

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

WRIT PETITION NO.2741 OF 2017

Madhav Shankar Kshirsagar & Ors. ...Petitioners

V/s.

The State of Maharashtra & Anr. ...Respondents

Mr.Narendra Bandiwadekar a/w Mr.Vinayak Kumbhar i/b
Mr.Ashwini Navjyot Bandiwadekar for the Petitioner.
Mr.N.C. Walimbe, AGP for Respondent Nos.1 and 2-State.

**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 23 March 2021

P.C.

The Petitioner Nos.1, 2 and 3 working with the Petitioner No.4-Institution have challenged the order dated 7 November 2016 passed by the Education Officer (Secondary), Zilla Parishad, Ratnagiri- Respondent No.2. Respondent No.2, by the impugned order, has refused to grant approval to the appointments of Petitioner Nos.1 to 3 made as Shikshan Sevak.

2. Petitioner No.4 runs three schools in Taluka-Rajapur, District-Ratnagiri. A common roster was prepared for the teaching posts. In the year 2010, as per the common roster of three schools of Petitioner No.4 there were six vacancies for the

post of Shikshan Sevak. On 15 May 2010, the Petitioner-Management made an application to fill up the vacant post and published an advertisement. A resolution was also passed by the Petitioner-Management. The Petitioner sent requisition letters to various concerned government agencies. The reply was received that the government agencies had only Scheduled Tribe candidates and Other Backward Class candidates were not available. An advertisement was issued on 22 July 2010 pursuant to which Petitioner Nos.1 to 3 applied. Petitioner No.1 applied as Open Category. Petitioner Nos.2 and 3 belong to Other Backward Class. Petitioner No.3 also has a physical disability certified at 44%. Interviews were held, and Petitioner Nos.1 to 3 were selected. Appointment orders were issued on 30 July 2010 for three years from 2 August 2010 to 1 August 2013. According to the Petitioners, the Petitioners made various attempts to submit the proposal and even the approvals in respect of the Petitioner Nos.1 to 3 were not considered.

3. By order dated 10 January 2014, Respondent No.2-Education Officer rejected the proposal. Four reasons were given for rejection, i.e. prior permission of Education Officer was not taken for the advertisement, change report from the Charity Authority was not produced, there was a delay in submitting the proposal and, last, the appointment of Petitioner Nos.1 to 3 was not in accordance with the backlog. The Petitioners filed a Writ

Petition bearing No.8930 of 2014, challenging the order dated 18 January 2014. The Division Bench considered the four grounds in the order impugned and found that the first three grounds were not tenable. Regarding the backlog, the matter was remanded to the Education Officer to pass a fresh order. Three grounds other stood concluded.

4. Upon remand, the Education Officer passed the impugned order on 7 November 2016. In the impugned order, the Education Officer had narrated the history and has held that approval cannot be granted since, as per the staff schedule for the academic year 2015-2016, there are no vacant post of Assistant Teachers, and secondly, before the appointment, the Petitioner-Management had not certified the roster from the Commissioner from Backward Class Cell being aggrieved the present Petition is filed.

5. As regards non-certification by Commissioner for Backward Class Cell of the roster is concerned, this is non-application of mind by the Education Officer. In the Petition, in paragraph 15, Petitioner has specifically asserted that the roster was inspected and verified by the Backward Class Cell on 1 September 2010 and remarks to that effect has been made on the extract. There is no denial of this assertion in the reply filed by the Respondent-Education Officer on 10 August 2017. We have

been shown the copy of the roster annexed, which bears an endorsement of the Assistant Commissioner. The reply only reiterates the impugned orders. This ground of rejection, therefore, cannot survive. The roster shows a backlog of two posts of Other Backward Class. Petitioner Nos.2 and 3 belong to the Other Backward Class, and that at the relevant point of time there was a vacancy even for petitioner No.3 is not disputed, and that is not the ground in the impugned order.

6. As regards the next ground that as per the position in the academic year 2015-2016 that there are no posts, overlooks the legal position that once the Petitioners were duly appointed and their approval is to be considered for the appointment in the year 2010 then if they have completed three years, they would be treated as Assistant Teachers on a regular basis. Neither in the impugned order nor in the reply there is a denial of the petitioner's assertion they have been working from the date of their appointments in the year 2010. Since there is no ground to reject the approval of the appointment of the Petitioner Nos.1 to 3, it will have to be granted from the date of the appointment, i.e. 2 August 2010. Once that position is established, the only consequence of not having any vacant post in the year 2015-2016 would mean that the Petitioner would be rendered surplus and as per the Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ('MEPS Rules' for short)

further modality to be followed. The learned counsel for the Petitioner relied upon the decisions in the case of *Ms.Prajakta Pandharinath Pawaskar V/s The State of Maharashtra*¹ where similar directions were issued by the Division Bench.

7. The sole contention of the learned Additional Government Pleader that there was a delay in submitting a proposal for approval from the year 2012 to the year 2014 is concerned, that has been dealt with by the Division Bench in the earlier round of litigation and held not to affect the claim of the Petitioner.

8. As a result, the petition succeeds. Prayer clauses (b), (c) and (d) are granted, which reads thus:-

(b) By a suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 7.11.2016 issued by the Respondent No.2 refusing approval to the appointment of the Petitioner Nos.1 to 3 as Shikshan Sevaks, and accordingly the Respondent No.1 may be directed to grant approval to the said appointment of the Petitioner Nos.1 to 3 as Shikshan Sevaks w.e.f. 02.08.2010 made in Sane Guruji Vidyamandir, Janshi, Tal-Rajapur, District-Ratnagiri, conducted by the Petitioner No.4 Institution, and thereafter to grant approval to the Petitioner Nos.1 to 3 as a Full Time Assistant Teachers w.e.f. 02.08.2013 together with payment of salary in pay scale for that post.

1 Writ Petition No.9027 of 2014 decided on 15 June 2016

(c) By a suitable writ, order or direction, this Hon'ble Court be pleased to direct the Respondent No.2 to release the grant-in-aid for payment of honorarium to the Petitioner Nos.1 to 3 as Shikshan Sevaks w.e.f. 02.08.2010 to 01.08.2013, and thereafter payment of salary in the pay scale prescribed for the post of Full Time Assistant Teachers w.e.f. 02.08.2013 in Sane Guruji Vidyamandir, Janshi, Tal Rajapur, District-Ratnagiri, conducted by the Petitioner No.4 Institution.

(d) By a suitable writ, order or direction, this Hon'ble Court be pleased to direct the Respondent No.2 to declare the Petitioner Nos.1 to 3 as surplus Teachers in same Guruji Vidyamandir, Janshi, Tal Rajapur, District-Ratnagiri, conducted by the Petitioner No.4 Institution, and accordingly to absorb them in any other aided Schools in Ratnagiri District, and to continue to release the grant-in-aid for payment of monthly salary to the Petitioner Nos.1 to 3 as Assistant Teachers on the establishment of above School until they are so absorbed.

Necessary action be taken within the period of twelve weeks from today.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)