

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

WRIT PETITION NO. 4530 OF 2019

Chandrakant Vishwanath Shinde

... Petitioner

Versus

The State of Maharashtra,
Through the Secretary & Ors.

... Respondents

Mr. Prashant Bhavake, for the Petitioner.

Ms. P.N. Diwan, AGP for State-Respondent Nos.1 to 5.

Mr. Umesh Pawar, for Respondent Nos.6 and 7.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 29th NOVEMBER, 2021.

P.C. :-

Rule.

2. Ms. Diwan, learned AGP for the respondent nos.1 to 5 waives service. Mr. Umesh Pawar, learned counsel for the respondent nos. 6 and 7 waives service. By consent of parties, petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 21st April, 2018 passed by Respondent No. 5- Education Officer, thereby rejecting the proposal submitted by the respondent nos. 6 and 7 seeking individual approval to the appointment of the petitioner

in the post of Shikshan Sevak at respondent no. 7- Secondary School and for other reliefs.

4. Respondent no. 6 published an advertisement on 9th August, 2014 in the daily newspaper Lokmat inviting applications for the post of Shikshan Sevak. The petitioner having cleared B.A.B.Ed. and B.P Ed. qualification, applied for the said post. On 17th August, 2014 the appointing authority appointed the petitioner in the post of Shikshan Sevak with effect from 20th August, 2014 on probation period of 3 years. The respondent no. 5 at the initial stage did not grant any approval to the appointment of the said post. The petitioner was thus required to file Writ Petition bearing No. 703 of 2017 before this Court. By order dated 10th March, 2017 this Court directed Education Officer to decide the proposal submitted by the Management within four weeks from the date of receipt of the said order. On 21st April, 2018 the Education Officer, however, rejected the said proposal submitted by the respondent no. 7 to the appointment of petitioner as Shikshan Sevak. It is the case of the petitioner that the petitioner has completed 3 years from the date of appointment as Shikshan Sevak.

5. Mr. Bhavake, learned counsel for the petitioner invited our attention to the documents annexed to the petition including the impugned order and would submit that each and every reason recorded by the Education Officer while rejecting the proposal for appointment of the petitioner is erroneous. He submits that

representative of respondent no. 6 had approached to the Education Officer to verify whether any suitable surplus teacher from OBC or open category for the English subject was available on the record of respondent no. 5 before appointing the petitioner. No such suitable surplus teacher was available on the record of the respondent no. 5. Education Officer thus could not have rejected the approval of the petitioner on that ground.

6. It is submitted by learned counsel for the petitioner that the petitioner had complied with all the eligibility criteria before appointment of the petitioner.

7. Learned counsel submits that the petitioner was appointed as Shikshan Sevak in English subject. Learned counsel placed reliance on the Judgment of this Court in case of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra** delivered on 10th July 2017 in Writ Petition No. 8587 of 2016 and other connected writ petitions and more particularly in paragraph nos. 4 and 9. He submits that this Court in the said judgment has held that by subsequent Government Resolution dated 4th September, 2013, certain candidates in the Government Resolution dated 2nd May, 2012 i.e. recruitment of Assistant Teacher till there was 100% absorption of the surplus teachers was relaxed in so far as subjects of English, Maths and Science are concerned. He submits that the Education Officer thus could not have invoked the Government Resolution dated 2nd May, 2012 in the impugned order.

8. In this case, the Management has already complied with the conditions imposed in the Government Resolution dated 4th September 2013 and more particularly the condition that till the teachers in these three subjects are absorbed fully to the extent of 100%, no other teachers would be appointed. Since no surplus teachers were available, the Management was fully justified in appointing the petitioner in the said post.

9. The Judgment of this Court in case of **Smt. Munoli Rajashri Karabasappa** (supra) and **Sandiprao V. Savant** (supra) would apply to the facts of this case. We are respectfully bound by these Judgments.

10. In our view, each and every reason recorded by the Education Officer while rejecting the approval to the appointment of the petitioner is totally untenable and contrary to principle of law laid down in the aforesaid judgments.

11. We accordingly pass the following order.

- (a) The Writ petition is made absolute in terms of prayer clause (b).
- (b) The approval shall be granted by the Education Officer to the Petitioner within four weeks from today and shall release the salary and other dues payable to the petitioner within two weeks thereafter.

- (c) Rule is made absolute in the aforesaid terms. No order as to costs.
- (d) The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D.DHANUKA, J.]