

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10834 OF 2018

Shri Ketan S/o Kishor Jadhav
Age : 28 years, Occ : Nil,
R/o Yewale Akhada, Tq. Rahuri,
Dist. Ahmednagar.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
3. The Secretary,
Shri Shivaji Shikshan Prasarak Mandal,
Shri Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar.
4. The Headmaster,
Shivaji Prathamik Vidyalaya,
A/p: Shri. Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar.

..RESPONDENTS

AND

WRIT PETITION NO. 10835 OF 2018

Shri Deepak S/o Jagannath Sonawane
Age : 28 years, Occ : Nil,
R/o Dhamori Kh. Tq. Rahuri,
Dist. Ahmednagar.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32

2. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
3. The Secretary,
Shri Shivaji Shikshan Prasarak Mandal,
Shri Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar.
4. The Headmaster,
Shivaji Prathamik Vidyalaya,
A/p: Shri. Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar.

..RESPONDENTS

AND

WRIT PETITION NO. 10836 OF 2018

Shri Amit S/o Mohanrao Deshmukh
Age : 32 years, Occ : Nil,
R/o Rahuri Factory, Shri. Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
3. The Secretary,
Shri Shivaji Shikshan Prasarak Mandal,
Shri Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar.
4. The Headmaster,
Shivaji Prathamik Vidyalaya,
A/p: Shri. Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar.

..RESPONDENTS

AND
WRIT PETITION NO. 10341 OF 2019

Kumari. Komal Sunil Shinde
Age : 30 years, Occ : Nil,
R/o Takalimiya, Tq. Rahuri,
Dist. Ahmednagar.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Education Officer (Primary),
Zilla Parishad, Ahmednagar.
3. The Secretary,
Shri Shivaji Shikshan Prasarak Mandal,
Shri Shivaji Nagar, Tq. Rahuri,
Dist. Ahmednagar.
4. The Headmaster,
Shivaji Prathamik Vidyalaya,
A/p: Shri. Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar.

..RESPONDENTS

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Mr. Hemant U. Dhage, advocate for the petitioners.
Mr. A.A. Jagatkar, AGP for respondent/State
Mr. S.T. Shelke, advocate for respondent no.2
Mr.V.P. Patil, advocate for respondent nos.3 and 4.
Mrs.Kavita Bhale h/f Mrs. Suvarna Zaware, advocate for
respondent no.2 in WP No.10341/2019.

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 02-12-2021

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith and heard finally
with consent of learned advocates for the parties.

2. Since the similar question of law and facts are involved in these petitions, the petitions were heard together and are being decided by this common judgment.

3. The petitioners are teachers in Respondent no.4 school run by respondent no.3 Management.

4. Brief facts leading to these Petitions and necessary for adjudication of these Petitions are as follows :-

The Management is running primary, secondary and higher secondary schools. Respondent No.4 herein is the primary school run by the Management. On 10.01.2013, five sanctioned posts became vacant with respondent – Management because of retirement of the incumbent teachers. The Management forwarded a communication dated 10.01.2013 to respondent no.2-Education Officer seeking permission to fill up the said five posts. On 29.04.2014, the Management also forwarded a representation to the Deputy Director of Education seeking permission to fill up the five vacant posts in terms of the Government Resolution dated 02.05.2012. However, there was no response either from the Education Officer or the Deputy Director of Education to the said representations of the Management.

5. By communication dated 17.05.2014, the Management called the list of eligible candidates available with Integrated Tribal Development Project. Similar communication dated 01.12.2014 was forwarded to the Employment Exchange calling upon the names of the eligible candidates from the Employment Exchange. After waiting for a considerable period of almost one year and ten months, since there was no response from the Deputy Director of Education and the Education Officer, the Management issued an advertisement in daily "Gaokari" paper on 29.11.2014 seeking to fill up total 18 posts of Shikshan Sevaks in granted primary, secondary and higher secondary schools run by the Management. Pursuant to the advertisement, the interviews were held on 07.12.2014. The petitioners appeared for interview and were duly selected by the Management from their respective categories as follows :-

Sr. No.	Names of Candidates	Caste
1.	Smt.Shinde Komal Sunil	S.C.
2.	Shri Jadhav Ketan Kishor	O.B.C.
3.	Shri Sonawane Deepak Jagannath	O.B.C.
4.	Shri Deshmukh Amit Mohanrao	Open

6. Accordingly, the petitioners were issued appointment orders dated 08.12.2014. The petitioners were appointed as Shikshan Sevaks for a period from 08.12.2014 to 07.12.2017 in

respondent no.4 – school run by the Management.

7. After appointments of the petitioners, the Management forwarded the proposal of the petitioners for approval to their appointments to respondent no.2 – Education Officer. Respondent No.2 refused to grant approval to the appointment of the petitioners by order dated 20th January, 2016, on the ground that as per Government Resolution dated 2nd January, 2016, there was ban for new recruitment of teaching and non-teaching staff. Thereafter, the Government has not granted permission to fill up the posts. In spite of that the Management has illegally published the advertisement. The appointments, therefore, are illegal and hence, the approval was refused. By representation dated 20th May, 2016, the Management requested the Education Officer that there are total 12 sanctioned posts of the teachers in respondent no.4 – school, out of them 6 teachers have retired, and therefore, there was problem of teaching in most of the classes. The Management from time to time sought permission of the Deputy Director as well as the Education Officer to fill up the said posts, however, there was no guidance and/or direction by the Education Officer or the Deputy Director. As per the Education Officer's order dated 09.02.2015, one surplus teacher was absorbed in respondent no.4 – school. So as to avoid educational loss to the

students, the Management has issued advertisement and filled up the posts by following due procedure and keeping in mind the backlog and all appointments are made after considering the merits. Considering all these aspects, as a One Time Measure (खास बाब), the approval may be granted to the appointments of the petitioners. Since there was no response to this representation, respondent no.2 – Management on 7th October, 2016 issued termination orders to the petitioners.

8. The petitioners approached the School Tribunal, Solapur by filing their respective Appeals challenging their termination orders. The Tribunal by the impugned decision dismissed the appeals mainly on the ground that the appointments of the petitioners were without permission of the Education Officer and the Deputy Director of Education. The orders of the School Tribunal are impugned in the present Petitions.

9. Heard learned advocate for the petitioners, learned advocates for the respondents and learned A.G.P. for the State.

10. Learned advocate for the petitioners strenuously urged that prior permission is not a condition precedent for issuing advertisement and appointment orders. In spite of the

Management repeatedly approaching the Education Officer and the Deputy Director of Education, since there was no response from them and as the students were suffering because of non-availability of teaching staff, to protect the interest of students, the Management has issued the advertisement and filled up the posts by following due procedure. The Education Officer was, therefore, not justified in refusing approval to the posts of the petitioners. The reason assigned by the Education Officer is wrong and unjustifiable in the facts of the present case. The School Tribunal has failed to consider the settled legal position that if the Management applies to the Education Officer and the Deputy Director of Education for permission to fill up the posts and if there is no response from them, then the Management is justified in filling up the posts by issuing advertisement. The Management is not to wait indefinitely for response of the said authorities. By relying on the decision in Writ Petition No.12811/2018 and connected Petitions, he submits that the issue raised in the present Petitions is squarely covered by the decision in aforesaid Writ Petition No.12811/2018 and connected Petitions. In the said petitions, similarly situated Shikshan Sevaks, who were interviewed on 07.12.2014 and appointed by the appointment orders dated 08.12.2014 by the respondent - Management pursuant to the same advertisement dated 29.11.2014, were also

terminated by the Management on the same ground, however, this Court has allowed the Writ Petitions.

He also relied on the following decisions in support of his arguments :-

(i) Shrikrishna Bhikaji Bondge Vs. State of Maharashtra and others 2021(3) Mh.L.J. 177, (ii) Mallinath Melgiri Kante Vs. The State of Maharashtra, Writ Petition No.7878 of 2014 and Writ Petition No.7879/2014, decided on 14th July, 2015, (iii) Shubhangi d/o. Bhagwat Chate & Ors. Vs. The State of Maharashtra & Ors, Writ Petition No.9709 of 2016, decided on 23rd November, 2017, (iv) Vikram Vilas Mane Vs. State of Maharashtra and others 2021(1) Mh.L.J.552, (v) Gopal S/o. Siddheshwar Akhade & Ors. Vs. The State of Maharashtra & Ors. 2014(4) ALL MR 6, (vi) Gajanan S/o. Valmik Chavan V/s The State of Maharashtra & Ors 2017(2) ALL MR 106, (vii) Satish S/o. Dnyaneshwar Ghodke Vs. The State of Maharashtra & Ors 2017(4) ALL MR 602, (viii) Shubhangi D/o. Bhagwat Chate and others V/s. The State of Maharashtra, Writ Petition No.837 of 2018 decided on 13.04.2018, (ix) Miss Rekha Vithal Said Vs. The State of Maharashtra Writ Petition no.13485 of 2016 (decided on 16th July, 2018), (x) Zelum Jayram Tarawade Vs. The Secretary, Shri Shivaji Shikshan Prasarak Mandal and others, Writ Petition No.12811 of 2018 and other connected Writ Petitions

(decided on 12th August, 2021 and (xi) St. Ulai High School & Anr. Vs. Shri Devendraprasad Jagannath Singh & Anr. 2007(2) ALL MR 1.

11. Learned advocate for respondent no.2 – Education Officer submitted that it is requirement of the Government Resolution dated 06.02.2012 to get prior permission before issuing the appointment orders. Since that was not done, respondent no.2 was justified in refusing approval which has led to termination of services of the petitioners.

12. Learned Advocate for respondent no.2 – Smt.Kavita Bhale h/f Smt. Suvarna Zaware pointed out that the approval is not challenged in Writ Petitions, and therefore, the Petitions are liable to be rejected on that ground.

13. Learned advocate for the Management submitted that in terms of rules 3(5) and 3(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the Management is duty bound to obtain prior permission before issuing advertisement and if the said procedure is not followed, in terms of rule 3(6) the Education Officer or the Deputy Director shall direct the management to cancel the appointments made

without following the procedure laid down in this rule. In that view of the matter, the management was justified in cancelling the appointment orders of the petitioners pursuant to the Education Officer's letter dated 20.01.2016. According to him, the decision in the case of **Vikram Vilas Mane (supra)** is not applicable to the facts of the present case, as according to him, it was rendered in different facts. He further submits that the petitioners are not entitled to seek relief prayed for in prayer clause "C". He, therefore, submitted that the Management was justified in issuing the termination orders to the petitioners in view of the communication of the Education Officer. Hence, there is no substance in the Petitions and the Petitions are liable to be dismissed.

14. The learned Advocate for the petitioners is right in submitting that these Petitions are covered by the decision of this Court in Writ Petition No.12811/2018 and connected matters. Similarly circumstanced petitioners in those petitions, who were also appointed pursuant to the same advertisement dated 29.11.2014 by appointment orders dated 08.12.2014, their services were terminated on the same ground that the Education Officer refused to grant approval, their Petitions are allowed by this Court. The present Petitions are squarely covered by the said

decision. While allowing the said Writ Petitions, this Court has considered that the Management had forwarded the representations to the Education Officer and to the Deputy Director of Education, seeking permission to issue advertisement to fill up the posts, which were not responded to by the authorities. The School Tribunal dismissed the appeals filed by the petitioners therein on the same ground on which the appeals of the present petitioners are dismissed. This Court while allowing the Petitions observed thus :-

“12. The petitioners have, thus, made out a case that the institution had twice requested the Education Officer to permit it to fill up the vacant posts. The Education Officer appears to have not responded to the communication dated 5/6/2013 and 27/5/2014. The institution was therefore justified in going ahead with the recruitment process ostensibly in the interest of students. The petitioners shall not suffer for inaction on the part of the Education Officer. It is true that, vide communication dated 5/1/2015, the Education Officer had asked the institution to cancel the entire recruitment process. The record, however, indicates that, in January 2015 itself a body of Administrator was appointed for managing the affairs of the sugar factory and necessarily the institution as well. The petitioners, thus, continued to serve until their services, abruptly came to be terminated for the reason of non-approval by the Education Officer to their appointment. In my view, therefore their services were not liable to be terminated merely on the ground of want of approval to their appointments. The petitioners are, therefore, required to be reinstated on the posts

of Shikshan Sevak until they complete their tenure as Shikshan Sevak for a period of three years vide their appointment orders dated 8/12/2014. Post completion of their tenure as Shikshan Sevak, they may be absorbed, if they are found to be fit and fulfilling all the mandatory requirements for appointments. The Education Officer – respondent No.3 or the concerned authority shall consider the proposals for approval to the appointments of the petitioners within a period of six months from the date of receipt thereof. The Education Officer shall not refuse to grant the approval on the ground of want of prior permission for publication of advertisement for filling up the vacant posts. The Education Officer would decide such proposal on its own merits. The petitioners were appointed on a fixed salary of Rs.8000/- per month.

13. In view of the above, the Writ Petitions are partly allowed. The orders terminating the services of the petitioners are hereby set aside. The petitioners are reinstated in service as Shikshan Sevaks, so as to complete the remaining tenure of their respective posts.

14. On reinstatement of the petitioners, the respondent – management shall forward within a period of two months to the Education Officer, proposals for approval to their appointments. The Education Officer, in turn, shall take a decision on such proposal within a period of four months thereafter, provided he shall not refuse to grant the approval on the ground of the respondent – management to have not obtained prior permission for publishing the advertisement and/or filling up the vacancies on which the petitioners have been appointed.

15. *The respondent – management shall pay the petitioners arrears of their salary and continue to pay the same until approval, if any, to their appointments is granted. If the approval is granted to their appointments, then their salary shall be reimbursed with arrears, by the Education Department.”*

. I am in respectful agreement with the above observations of the learned Single Judge.

15. In **Vikram Vilas Mane (supra)**, the co-ordinate bench of this Court held thus :-

“21. The case law fully covers the present set of facts. It has been observed, as stated above that there are number of judgments of this Court making it clear that ban on recruitment of teachers pending absorption of surplus teachers under Government Resolution dated 2nd May, 2012 could not be invoked by the State, when despite communication of a vacancy of a teachers post by the School Management to the Education Officer and seeking of his permission to fill in the post, the Education Officer does not reply or forward any name of surplus teacher to be appointed in the vacancy and a result the School Management proceeds to select and appoint a teacher in the vacant post. In that case also the respondent - State had neither responded to the School Management’s communication nor sent any name of surplus teacher at any stage prior to the impugned order dated 28th November, 2016. Thus, it was observed that the School Management is not

expected to carry on with the vacancy awaiting indefinitely the Education Officer's response. It is reiterated that when the School Management informs the Education Officer about the vacancy in its School seeking latter's permission for appointment, the Education Officer is expected to either forward names of suitable persons from the list of surplus teachers maintained by him or if no surplus teachers are available for absorption, give permission to the Management to appoint a teacher following regular appointment procedure. The ratio is squarely applicable to the present set of facts.

22. It is the contention of the petitioner that at the time of publishing an advertisement for the post in question, it was mentioned that the post was reserved for Scheduled Tribe candidate, however, no candidate belonging to Scheduled Tribe category was available, and therefore, a proposal to that effect had been sent to respondent No. 2 on 11th April, 2018. Exhibit E is the photo stat copy of the said proposal forwarded to respondent No.2 seeking approval. Copy of the proposal which is at Exhibit E at page No.26 on record reveals that the Management made an attempt to secure a candidate from Scheduled Tribe category but could not succeed and, therefore, the candidature of the petitioner was required to be considered to the post who admittedly belongs to open category. Even otherwise, my attention is drawn to the communications dated 6th June, 2017 and 16th June, 2017. It is apparent that respondent No.1 by letter dated 3rd July, 2017 addressed to the Commissioner (Education) Maharashtra State, Pune and a copy marked to the Director of Education [Secondary and Higher Secondary), M.S. Pune informed that the assumption mentioned in the aforesaid letters is correct and therefore, the

action should be taken to exempt the Art Teachers from the process of being declared surplus online. On the basis of the aforesaid order issued by respondent No.1, the Director of Education by letter dated 12th July, 2017 informed the Education Officers (Secondary) of all the Zilla Parishads the said decision of Respondent No. 1 and directed them to take immediate action for compliance of the directions issued by respondent No. 1 in the letter dated 3rd July, 2017. It is clear from the aforesaid correspondence that it is the policy of the State Government that art teacher should not be declared surplus. It is rightly submitted by Mr.Bandiwadekar that as a natural corollary, there would be no surplus teachers-art teacher who is required to be absorbed in the post in which the petitioner came to be appointed and as a consequence thereof approval should not have been refused to his appointment on the ground that there were surplus art teachers who were required to be absorbed.

23. In the premises, the impugned order passed by respondent No. 2 – Education Officer cannot pass muster. Rule is accordingly made absolute by quashing and setting aside the impugned order dated 20th April, 2018.”

16. In Writ Petition No.13485 of 2016, in similar facts, the learned Single Judge of this Court has held thus :-

“5. There are a number of judgments of our court, making it clear that the ban on recruitment of teachers pending absorption of surplus teachers under Government Resolution dated 2 May 2012 could not be invoked by the State, when despite communication of a vacancy of a teacher’s post by the school management to the Education Officer and seeking of his

permission for filling the post, the Education Officer does not reply or forward any name of a surplus teacher to be appointed in the vacancy and, as a result, the school management proceeds to select and appoint a teacher in the vacant post. Admittedly, the Respondent-State has neither responded to the school management's communication in this case nor sent any name of a surplus teacher at any stage prior to the impugned order dated 28 November 2016. As this court has reiterated time and again, when the school management informs the education office about a vacancy in its school seeking the latter's permission for appointment, the Education Officer is expected to either forward names of suitable persons from the list of surplus teachers maintained by him or if no surplus teacher is available for absorption, give permission to the management to appoint a teacher following regular appointment procedure. Education Officer, in the present case, has done neither of these things. The school management is not expected to carry on with the vacancy awaiting indefinitely the Education Officer's response. The second reason cited, namely, the appointment not being in compliance of the backlog of reserved category, also does not hold water. Accordingly, the post which had become vacant and in which the Petitioner was appointed, was an open category post and there was no question of it being filled up from amongst reserved category candidates.

6. *In the premises, the impugned order of the Education Officer cannot pass muster. **Rule** is, accordingly, made absolute by allowing the petition and quashing and setting aside the impugned order dated 28 November 2016. Respondent No.2 Education Officer is directed to grant approval to the Petitioner's appointment with effect from 12 January 2015 and*

also allow grant of aid to the school for payment of honorarium to the teacher with effect from the date of her appointment including all arrears upto date. As for the approval of her appointment as an Assistant Teacher pursuant to completion of her probationary period, the school management will be at liberty to apply for such approval. The Education Officer shall act in accordance with law as discussed above whilst dealing with such application.”

. I am in respectful agreement with the observations in the above-mentioned rulings.

17. There is no merit in the argument of the learned advocate for respondent no.3 that rule 3(5) & 3(6) mandate obtaining of prior permission of the Education Officer or Deputy Director of Education as Rule 3 pertains to appointment of Head of the School and is not in respect of Assistant Teacher.

18. While rejecting the appeals filed by the petitioners, the School Tribunal has failed to take into consideration the aforestated settled legal position. The Tribunal has erred in rejecting the appeals solely on the ground that the prior permission of the Education Officer and the Deputy Director of Education was not obtained before issuing the advertisement and filling up the posts. The Tribunal has ignored the representations forwarded by the Management to the Education Officer and the

Deputy Director of Education and waiting for their response for more than one year and 10 months, the Management had also forwarded the representations to the Social Welfare Department as well as the Employment Exchange calling from them the names of the eligible candidates before issuing advertisement. In these circumstances, the Management was justified, so as to protect the interest of the students, to initiate and complete the process of filling up the posts by appointing the petitioners. It is not in dispute that the posts which are filled up by the Management were permanent clear vacant posts which were filled after following due procedure. The Management has also followed the reservation while filling up the said posts. These important aspects are ignored by the Tribunal while rejecting the appeals of the petitioners, hence the impugned order is vitiated and cannot be sustained.

19. In the result, the following order is passed :-

ORDER

- (i) The Writ Petition Nos. 10834/2018, 10835/2018, 10836/2018 and 10341/2019 are allowed.
- (ii) The impugned orders passed by the School Tribunal, Solapur in Appeal Nos. 65 of 2016, 66 of 2016, 67 of 2016 and 68 of 2016 are hereby quashed and set aside.
- (iii) The impugned termination orders are hereby set aside.

(iv) The petitioners are reinstated in service as Shikshan Sevaks so as to complete the remaining tenure of their respective posts.

(v) On reinstatement of the petitioners, the Respondent – Management shall forward the proposals for their approval within a period of two months to the Education Officer.

(vi) The respondent No.2 – Education Officer is directed to grant approval to the petitioners' appointment with effect from 08.12.2014 and also allow grant of aid to the school for payment of honorarium to the petitioners with effect from the date of petitioners' appointment including all arrears upto date.

(vii) Rule is made absolute in above terms. No order as to costs.

(NITIN B. SURYAWANSHI)
JUDGE

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