

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION No. 5547 of 2014.**

- 1) Shri Kadam Rahul Shivaji, PETITIONERS.
occupation service as clerk,
- 2) Shaikh Javed Ahmad
Occupation-service as Peon,
Both working in
Shri. Datta Vidya Mandir,
Akkalkot Road, Solapur.

VERSUS

- 1) State of Maharashtra,
through : Its Secretary
Education Department
Mantralaya, Mumbai
400 032.
- 2) Dy.Director of Education
Pune Region, Pune.
- 3) Administrative Officer,
Solapur, Municipal
Corporation Primary
Education Department
Solapur.

- 4) Education Officer (Primary)
Solapur Zilla Parishad,
District Solapur.
- 5) Head Master, RESPONDENTS.
Shri Datta Vidya Mandir,
Akalkot Road, Solapur.

WRIT PETITION No.1503 of 2015.

- 1 Mane Kashinath Baburao, aged PETITIONER.
about 43 years, Occupation
service as clerk working in
Devraj Prathmaik Shala
Vidyadevi Balak Mandir,
Shantinagar, Junna Kumtha
Naka Road, Solapur.

Versus.

- 1 State of Maharashtra,
through : Its Secretary
Education Department
Mantralaya, Mumbai 400 032.
- 2 Director of Education Primary,
Dr. Ani Besant Road,
Central Building, Pune.
411 001.
- 3 Deputy Director of Education,

Pune Region, 17, Dr. Babasaheb
Ambedkar
Opp. Lal Deul, Pune 411 001.

4 Administrative Officer Solapur,
Municipal Corporation,
Primary Education Dept.
Solapur.

5 Head Master, RESPONDENTS.
Devraj Prathmaik Shala
Vidyadevi Balak Mandir,
Shantinagar, Junna Kumtha
Naka Road, Solapur.

WITH
WRIT PETITION No. 2330 of
2015

1 Adarsh Kannad Vidyalay
MIDC Nilam Nagar, Bhag 3
Solapur run by Solapur
Shikhshan Prasarak Mandal
through its : President,
Mr. Usman Rajesab Inamdar
aged about 80 years.

2 Sagari Irshad Mahiboob
aged about 30 years,
working as a clerk in Adarsh
Kannad Vidyalay,
MIDC Nilam Nagar, Bhag 3
Solapur.

3 Kumbharikar Bhutalsidha PETITIONERS

Mahadev, aged about 33 years,
working as Peon in Adarsh
Kannad Vidyalay,
MIDC Nilam Nagar, Bhag 3
Solapur.

VERSUS.

- 1 State of Maharashtra
Mantralaya, Mumbai.
Through : Its Secretary
Education Department.
- 2 Director of Education,
Directorate Office
Maharashtra State, Pune.
- 3 Deputy Director of Education,
Pune Region, Pune.
- 4 Education Officer, (Primary) RESPONDENTS
Solapur Zila Parishad,
Solapur.

WITH
WRIT PETITION No. 6299 of
2014.

- 1 Deepak Sidram Fule,
Occupation service as clerk,
- 2 Bhalchandra Mahendra More
Occupation service as Peon
both working in
Jay Bharat Primary School

13/98, Bapuji Nagar,
Uttar Sadar Bazar,
Solapur.

VERSUS.

- 1) State of Maharashtra,
through : Its Secretary
Education Department
Mantralaya, Mumbai
400 032.
- 2) Dy. Director of Education
Central Building,
Maharashtra State, Pune.
- 3) The Deputy Director of
Education, Pune Region
Pune.
- 4) Administrative Officer,
Solapur, Municipal
Corporation Primary
Education Department
Solapur.
- 5) Head Master, RESPONDENTS.
Jay Bharat Primary School
13/98, Bapuji Nagar,
Uttar Sadar Bazar, Solapur.

Mr. V.S. Deokar in W.P.No.1503/15 and 6299/14
& Mrs. Ujawala V. Karpe, in W.P.No.5547/14 and
2330/15 Advocates for the Petitioners.

Mr. Vijay Killedar, Advocate for Respondent-
Administrative Officer, Solapur Municipal
Corporation, Primary Edu.Dept.Solapur in all

the petitions.

Mr. A.I. Patel, AGP for Respondent Nos. 1 to 3.

**CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**
RESERVED ON:- 8th November, 2017.
PRONOUNCED ON:- 12th December, 2017.

JUDGMENT (PER: SMT. BHARATI. H. DANGRE,J).

1 Rule, Respondents waive service. By consent, rule is made returnable forthwith and the petitions are taken up for hearing and final disposal. All these four writ petitions revolve around the same set of facts and seek same reliefs and hence they are heard together and disposed of by this common judgment.

All the four writ petitions are filed by the petitioners seeking directions to the Respondents, State of Maharashtra and its subordinates in the Department of Education to grant individual approval to the appointment of the petitioners effected on the post of clerk/peon from the date of their initial appointment and all the petitioners pray for release of salary in their favour, on grant of such approval.

2 In order to appreciate the grievance of the petitioners

in the respective petitions, it is necessary to refer to certain factual events which are common to all the petitioners except the variance in the dates on which the events took place. In W.P. No. 5547 of 2014 petitioner No.1 Rahul Shivaji Kadam and petitioner No.2 Shaikh Javed Ahmad are presently working on the establishment of Respondent No.5/ Shri Datta Vidya Mandir, Akkalkot Road, Solapur as clerk and peon respectively and their appointments are effected from 25th June, 2007 and 16th June, 2009 respectively. As far as W.P. No. 1503 of 2015 is concerned the petitioner is working as clerk in Devraj Primary School, Solapur i.e. Respondent No.5. He is appointed in the said post from 10th July, 2003. In W.P. No. 6299 of 2014 petitioner, namely Deepak Sidharam Fule is working as clerk and petitioner No.2 Bhalchandra Mahendra More is working as peon in Jay Bharat Primary School, Solapur i.e. respondent No.5 from 1st June, 2004. In W.P. No. 2330 of 2015 which is filed by Adarsh Kannad Vidyalay, M.I.D.C. Nilam Nagar, Solapur, petitioner No.2 Sagari Irshad Mahiboob is working as clerk in the establishment of petitioner No.1 since 26th July, 2004 whereas petitioner no. 3

Kumbharikar Bhutalsidha Mahadev is working as peon in petitioner no.1 school from 26th July, 2004. All the petitioners

are constrained to approach this Court, aggrieved by the action of the respondents in denying approval to their appointments in spite of the fact that they are in service since considerably long period of time and they have been deprived of benefit of approval in view of the new policy of the State Government by which the restriction is imposed on absorption of persons like the petitioners, until the surplus non-teaching staff is absorbed.

3 The State of Maharashtra has an existing policy in regard to sanction of non-teaching post on the establishment of a primary school, on crossing the strength of 500 students in terms of Rule 115 (3) (b) of the Bombay Primary Education Rules, 1949 and according to the said Rules a primary school having 500 or more students or on its roll are entitled for having one post of junior clerk and one post of Class-IV employee (peon) to be sanctioned on its establishment. The respective

school in which the petitioners in all the petitions seeking relief before us were working reached the desired number of 500 students in different academic years and the respective schools sought permission from respondent No.3 and Respondent No.4 for filling up the said post either of peon or the clerk as the case may be and after issuing advertisement carried out the recruitment process for filling up the said post. All the petitioners before us were qualified to be appointed to the post of clerk/peon as the case may be, participated in the selection process pursuant to the advertisement and were appointed on the respective posts on different dates which we have already mentioned above, and they are holding the said post since their date of appointment on the establishment of the different schools in Solapur District.

On the issuance of order of appointments the respective schools submitted their proposal seeking approval to their appointments from the date of their initial appointments to the Education Officer Primary School, Zilla Parishad, District Solapur and the Education Officer taking into account the fact

that the respective schools were eligible for sanction of non-teaching staff in the backdrop of the strength of the students in the said school directed respective schools to submit fresh proposal for approval of non-teaching staff and accordingly respective schools forwarded the proposal for individual approval in favour of the petitioners on the post of clerk/peon as the case may be.

4) The Deputy Director of Education Pune Region, Pune verified the proposal and respondent No.1 prepared one District-wise list of non-teaching staff for the entire State of Maharashtra and issued a Government Resolution on 1st April, 2011 sanctioning the posts in various primary schools in the State on the basis of requisite strength of the students as on 30th September, 2010. The Government Resolution dated 1st April, 2011 included the name of school in which they were appointed and also included the name of the petitioners. The said Government Resolution issued by the School Education Department set out that Rule 115 (3) (b) of the Bombay Primary

School Rules, 1949 make a provision for admissibility of one post of junior clerk and one class IV employee i.e. peon to those schools whose strength of the students was 500 or more. The Government by its earlier Resolution dated 12th July, 2004 had permitted such grant in aid primary school whose strength was more than 500 students to fill in the admissible posts and accordingly 193 Government Aided Primary Schools were sanctioned 193 posts of junior clerks and 193 posts of peons and the said posts were filled in. However, subsequently the strength of the students of the said school had fallen below five hundred and, therefore, 121 junior clerks and 103 peons had become surplus and therefore proposal was submitted to absorb the surplus junior clerks and peons before filling up the post of non-teaching staff. In this background, the proposal for selection of 193 posts of junior clerks and 193 posts of peons was approved by the Joint Secretary Committee and High Level Secretary Committee on 17th April, 2010 and 21st January, 2011 respectively and the State Government issued Resolution on 1st April, 2011 thereby granting an approval for creation of the said

posts, division-wise and district-wise and for filling up the same. This Government Resolution was accompanied with the list of posts created and the name of the schools in which the said posts were created. Appendix II of the said Government Resolution include the names of Samrat Ashok Marathi Vidyalaya, Shri Datta Vidya Mandir, Akkalkot, Arun Primary School, Devraj Primary School, Balbharati Primary School and Vikas Vidyalaya who have been sanctioned post of clerk and post of peon and the year.

5 The grievance of the petitioners is that in spite of the said Government Resolution, they were not granted approval, and they continue to work without same, till today. This constrained some of the petitioners to approach this Court by filing Writ Petition No. 3806 of 2013 and this Court on 13th October, 2014 granted an opportunity to the respondent Nos. 1 to 3 to take a decision on the proposal of the petitioners which was already forwarded to them by Education Department of Solapur Municipal Corporation. Pursuant to the order passed by

this Court, the Administrative Officer, Solapur Municipal Corporation, Primary Education Department, Solapur addressed a letter to Respondent No.5 School in W.P. No.5547 of 2014 by which it was communicated to the Head Master of Respondent No.5 that the School had been asked vide letter dated 13th June, 2012 to fill in the post of non-teaching post (clerk and peon) subject to the condition that the surplus peon and clerk should be absorbed in the school and it was mentioned that Shri Baswaraj Purchase, clerk and Shri Sharad Shinde, peon who were declared as surplus and directed to be absorbed by letter dated 16th August, 2012, but were not absorbed and in view of this inaction, no approval can be granted to the appointment of Shri Rahul Shivaji Kadam, Clerk i.e. petitioner No.1 and petitioner No.2 Shri Shaikh Javed Ahmed, Peon similar such communications were addressed to the head of the schools.

The petitioners being aggrieved by the impugned letter/communication have challenged the said communication in the present petitions before us. By amendment the petitioners have also sought relief of cancellation of the policy of

the State Government namely “First surplus then wait list” or in the alternative the petitioners have sought declaration that the impugned policy may not be made applicable to the petitioners since they are working on the said posts for more than ten years. In nut-shell, the grievance of the petitioners is that they have been validly appointed and their appointments were approved by the State Government by issuing Resolution on 1st April, 2011. However, there is no implementation of the said Government Resolution and the decision of the respondents to absorb surplus non-teaching staff into the schools before granting approval to the appointees on the newly created post has deprived the petitioners of benefits of approval though they have rendered long length of service for more than ten years. With this grievance the petitioners have approached this Court.

6 In response to the writ petition, Respondent No.3/the Administrative Officer, Municipal Primary School, Solapur has filed an affidavit-in-reply on 27th October, 2014, opposing the grant of relief sought by the petitioners. Respondent No.3 do not

dispute the issuance of the Government Resolution dated 2nd May, 2012 requiring and mandating the respondents to conduct inspection drive for ascertaining the actual number of students in the school within the precincts and the fact that inspection was carried out for ascertaining the strength of the students of respondent No.5 school. It is stated in the affidavit that on inspection, the strength of the students was found less than 500 and hence the post of clerk as well as peon was not available in the primary school. Respondent No. 3 has further stated on affidavit that in order to implement the provisions of Right of Children to Free and Compulsory Education Act, 2009 (for short, the RTE Act), the staffing pattern in respect of the teaching and non-teaching employees of the school came to be revised and the Government has resolved not to grant approval to any other appointment unless the surplus candidates are absorbed. According to respondent No.3, this was applicable to the post of the petitioners also and therefore they could not have been absorbed unless the surplus non-teaching staff was absorbed.

7 We have heard learned Counsel Mr. V.S. Deokar and U.V.Karpe for the petitioners and learned A.G.P. Mr. A.I. Patel for Respondent Nos. 1 to 3.

The learned Counsel for the petitioners would argue that the decision of the respondents not to grant approval to the appointment of the petitioners as non-teaching staff is highly arbitrary and he would contend that the petitioners were appointed long back 2007 and have continued on the sanction. The learned Counsel for the petitioners would place heavy reliance on the Government Resolution of 1st April, 2011, whereby the Government has granted approval to the non-teaching posts in the Government Aided Private Primary Schools, where it was found that the number of the students on roll was 500 and permission was granted to fill up the said post. The learned counsel would contend that the posts of the petitioners were appointed are included in the Government Resolution of 1st April, 2011 and only because the Government has subsequently issued a Government Resolution directing

absorption of surplus non-teaching staff and the decision not to sanction any post unless and until the surplus staff is absorbed cannot be used to deny the claim of the petitioners.

As against this argument, the learned A.G.P. would not dispute the fact that by the Government Resolution dated 1st April, 2011 the Respondent Schools were held entitled for sanction of non-teaching staff in view of the fact that the strength of students in the said school was 500. However, he would argue that the State Government had issued directions to the Director (Primary School), Maharashtra State, Pune for absorbing the surplus clerks and peons in the Division prior to grant of approval to the newly appointed persons on vacant posts. He would argue that in the year 2011-12 in Solapur District ten clerks and nine peons were declared surplus and were required to be absorbed and in this backdrop grant of approval to the appointments of the petitioners on the establishment of respondent no.5-school would violate the Policy Decision of the State Government.

8 On careful consideration of the contentions advanced

on behalf of both parties, it can be seen that respondent No.3 has issued communication to the Head Master of Respondents school informing that in terms of the communication issued by the Director, Pune Division Pune on 13th June, 2012, the Head Master was directed not to grant any individual approval to any new non-teaching employee unless and until the process of absorption of surplus clerks and peons is completed and by the said communication the Head Master of Respondent schools were directed to absorb the peons and clerks who were declared surplus and in the absence of their absorption, the approval to the appointments of the petitioners cannot be granted. We are not incognizant of the fact that the State Government had taken a policy decision to absorb the surplus teaching and non-teaching staff on account of implementation of the Right of Children to Free and Compulsory Education Act, 2009, who have been declared as surplus and have prohibited the primary schools from any approval being granted to the appointments unless and until the surplus staff was absorbed. However, on perusal of the Government Resolution dated 1st April, 2011 we

note that it also relates to absorption of 193 junior clerks and 193 peons in 193 Government Approved Aided Private Schools in the State of Maharashtra, on the post which were created in view of the policy of the State Government to make such schools eligible for non teaching staff when the strength of the student exceeded 500. The said Government Resolution was issued to tackle a situation where the posts were created in the respective schools when the strength of the students on roll was more than 500 but it had subsequently reduced and therefore 121 junior clerks and 103 clerks had become surplus. In order to deal with the contingency, the State Government issued the Resolution on 1st April, 2011 to absorb such clerks and peons and decision was taken and accordingly they were held to be eligible for approval in the schools where strength of students was exceeding 500. The petitioners are covered by the said resolution and were held entitled for approval. In ignorance of this fact, the respondent schools were communicated that the petitioners cannot be granted approval on the post of clerk and peon respectively.

9 We do not find the approach adopted by the

respondents to be justified one. No doubt, it is laudable policy of the State Government to absorb the surplus non-teaching staff who have been rendered surplus and the State Government has restrained the schools from appointing new staff in the absence of their absorption but in any case, we find that the petitioners are also entitled for the same protection as they have been declared surplus by the Government Resolution on 1st April, 2011 and the State Government has granted approval to 121 posts of clerks and 103 posts of peons throughout the State of Maharashtra and they were held entitled for sanction of posts and approval.

In any event, the petitioners cannot be said to be at fault and they were appointed on the post of peon / clerk, the school in which they were appointed was eligible for the sanction of non-teaching staff in view of the fact that the strength of students on roll in the school exceed 500. It is also a fact that six other employees who were similarly situated as the petitioners and whose names were included in the list appended to the Government Resolution dated 1st April, 2011 have been

granted individual approval and this fact is not disputed by the respondents. Not granting approval to the petitioners on one hand and conferring the benefit of approval to another set of employees who are similarly situated as the petitioners is clearly discriminatory and the respondents have not offered any justification for the alleged discrimination. The Government had issued a Resolution on 2nd December, 2012 when it had carried out a special drive for assessing the actual strength of the students on roll of various schools since it had noticed that the private aided schools were indulging in hiking the number of students in order to avail the grant-in-aid from the State Government. The State Government issued the Resolution on 2nd May, 2012 thereby proposing the modalities to be followed by the authorities in view of the special drive for assessment of strength of the students carried through out the State of Maharashtra between 3 to 5th October, 2011. By the said Government Resolution it was resolved that the schools where the attendance of the students was found to be less than 50%, were liable for initiation of criminal proceedings and were also

liable for facing the consequences of withdrawal of the approval of such schools. By the same Government Resolution, the Government also resolved that those teachers who have been rendered surplus as a result of the said special drive should be accommodated in the schools meeting the requisite strength and till the teachers/non-teaching staff who were declared surplus have been absorbed in totality, private schools/schools run by the local bodies, would not recruit new teaching/non-teaching staff. It is in the backdrop of this Government Resolution the claim of the petitioners is denied. As expressed above, we are of the opinion that the said policy of the Government cannot be used to deprive the petitioners of the benefit of approval since they themselves are the one who have been declared as surplus in view of the strength of the students falling below 500, though at the time of their appointment the school in which they were appointed was having the requisite strength and therefore the State Government by the said Resolution resolved to grant approval to their post and this included respondents school in which the petitioners were appointed.

10 In view of the above circumstances, we hold that the impugned communication issued by the Respondents cannot be sustained and the petitioners also need to be extended the benefit of the policy decision of the State Government. In such circumstances, we allow the present writ petitions with directions to the respondents to grant approval to the appointments of the petitioners from the respective dates and we further direct the respondents to release the salary of the petitioners in the respective petitions (except petitioner No.1 in W.P. No. 2330/2015) from the date of their appointments treating the posts which they are holding to be the sanctioned and approved posts. Rule is made absolute in all the petitions accordingly. No order as to costs.

[SMT.BHARATI H. DANGRE,J.][S.C. DHARMADHIKARI, J.]