

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

WRIT PETITION NO. 2941 OF 2017

Shri. Gajanan Shahu Keripale	)	
Age : 27 Years, Occ : Service,	)	
Address: C/O. Aalas Bubnal	)	
High School, Aalas, Tal. Shirol,	)	
District. Kolhapur.	)	...PETITIONER

VERSUS

- | | | |
|-----------|---|------------------|
| 1. | The State Of Maharashtra
Through The Secretary, School
Education & Sports Dept,
Mantralaya, Mumbai – 400 032 |)
)
)
) |
| 2. | The Commissioner Of Education)
School Education Department,
Maharashtra State, Pune. |)
) |
| 3. | The Director Of Education,
(Secondary & Higher Secondary
Maharashtra State, Pune – 1. |)
)
) |
| 4. | The Dy Director Of Education,
Kolhapur Region, Kolhapur |)
) |
| 5. | The Education Officer
(Secondary), Zilla Parishad,
Kolhapur Having Office At Zilla |)
)
) |

- Parishad Building,)
 Nagala Park, Kolhapur)
6. Shikshan Prasarak Mandal,)
 Kurundwad,)
 Tal. Shirol, District : Kolhapur.)
 Through Its President/Secretary.)
7. Aalas Bubnal High School, Aalas,)
 Tal. Shirol, District: Kolhapur.)
 Through Its Head Master.) ..RESPONDENTS

Mr. Prashant Bhavke for the Petitioner.
 Mr. B.V. Samant, AGP for Respondent Nos. 1 to 5.

**CORAM : S. S. SHINDE &
 V.G.BISHT, JJ.**

**RESERVED ON : 06th MARCH 2020
 PRONOUNCED ON : 30th APRIL 2020**

JUDGMENT (PER S. S. SHINDE, J)

1. **Rule.** Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2. By this Petition under Article 226 of the Constitution of India petitioner is challenging legality, validity and propriety of the impugned

order dated 23rd January, 2017 passed by the Respondent No. 5 Education Officer, thereby rejecting proposal for individual approval to the appointment of the Petitioner made by Respondent No. 6 Educational Institution for the post of Shikshan Sevak at the Respondent No. 7 Secondary School and further seeks direction to Respondent No. 5 Education Officer to grant the said proposal and issue order granting individual approval to appointment of Petitioner.

3. Brief facts for filing this Petition can be summarized as under:

Petitioner is B.A.D.Ed. It is the case of Petitioner that in view of Rule 21 of Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 and Government Resolutions issued in view thereof the Respondent No. 5 Education Officer sanctioned teaching and non-teaching posts in Respondent No. 7 Secondary School for the academic year 2012-13. The staff schedule of the academic year 2013-2014 was sanctioned by Respondent No. 5 Education Officer in the month of September, 2014 i.e. after expiry of academic year 2013-14. It is the case of the Petitioner that due to retirement of teachers / Head Master on 31.05.2014 vacancies of posts of Shikshan Sevaks / Assistant Teacher (Probationary) were available in the Respondent No. 7 Secondary School. Therefore, the representative of Respondent No. 6 Educational Institution approached to the office of

Respondent No. 5 Education Officer to ascertain whether any suitable candidate was available for the said post of Shikshan Sevaks. However, information of suitable surplus candidate was not available with the office of the Respondent No. 5 Education Officer. Therefore, on 10.05.2014 the Respondent Management submitted letter-cum-application to Respondent No. 5 Education Officer seeking permission for issuing advertisement. However, the Respondent No. 5 Education Officer did not give any reply to the said letter-cum-application. It is the case of the Petitioner that Respondent No. 6 Educational Institution also sent letter to office of the Directorate of Employment and Self-employment Guidance Centre, Kolhapur, Project Officer and Integrated Tribal Development Project, the Commissionerate of Tribal, Nashik, the Social Welfare Office, Kolhapur. However, said Authorities also did not communicate name of any candidate.

4. It is the case of the Petitioner that since no response was received to the said letter-cum-applications, the Respondent – Management published advertisement in the newspaper daily Sakal on 20.05.2014 and thereby advertised three posts of Shikhan Sevaks out of which one post for candidate having qualification H.S.C.D.Ed from ST Category, one post for candidate having qualification H.S.C.D.Ed from Open Category and one post having qualification B.Sc.B.Ed, from Open Category and directed to submit

applications along with all requisite documents on or before 02.06.2014. As the Petitioner was fit to apply for aforesaid post of Shikshan Sevak from Open Category having qualification H.Sc.D.Ed., he applied for the said post. After receiving call for interview, the Petitioner remained present for interview which was conducted and scheduled on 11.06.2014.

5. It is the case of the Petitioner that after following due procedure, the Respondent Management found that the Petitioner is eligible and meritorious candidate for the said post. Accordingly School Committee passed resolution on 14.06.2014. In the meeting dated 14.06.2014 thereby selected Petitioner in the post of Shikshan Sevak from Open Category. Thereafter Respondent No. 7 Secondary School issued appointment order dated 16.06.2014 for the post of Shikshan Sevak on probationary period of three years. Accordingly, Petitioner joined as a Shikshan Sevak on 16.06.2014 and submitted joining report.

6. It is the case of the Petitioner that in view of the aforesaid appointment, on 17.11.2014, the Respondent No. 6 Educational Institution submitted proposal along with all requisite documents to Respondent No. 5 Education Officer through Head Master of Respondent No. 7 Secondary School for individual approval to the appointment of the Petitioner in the post

of Shikshan Sevak. After submitting the aforesaid proposal, the Petitioner as well as Head Master of Respondent No. 7 Secondary School approached to the office of the Respondent No. 5 Education Officer and requested to take decision on the proposal. However, in spite of repeated requests, the Respondent No. 5 has not taken any decision on the said proposal submitted by the Respondent No. 6 and 7 and kept it in abeyance. Despite repeated request made by the Petitioner, Respondent No. 5 has not taken any decision, therefore, Petitioner filed Civil Writ Petition No. 14068 of 2016 before this Court. This Court vide order dated 20.12.2016 was pleased to dispose of the aforesaid Writ Petition with a direction to Respondent No. 5 – Education Officer to decide the said proposal within the period of four weeks from the date of receipt of the order.

7. It is the case of the Petitioner that thereafter on 20.01.2017 the Respondent No. 5 – Education Officer issued notice of hearing and informed the Petitioner to remain present for hearing on 22.01.2017. By impugned order on 23.01.2017 without giving any opportunity of hearing to Petitioner, the Respondent No. 5 Education Officer rejected said proposal for individual approval to the appointment of the Petitioner. Hence, this Writ Petition.

8. Learned counsel appearing for the Petitioner submits that the appointment of the Petitioner is in conformity with the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (for short '**Act of 1977**'). He submits that the position of vacancies was communicated to the Respondent Education Officer and thereafter, advertisement was issued by the Respondent Institute. The Petitioner applied for the said post of Shikshan Sevak and he was duly selected. He has completed probationary period of three years satisfactorily. It is submitted that Respondent Education Officer has wrongly rejected the proposal sent by the Respondent Management for approval to the post of Petitioner. Therefore, he submits that Writ Petition may be allowed.

9. On the other hand, learned AGP relying upon the reasons assigned in the impugned order so also affidavit in reply filed by the Deputy Education Officer, Zilla Parishad, Kolhapur submits that in view of the availability of surplus teachers on the roll of Respondent Education Officer, the Management should not have proceeded to advertise the posts. It is submitted that, there are 129 surplus teachers in the Kolhapur District and therefore said surplus teachers need to be absorb in the various institutes.

10. We have given careful consideration to the submissions of the counsel appearing for the parties. With their able assistance perused the reasons assigned in the impugned order, grounds taken in the Petition, annexures thereto and reply filed by the fifth Respondent.

11. The only reason assigned in the impugned order is that 129 surplus teachers are to be absorbed in the various institutions. It appears from the annexures to the Petition that Head Master of A.B. High School, Alas sent letter to the Education Officer (Secondary), Zilla Parishad, Kolhapur on 10th March, 2014 requesting him to grant permission to advertise the vacant posts of the Shikshan Sevak / Assistant Teacher. Thereafter, the letter was also written by the Secretary of Respondent Management on same date. Thereafter, Secretary further wrote letter addressed to the various authorities on 21st May, 2014 thereby communicating the authorities that the institution wants to fill up the vacant post. It further appears that advertisement was given and after following procedure contemplated under Section 5 of the Act of 1977 appointment letter was issued in favour of the Petitioner. The copy of the said appointment letter is placed on record with the Petition at Exh. J (Page 14) wherein it appears that the Petitioner was appointed for the period of 16th June, 2014 to 15th June, 2017. In the affidavit-in-reply filed by the fifth Respondent there is no denial to the fact that said letter requesting to fill

up the post by the Head Master or the Management was not received or Management did not advertise the post or the Petitioner has not satisfactorily completed three years probation period.

12. In the light of discussion herein above it is crystal clear that the Petitioner was appointed after following due process of law and completed three years probation period satisfactorily. As already observed in the affidavit-in-reply filed by fifth Respondent there is no whisper that the Petitioner pursuant to appointment has not completed three years probation period satisfactorily. Hence, we pass the following order:

ORDER

- A)** The impugned order dated 23rd January, 2017 passed by the Respondent No. 5 Education Officer (Secondary), Zilla Parishad, Kolhapur is hereby quashed and set aside.
- B)** The Respondent No. 5 Education Officer (Secondary), Zilla Parishad, Kolhapur is directed to reconsider the proposal for approval of the Petitioner on the post of Shikshan Sevak / Assistant Teacher as expeditiously as possible however, preferably within four weeks from today, however, without raising the ground of surplus teacher.

- C)** We make it clear that in case the Respondent No. 5 Education Officer (Secondary), Zilla Parishad, Kolhapur fails to comply the aforesaid directions, this Court will be constrained to direct the superior authorities of Respondent No. 5 to initiate the appropriate action against him.
- D)** Rule made absolute in above terms. Writ Petition is partly allowed and accordingly disposed of as such.

(V.G.BISHT, J.)

(S. S. SHINDE, J.)