

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.12811 OF 2018

Zelam Jayram Tarawade
Age 36 years, Occu. Service,
presently nil, R/o Wambori,
Tq. Rahuri, Dist. Ahmednagar

... PETITIONER

VERSUS

1. The Secretary,
Shri Shivaji Shikshan Prasarak
Mandal, Shri Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar

2. The Head Master,
Aadarsh Vidyalyaya,
Brahmani, Post Umbare,
Tq. Rahuri, Dist. Ahmednagar

3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar

... RESPONDENTS

.....
Shri V.S. Panpatte, Advocate for petitioner
Shri V.P. Patil, Advocate for respondents No.1 and 2
Shri Y.G. Gujarathi, A.G.P. for respondent No.3.
.....

WITH

WRIT PETITION NO.12812 OF 2018

Shri Ram Ashok Kavane
Age 32 years, Occu. Service,
presently nil, R/o Takali Miya
Tq. Rahuri, Dist. Ahmednagar

... PETITIONER

VERSUS

1. The Secretary,
Shri Shivaji Shikshan Prasarak
Mandal, Shri Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar
2. The Head Master,
Sant Tukaram Vidyalaya,
At Post Baragaon Nandur,
Tq. Rahuri, Dist. Ahmednagar
3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar ... **RESPONDENTS**

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Shri V.S. Panpatte, Advocate for petitioner
Shri V.P. Patil, Advocate for respondents No.1 and 2
Shri Y.G. Gujarathi, A.G.P. for respondent No.3.

.....

WITH

WRIT PETITION NO.12815 OF 2018

Shri Yogesh Dnyandev Pawar
Age 36 years, occu. Service,
presently nil, R/o At Post Kesapur,
Tq. Rahuri, Dist. Ahmednagar ... **PETITIONER**

VERSUS

1. The Secretary,
Shri Shivaji Shikshan Prasarak
Mandal, Shri Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar
2. The Head Master,
Keshav Govind Vidyalaya,
At Post Belapur Khurd,
Tq. Shrirampur, Dist. Ahmednagar

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3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar ... **RESPONDENTS**

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Shri V.S. Panpatte, Advocate for petitioner
Shri V.P. Patil, Advocate for respondents No.1 and 2
Shri Y.G. Gujarathi, A.G.P. for respondent No.3.

.....

WITH

WRIT PETITION NO.12818 OF 2018

Shri Tushar Arun Dhus
Age 34 years, occu. Service,
presently nil, R/o At Post Devlali Pravara,
Tq. Rahuri, Dist. Ahmednagar ... **PETITIONER**

VERSUS

1. The Secretary,
Shri Shivaji Shikshan Prasarak
Mandal, Shri Shivaji Nagar,
Tq. Rahuri, Dist. Ahmednagar
2. The Head Master,
Sant Dnyaneshwar Madhyamik & Uccha
Madhyamik Vidyalaya, Taklimiya,
Tq. Rahuri, Dist. Ahmednagar
3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar ... **RESPONDENTS**

.....

Shri V.S. Panpatte, Advocate for petitioner
Shri V.P. Patil, Advocate for respondents No.1 and 2
Shri Y.G. Gujarathi, A.G.P. for respondent No.3.

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CORAM : R. G. AVACHAT, J.

Date of reserving judgment : 12th February, 2021

Date of pronouncing judgment : 12th August, 2021

J U D G M E N T :

Rule. Rule made returnable forthwith and taken up for final disposal with the consent of learned counsel for the parties.

2. This judgment governs disposal of these four Writ Petitions since common question of facts and law arise therein.

Respondent No.1 herein is an educational institution (for short institution). Respondent No.2 is the Head Master of one of the schools run by the institution. Respondent No.3 is the Education Officer (Secondary), Zilla Parishad, Ahmednagar.

The institution issued an advertisement in the daily "Gavkari", dated 29/11/2014 for filling up posts of Shikshan Sevak in its various schools, primary, secondary and higher secondary as well. In response to the said advertisement, the petitioners in these Writ Petitions made

applications for the posts of Shikshan Sevak. The petitioners including other applicants were interviewed on 7/12/2014. The petitioners were selected and, therefore, issued with appointment orders dated 8/12/2014. The petitioners joined their respective posts the same day.

It is also the case of the petitioners that the institution, before publishing the advertisement in the daily dated 29/11/2014, had applied to the Education Officer – respondent No.3 for permission to issue advertisement and fill up vacant posts. The services of the petitioners all of a sudden came to be terminated w.e.f. 8/10/2016 in spite of the petitioners to have rendered their services satisfactorily. The reason for termination of their services is, the Education Officer not accorded approval to their appointments. The petitioners, therefore, preferred appeals to the School Tribunal, Pune Region, at Solapur. The Presiding Officer of the School Tribunal, by her judgment and orders dated 27/4/2018, dismissed the appeals. The petitioners have therefore, been before this Court in these Writ Petitions with the following main prayers :

Prayer clauses (B) and (C) from Writ Petition

No.12811/2018 are reproduced hereunder :

- (B) The termination order dated 7/10/2016 issued by the respondent No.1 at Exhibit 'H', so also the judgment and order dated 27/4/2018 passed by the Presiding Officer, School Tribunal, Pune Region, Solapur in Appeal No.64/2016 at Exhibit 'J' may please be quashed and set aside.
- (C) The respondent Nos.1 and 2 may please be directed to reinstate the petitioner in service in the respondent no.2 – School with continuity of service and back-wages and further the respondent No.3 may please be directed to grant approval to the services of the petitioner and release arrears of salary of the petitioner.

3. Heard. Shri V.S. Panpatte, learned counsel for the petitioners would submit that, the petitioners had been appointed by following due process. The institution had time and again requested the Education Officer to grant it permission to fill up the vacant posts. Due to many of the posts of Shikshan Sevak having been vacant, it adversely affected interest of the students. The institution, therefore, issued public advertisement, interviewed the candidates and since the petitioners were found to be meritorious, they came to be selected. According to learned counsel, due to change in the management of the school, the petitioners had to suffer. The Executive Director, Dr. B.B. Tanpure Co-operative Sugar Factory Ltd., without having any authority, issued

orders terminating the services of the petitioners. According to him, the Government Resolution dated 2/5/2012 imposing ban on recruitment of teaching and non-teaching staff had no application for filling up the posts in the subjects of Science, Mathematics and English. The said ban has also no application for filling up the posts reserved for SC, ST and OBC categories etc. In support of his submission, the learned counsel has relied on some authorities :

4. An extract from inward register maintained in the office of Zilla Parishad, Ahmednagar has also been placed on record to indicate the Zilla Parishad to have had received request for filling up vacant posts. According to learned counsel, the petitioners who have been duly recruited, shall not suffer for the change in the management of the institution and the stand taken by the Education Officer contrary to the facts and circumstances of the case. According to learned counsel, the Presiding Officer erred in dismissing the appeals. He, therefore, urged for allowing the Writ Petitions.

5. Both the institution and the Education Officer resisted the appeals before the Tribunal. It was their case that the institution, without obtaining prior permission of the

Education Officer, published the advertisement in the daily. The institution represented in the advertisement that the Education Officer granted it permission to fill up the vacant posts. It was a misstatement. The Education Officer had received a complaint. The institution was, therefore, immediately informed not to go ahead with the recruitment process. No proposal for grant of approval to the appointment of petitioners was ever submitted. The said proposal has been turned down for valid reason. Vide Government Resolutions dated 2/5/2012 and 27/10/2016, there was a ban on recruitment of teachers. The ban was with a view to ensure absorption of surplus teachers. Since the petitioners were appointed without following due procedure and in violation of the Government Resolution dated 2/5/2012, no approval could be granted to their appointments.

6. The Tribunal found the petitioners to have been appointed without following due procedure. It also found the petitioners to have failed to make out their case. The Tribunal, therefore, dismissed the appeals preferred by the petitioners.

7. Perused the impugned judgments. Gone through the documents placed on record. Considered the rival submissions. It appears that, there is again a change in the management of the institution. The Secretary of the institution has filed his affidavit-in-reply submitting therein that the earlier management, in order to fill up the vacancies, solicited permission of the Education Officer on 5/6/2013. A copy of the communication under the signature of the concerned Education Officer, acknowledging to have received the communication has been placed on record. It has been averred in the affidavit-in-reply that there was urgency to fill up the posts for the subjects of English, Marathi, Science from OBC category. The Deputy Director of Education had also been requested to grant permission for filling up the posts. The Education Department did not take cognizance of the communications made by the institution. In response to the complaint made by one Sandip Tanpure, the Education Officer had issued the communication dated 9/9/2015, asking for the explanation of the institution. From 12/1/2015, there was no Board of Directors for the sugar factory which runs the institution. The Chairman of the sugar factory and the members of the Board of Directors are Ex-officio Chairman and the Trustees of the institution. From 7/3/2015, the

affairs of the sugar factory were being managed by three member committee appointed as Administrators. The Board of Directors was not in the know of the developments that took place in the interregnum until a new elected body took over the management. It has also been averred in the affidavit-in-reply that the institution has kept the posts vacant, in respect of which the proceedings are pending in Courts of law. The institution has also informed the Education Officer its inability to accommodate surplus teachers as it may require to reinstate the teachers, like petitioners. As such, the management of the institution now appears to have been on the side of the petitioners.

8. A copy of the advertisement dated 29/11/2014 indicates the institution to have had published it, inviting applications for filling up 7 posts of Shikshan Sevak for its secondary school. The advertisement was issued interalia for filling up posts of Shikshan Sevak for primary and higher secondary school as well. It has been mentioned in the advertisement that the Shikshan Sevaks were required for teaching the subjects of Marathi, Hindi, English, History, Geography, Science and Mathematics. The petitioners claim to have necessary educational qualifications. True, there is a

note at the bottom of the advertisement that it has been published with prior approval of the Education Officer (Secondary) and the Deputy Director of Education, Pune. The same is a misstatement. Admittedly, the concerned authorities had not granted the institution permission to go ahead with the recruitment process. It, on the contrary, appears that, no sooner the advertisement was published, the Education Officer received a complaint and he, therefore, by his communication dated 5/1/2015, i.e. within a month of the petitioners were appointed, called upon the institution to cancel the recruitment process. In my view, the petitioners shall not suffer therefor.

9. Along with the affidavit-in-reply, the Secretary of the institution has placed on record a copy of its communication dated 5/6/2013, addressed to the Education Officer, asking for permission to fill up the vacancies in the interest of students. The said communication bears signature of the Education Officer. True, the affidavit-in-reply has been filed by Superintendent in the office of Education Officer (Secondary), stating therein, that in the inward register there is no entry indicating the same to have been received by the office. There is, however, no specific denial of the

communication to have been signed/ endorsed by the Education Officer, acknowledging the receipt thereof. Moreover, in the extract of the inward register placed on record in these Writ Petitions, which are taken on record and marked as "Z" for identification, there is an entry at Sr.No.334, dated 28/5/2014, indicating the communication dated 17/5/2014 made by the institution, seeking permission for filling up the vacancies. It, therefore, cannot be said that the institution did not ask for Education Officer's permission for filling up the vacant posts.

10. The Division Bench of this Court, in case of **Shirur Shikshan Prasarak Mandal, Ghodnadi, Dist. Pune Vs. State of Maharashtra & anr. [Writ Petition 2024/2017]**, has observed :

“3. The issue is no more res integra. The Division Bench of this Court vide its judgment and order dated 10th July, 2017 in Writ Petition No.8587 of 2016, along with connected matters, in paragraph No.9 has held thus :-

“9. In the result the Writ petitions are allowed and impugned orders are quashed and set aside. The respondents – Education officers are directed to examine independent cases and grant approval to each of the teachers who fall in the following three categories :-

- (a) where the recruitment process is already commenced prior to GR dated 2nd May 2012;
- (b) where the appointments made for filling up vacancies in English, Mathematics and Science;
- (c) where the recruitment is made to fulfill the backlog of reserve categories candidates.”

11. The petitioners have placed on record a copy of resolution dated 8/12/2014, passed by the Trustees of the institution, approving the appointment of the petitioners. It appears therefrom that the petitioners belong to OBC category. It is stated that there is backlog of this category. The resolution is, however, silent to indicate whether the appointments of the petitioners have been made to clear the backlog of OBC candidates. There is also nothing therein to indicate the petitioner in Writ Petition No.12811/2018 has been selected for teaching English subject. The petitioners have also placed reliance on the judgment of this Court in Public Interest Litigation No.197/2013, wherein the following directions were issued :-

“6. Accordingly this PIL is disposed of in terms of the following directions :-

- (a) The State Government shall issue necessary instructions to commence the recruitment process

for filling in vacant posts of teachers in Secondary schools, Higher Secondary schools and Junior colleges in the State of Maharashtra, after taking into consideration vacancies likely to arise in the years 2014 and 2015 on account of retirement on superannuation;

(b) The advertisements for the above purpose shall be published by 31 May 2014 and the recruitment shall be made by 31 May 2015;

(c) The State Government shall issue appropriate instructions and guidelines for making timely recruitment of teachers in Secondary schools, Higher Secondary schools and Junior colleges in the State of Maharashtra by directing that the exercise for this purpose shall be undertaken every year.”

Moreover, the Division Bench of this Court, vide judgment dated 10/7/2017, passed in Writ Petition No.8587/2016 and connected matters, has observed in paragraphs No.6, 7 and 8 as under :

6. We find that if the Education Officers do not send the surplus teachers within reasonable time, the schools can not be expected to run without teachers for years together. Undisputedly, finding it difficult to send surplus teachers for the subjects of English, Maths and Science, the State Government itself has relaxed the rigour of government resolution dated 2nd May 2012 vide GR dated 4th September 2013. It could further be seen that State Government also vide that GR relaxed the ban where the selection process has already commenced on 6th September 2012.

7. In that view of the matter, we find that in view of subsequent GRs and in view of the view taken by Division Bench of this Court, the ban would not be applicable to three categories, one where the recruitment process is already commenced prior to GR dated 2nd May 2012, second, in so far as the appointment made for the subjects of English, Maths and Science are concerned and third, where the recruitment is made to fulfil the backlog of reserved category candidates.

8. We find that at the same time the State should take into consideration, that such situations arise on account of inaction of its own Education Officers. If Education Officers act promptly and ensure that the surplus teachers are absorbed in the schools wherever there is a vacancy, such a situation would not arise. However, as already observed hereinabove on account of inaction on the part of Education Officers, right which has become fundamental, in view of amendment to the constitution by which Article 21A brought in the Constitution, cannot be permitted to be frustrated. The schools are not expected to run without teachers for years together. The State would always be at liberty to take appropriate action against its officers, on account of who's inaction the State exchequer will be burdened.

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.

16. Rule made absolute in above terms.

**(R. G. AVACHAT)
JUDGE**

fmp/-