

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

WRIT PETITION NO.11338 OF 2018

Shri. Atul Kerba Shinde Petitioner

Vs.

- 1 The State of Maharashtra
- 2 The Education Officer (Secondary)
Zilla Parishad, Kolhapur
- 3 Vidyapeeth Society, Kolhapur
- 4 Maharshi Laxmibai Girls High School
& Junior College, Kolhapur Respondents

Mr. N.V. Bandiwadekar I/by Ms. Ashwini N. Bandiwadekar for the
Petitioners.

Ms. Vaishali Nimbalkar, AGP for Respondents 1 and 2.

Mr. Sheshrao Bade, Education Officer (Secondary), Thane present.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 31st October 2018.

P.C.:

1 Rule. Rule made returnable forthwith with the consent
of the parties.

2 The petitioner herein challenged the order dated 21st September 2018. The petitioner herein belongs to Hindu Nhavi caste, OBC category and is qualified as B.A., MS-CIT, English and Marathi Typings @ 40 w.p.m. respectively. The caste claim is validated by order dated 23rd November 1997. Vidyapeeth Society, Kolhapur is an Educational Institution runs several schools and Junior colleges including Maharani Laxmibai Girls High School and Junior College at Kolhapur. The post of the Senior Clerk had fallen vacant since Mr. Ashok Shripati Kamble was transferred to another School. One Anil V. Magdum was promoted to the said post and hence post of Junior Clerk had fallen vacant. As per the roster, there was a backlog of OBC category in the cadre of non-teaching employees. By letters dated 22nd August 2011 and 24th August 2011, the District Employment and Self Employment Guidance Centre was requested to send a list of qualified candidates from O.B.C. category. The list was submitted by the Centre and an advertisement was also published in daily "Sakal" on 23rd August 2011. Interviews were held on 30th August 2011. The management had approved an

appointment of the petitioner in the meeting of 30th August 2011. On 2nd September 2011, he was appointed in the Pay-Scale of Rs.5,200/- to 20,200/- with G.P. Rs.1,900/-.

3 The proposal was submitted for approval of the said post. There was no response. The respondent no.2 had organised Camp for approval on 28th March 2012 and 11th September 2014, but no orders were passed. By an order dated 21st September 2018, there was refusal to approve the said post on the basis of G.R. dated 12th February 2015, which was in continuation of the G.R. dated 23rd October 2013.

4 Learned counsel for the petitioner has placed reliance upon the judgment of the Division Bench of this Court (Coram : B.R. Gavai and Riyaz I. Chagla, JJ.) in Civil Writ Petition No. 8587 of 2016 (with connected writ petitions). However, the said judgment is in respect of teaching staff i.e. Assistant Teachers. The petitioner was appointed in the cadre of non-teaching staff. In fact the guidance centre vide letters dated 23rd August 2011 and 26th August

2011 has forwarded the list of such qualified candidates. There is nothing on record to show that the said list was considered by the Management in fact on the very same day i.e. on 23rd August 2011 an advertisement was published.

5 Learned AGP submits that in view of this, it cannot be said that the petitioner was appointed by following due procedure of law. Learned AGP further submits that since this pertains to non-teaching staff, no implicit reliance can be placed on the citations presented by the petitioner since they pertain to teaching-staff.

6 The definition of employee as per Section 2(7) of the Maharashtra Employees of Private Schools Regulation Act, 1977 (“MEPS Act”) reads as follows:

2(7) Employee means any member of the teaching and non-teaching staff of a recognised school [and includes Assistant Teacher (probationary)]
Shikshan Sevaks:- This category has been included in categories of “**employees**” on honorarium basis for probation period of 3 years as base cadre to be appointed and confirmed as Assistant Teacher.

7 It is pertinent to note that the G.R. dated 25th November, 2005 is based on Section 2(7) of MEPS Act wherein it is clearly mentioned that the non-teaching staff i.e. the Clerks, Peons and others are appointed as per Shikshan Sevaks Scheme and not as per Secondary School Code. Their appointments are not made on the pay-scales but they are entitled to an honorarium for a period of three years just like the teaching staff, who are appointed as Shikshan Sevaks. The Petitioners are appointed prior to the G.R. dated 12th February, 2015.

8 The Education Officer is present and admits that the non-teaching staff is covered by the Shikshan Sevaks Scheme. The Education Officer further submits that the inclusion of non-teaching staff under the Shikshan Sevaks Scheme is subject to appointment and approvals by the educational authorities. That exclusion of non-teaching staff would reverse a long standing practise.

9 In the case of Uma Kant (Dr.) and Ors. Vs. Bhika Lal Jain (Dr.) and Ors., reported in 1991 II CLR 734., the Hon'ble Apex Court has held as follows :

“It is well settled that in matters relating to Educational Institutions, if two interpretations are possible, the Courts would ordinarily be reluctant to accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities.”

10 Learned AGP, upon instructions, submits that the Committee constituted has not taken any decision either on the staffing pattern or otherwise. The posts of the present Petitioner cannot be considered under the G.R. dated 12th February 2015 as it does not get retrospective effect but prospective appointments were banned.

11 It is, in these circumstances that the petition deserves to be allowed. The order dated 21st September 2018 passed by the Education Officer, (Secondary) Zilla Parishad, Kolhapur is hereby quashed and set aside and rule is made absolute in terms of prayer clause (b)

12 At this stage, the learned AGP seeks stay to the order. It is a matter of fact and record that in the catena of decisions, the refusal to approve the posts on the basis of the G.R. does not get retrospective effect and, therefore, the prayer for staying the order is declined.

(SMT. SADHANA S. JADHAV, J.)