wani
Age 42 Yrs, Occ. Nil,
Category (Open)
R/at Talwade, Tal. Malegaon,
Dist. Nashik.

...Petitioners

Versus

1] The State of Maharashtra,
Through the Principal Secretary,
School Education & Sports
Department,
Having Office at Mantralaya,
Mumbai – 400 032.

2] The Deputy Director of Education
Nashik Region, Nashik.

3] The Education Officer,
[Secondary]
Zilla Parishad, Nashik, Dist. Nashik

4] Sarvodaya Shikshan Sanstha,
through its President/Chairman
Nav Vasahat, Soygaon, Malegaon,
Dist. Nashik

5] Jagruti Secondary School
through its Principal,
Nav-Vasahat, Soygaon, Malegaon,
Dist. Nashik – 423 203

...Respondents

AJIT
RAMESH
PATHRIKAR

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AJIT RAMESH
PATHRIKAR
Date: 2026.10.13
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Mr Jayendra D. Khairnar for Petitioner.

Mr. Aditya R. Deolekar, AGP for Respondent-State.

CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 30th SEPTEMBER 2026

JUDGMENT: (Per Dr. Neela Gokhale, J.)

1. By this petition, the Petitioners seek to quash and set aside the Communication dated 01st August 2018 issued by Respondent No. 3, Education Officer, revoking the approval granted to the Petitioners' appointment as 'Peon' in Respondent No. 5, School.

2. The brief facts of the case are as follows:

2.1. The Petitioners were appointed as peons in Respondent No.5-School *vide* appointment orders dated 30th June 2011 and 01st October 2011, respectively. Respondent No. 3, the Education Officer, duly approved their appointment on 19th March 2012.

2.2. They were appointed to the posts which were vacant, following the termination of the services of Ms Anita Atmaram Dhangar and Mr Arun Tanhaji Kunwar. Ms Dhangar and Mr Kunwar had preferred an appeal challenging the retrenchment before the School Tribunal. The Management failed to apprise the School Tribunal that the present Petitioners were recruited on the post, which were held by the said two terminated employees and to replace the retrenched employees. The Petitioners were also kept in the dark regarding the challenge to the termination order and the proceedings filed by the said erstwhile employees. By an order dated 26th November 2013, the appeals filed by the said terminated employees were allowed, directing reinstatement of Ms Dhangar and Mr Kunwar with

back wages and continuation of service. Respondent Nos. 4 and 5, Management and the school, filed a writ petition before this Court assailing the said orders passed by the School Tribunal. The Petitioners herein, filed an intervention application in the said proceedings filed before this Court inter alia bringing to the Court's notice that, pursuant to the termination of the services of Ms Dhangar and Mr Kunwar, the Petitioners were appointed on the post held by them. They also pointed out to the Court that an approval was also granted for their appointment by the Education Authorities. By its Order dated 13th June 2017, the High Court dismissed the writ petitions filed by the Management, thereby upholding the School Tribunal's order directing reinstatement of the said terminated employees.

- 2.3. Pursuant to the dismissal of the Writ Petition, the said terminated employees rejoined their posts. As a consequence thereto the Petitioners were informed, by a letter dated 26th April 2018 issued by Respondent No.5-Management, that, on the oral direction of Respondent No.3-Education Officer, the Petitioners were not included in the pay bill from April 2018. Upon enquiry, Respondent No. 3, Education Officer, issued the impugned Communication stating that the approval granted to the Petitioners' appointment was revoked, in view of the orders passed by this Court and the School Tribunal, reinstating the erstwhile employees to their respective posts. The Petitioners made representations to Respondent No. 2, Deputy Director, for absorption. As these representations were neither heard nor decided, the Petitioners approached this Court by filing writ

petition, which was allowed, thereby directing Respondent No. 2, Deputy Director, to decide the Petitioners' representations within six weeks.

- 2.4. As per the directions of this Court, the Petitioners appeared before Respondent No. 2, Deputy Director; however, they were informed that their representations cannot be decided unless the order revoking the approval for their appointment is set aside first. Hence, they are before this Court praying for the following reliefs:

"a] Rule be issued

b] That this Hon'ble Court be pleased to issue a writ of Certiorari and/or any other appropriate writ, order and/or direction under Article 226 of the Constitution of India, thereby calling for the record and proceeding in respect of impugned Letter dated 01-08-2018 and order of cancelling/revoking/reviewing the order of approval dated 09-03-2012 granted to the Petitioners and after ascertaining the record and proceeding, this Hon'ble Court be pleased to quash and set aside the order of cancelling/revoking/reviewing the order of approval dated 09-03-2012 granted to the Petitioner and further be pleased to declare Petitioners as "Surplus".

c] That this Hon'ble Court be pleased to issue a writ of Mandamus and/or any other appropriate writ, order and/or direction under Article 226 of the Constitution of India, thereby directing the Respondent Nos. 1 to 3, to pay the monthly salary of the Petitioners, as payable, from April 2018 till the date of their absorption.

d] That this Hon'ble Court be pleased to issue a writ of Mandamus and/or any other appropriate writ, order and/or direction under Article 226 of the Constitution of India, thereby directing the Respondent Nos. 2 to decide the representation/s dated 13-09-2019 and/or representation/s dated 06-11-2020 made by the Petitioners, on its own merit, in accordance with law, within time bound schedule, thereby declaring Petitioners surplus and consequently to absorb the Petitioners on vacant posts, in any institute.

e] Pending the hearing and final disposal of this Writ Petition this Hon'ble Court be pleased to direct the Respondents No. 1 to 3 to provide copy of the Order cancelling/revoking/reviewing order of approval dated 19-03-2012 granted to Petitioners and further be pleased to allow the Petitioner to amend the Petition to add impugned Order.

f] Pending the hearing and final disposal of this Writ Petition, this Hon'ble Court be kindly pleased to restrain the Respondents, by an order of injunction from deleting online ID of the Petitioners from online portal applicable for disbursing salary.

g] Ad-Interim, Interim prayers in terms of prayer clause [e] & [f] be granted.

h] Cost be provided.

i] For such and further relief as the nature and circumstances of the case may require be granted”

3. Mr Jayendra Khairnar, learned counsel, appeared for the Petitioner and Mr Aditya Deolekar, learned AGP, represented the State.

4. Mr Khairnar submitted that the Petitioners were appointed after following due process of law and are continuing to work as peons in Respondent No.5-School. He further submitted that the Petitioners were neither issued any notice before the order revoking of their appointment approvals was passed by the Education Officer; nor was any copy of the same served upon them, and that their salaries were arbitrarily stopped. He submitted that Respondent No. 3, the Education Officer, does not have the power to review his own order unless it was alleged to have been obtained by fraud. He relied on various decisions of this Court to support his contentions.

5. On the other hand, Mr Deolekar has drawn the Court’s attention to the Affidavit-in-Reply dated 24th June 2022 of Mr Machhindra Kadam, Respondent No.3-Education Officer. He submitted that only two posts of peons are approved in Respondent No. 5 School, and by virtue of the School Tribunal's decision, reinstating Ms Dhangar and Mr Kunwar, which was approved up to the Supreme Court, thereby rendering their termination illegal and invalid, would mean that salary and allowances from the government funds can be drawn only qua the said two employees and not otherwise. He further submitted that Respondent Nos. 4 and 5, as the appointing authority, would be responsible for paying the salary and allowances to the Petitioners.

6. Heard the learned counsels for the respective parties and perused the record with their assistance.

7. On a bare reading of the impugned communication, it is evident that the Petitioners were neither given any notice of their removal nor any opportunity to be heard. Although it was only after the directions passed by this Court the Petitioners were given an opportunity to be heard before Respondent No.2-Deputy Director, however, they were informed that their representations cannot be decided unless the order revoking the approval for their appointment is set aside first. It appears to us that the present situation for the Petitioners has arisen on account of the irresponsible conduct of the Respondent Management / the school authorities. We say so for the reason, that it is quite clear, that the fact of these Petitioners being appointed on the vacant posts of the terminated employees, was never brought to the notice of the school tribunal.

8. Also in the Writ Petition filed by the Management, assailing the School Tribunal's order, the present Petitioners moved intervention applications in the said proceedings, on learning that the erstwhile employees had been reinstated to their posts. However, their applications were rejected. While dismissing the Writ Petition, this Court opined that, the Management had failed to bring to the notice of the School Tribunal that the present Petitioners were appointed in place of the retrenched employees. Thus, the High Court held that such circumstances were created because of feckless management. As a result, the Petitioners were in a situation that they would be removed from their posts as peons, despite having been appointed through the due recruitment process.

9. Mr Khairnar has contended that the decision to grant approval to the Petitioners' posts once taken could not have been reviewed, as there is no provision conferring any powers of review, once an order is issued by the Education Officer granting an approval to the Petitioners' appointment. Hence, he submitted that the Education Officer, having once granted approval to the Petitioners' appointment as peons, cannot review or recall the same. Mr Khairnar may be right in his contention that no review provision exists. However, in the present case, the Petitioners were appointed during the pendency of the appeal before the School Tribunal preferred by the erstwhile employees challenging their termination. It is settled law that anything done pending litigation is always subject to the outcome of the proceedings.

10. While the literal doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 does not directly govern service law, in the different decisions of the High Courts, the same has been applied as an equitable principle. Subsequent appointments, promotions or vacancies created and filled up pending litigation are held to be always subject to the outcome of the court case. In **Parvinder Singh Bajaj vs. State of Punjab**¹, on an identical issue, the Punjab and Haryana High Court observed as under:

"In view of the above we are satisfied that the impugned order dated 19th April, 1994 (annexure B-5) by which the petitioner was removed from the office of presidentship as well as membership of the committee cannot be sustained. It is quashed. The petitioner is restored to his original position. Mr. Bagchi has pointed out that during the pendency of the petition a fresh election had taken place. In our view, the election is governed by principles of *lis pendens*. In any case fresh election had taken place on account of the impugned order. Once the impugned order is quashed election cannot survive. As a necessary consequence status quo ante as existed prior to April 19, 1994 has to be restored."

¹ 1995 (1) All India High Court Cases 3644

11. In another identical case, the Madhya Pradesh High Court in the matter of **Smt. Rani Kushwaha vs. State of Madhya Pradesh and Ors.**² held that once the earlier incumbent was terminated and the termination was challenged by him, it means that the process was underway and impliedly appointment of another employee on that post was subject to final outcome of the said litigation initiated at the instance of the earlier incumbent employee. This aspect was also discussed in detail by the Division Bench of the Madhya Pradesh High Court in **Jhunilal Yadav vs. State of M.P.**³, in which the Division Bench held as under:

“It is the case of the applicant now in the application that the applicant was appointed as a Panchayat Karmi based on an advertisement and recruitment process conducted by the Panchayat in the year 2001 and as the applicant was working in the panchayat, the order passed for reinstating Smt. Vijay Laxmi Mishra has the result of removing the applicant from service and as this has been done without hearing him, the action is unsustainable.

Shri Atulanand Awasthy, learned counsel appearing for respondent No. 5 refuted the aforesaid and pointed out that services of Smt. was terminated in the year 2000 and after her termination the applicant was appointed in a vacancy that arose due to termination of Smt. Vijay Laxmi Mishra. It is said that termination of the original employee namely Smt. Vijay Laxmi Mishra having been found to be unsustainable, applicant has to make room as the applicant's appointment was on a vacancy which was created after termination of respondent Smt. Vijay Laxmi Mishra. Accordingly, it is submitted by him that no error has been committed, applicant is not entitled for any hearing and no case for review is made out.

We find much force and substance in the objection raised by Shri Atulanand Awasthy. Smt. Vijay Laxmi Mishra was working as Panchayat Karmi/Panchayat Secretary and in the year 2000 her services were terminated. After terminating her services, in a vacancy resultantly caused applicant herein was appointed but once the termination of Smt. Vijay Laxmi is quashed she is to be re-appointed as a Panchayat Karmi, the applicant cannot resist that reinstatement on the ground that applicant has been appointed. Applicant having been appointed in a vacant post created after termination of Smt. Vijay Laxmi cannot have any grievance in the matter of reinstatement of Smt. Vijay Laxmi after her termination is quashed.

In the facts and circumstances as are detailed herein above, merely on the ground that applicant was not impleaded in original writ petition and he was not heard in the matter, we see no reason to review/recall the order. If the applicant has any grievance for continuing him in service in any other Panchayat, he may take up

2 2025: MPHC-GWL: 21964

3 2014 SCC Online MP 3951

the matter with the competent authority and it would be for the competent authority to consider the same. On the basis of consideration made herein above, we see no reason to interfere. There is no error apparent on the face of record warranting review/recall of the order."

12. Since the erstwhile terminated employees and now reinstated employees were pursuing litigation assailing their termination and the matter was pending before the School Tribunal and later before this Court for consideration, therefore, the natural consequence of the litigation concluding in favour of the erstwhile, resulting in their reinstatement, then obviously the Petitioners being the appointees on the post held by the said employees need to give way to effect the reinstatement of the said employees; as their reinstatement brought about a situation of restoration of a status quo ante qua the service of the erstwhile employees or a consequence of restitution within the meaning of Section 144 of Civil Procedure Code, 1908. Hence, when the appointment of the Petitioners was on the post held by the said erstwhile employees who were reinstated, impliedly the same was subject to the outcome of the litigation pursued by the erstwhile employees.

13. In this view of the matter, we are inclined to hold that although the approach to the Petitioners' appointment ought not to be recognized qua the post held by them of the erstwhile employees, the same needs to be recognized for the purpose of the Petitioners being considered as surplus employees, to be absorbed in the vacancy recruitment which may take place in respect of any aided institution. In this view of the matter, we deem it appropriate to direct Respondent Nos. 2 and 3 to include the names of the Petitioners in the list of surplus candidates and absorb them as expeditiously as possible and in any event within a period of eight weeks.

14. We are also informed that these Petitioners have not received salary from April 2018 till date. They claim to be still serving on their posts. If this be so, we hold the Management and the school i.e. the Respondent Nos.4 and 5 responsible to ensure that the arrears of their salaries are paid for the reason, that the State Government if is paying the salaries of the erstwhile reinstated employees on their reinstatement, then Respondent Nos. 4 and 5 shall be responsible for paying the salaries of these Petitioners from April 2018 till such time as they are working on the posts having taken work from them. No institution which is being conducted as per law can exploit their employees and not pay their salaries for so many years after taking work from these Petitioners. The Petitioners in this regard were at the mercy of the institution when it came to their salaries. Respondent Nos. 4 and 5 are thus directed to disburse the Petitioners' arrears of unpaid salaries along with interest at the rate 6% per annum from their own funds which shall be paid to the Petitioners in four monthly installments, failing which, the same needs to be deducted from the grants which are payable to Respondent Nos. 4 and 5. The Deputy Director shall record compliance of the present order.

15. Ordered accordingly.

16. The petition is thus disposed of in the aforesaid terms. No costs.

(DR. NEELA GOKHALE, J)

(G. S. KULKARNI, J.)