

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1875/2020

Santosh Shankarappa Umarani Petitioner

Vs.

State of Maharashtra & Ors. Respondents

Mr. Prashant Bhavake for the Petitioner
Mr. V. M. Mali, AGP for Respondent Nos.1 to 5

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

DATED : OCTOBER 26, 2021

P.C.

1 Mr. Prashant Bhavake, the learned counsel for the Petitioner seeks leave to delete the names of Respondents No.6 and 7 from the cause title.

2 Leave granted. Amendment shall be carried out forthwith. Re-verification is dispensed with.

3 Rule.

The learned AGP waives service for the Respondents.

4 By consent of the parties the matter is taken up for final disposal.

5 By this petition under Article 226 of the Constitution of India the Petitioner has impugned the order dated 28.07.2017 passed by the Education Officer whereby rejecting to grant proposal submitted by the Management seeking individual approval to the appointment of the Petitioner made by the Umarni Shikshan Prasarak Mandal, Umarani on the post of Shikshan Sevak at Khojanwadi Kannad Secondary School, Khojanwadi.

6 The Petitioner also seeks an order of direction against Respondent Nos.5 and 6 to grant proposal and issue order granting approval to the appointment of the Petitioner and release all salary benefits to the Petitioner.

7 It is the case of Petitioner that the Management had issued an advertisement on 25.08.2012 in the daily newspaper inviting applications from the suitable candidates for the post of Shikshan Sevak having qualification of B.Sc. B.Ed. The Petitioner was appointed on the post of Shikshan Sevak by the Management on 01.11.2012 after following due process of law. The Management, thereafter, submitted a proposal in the year 2016 seeking individual approval to the appointment of the Petitioner on the post of Shikshan Sevak. Respondent No.5, however, returned the said proposal on 02.06.2016 and directed to resubmit the proposal for individual approval. Said proposal was submitted by the Management to Respondent No.5. Respondent No.5, however, on 28.07.2017 passed a fresh order rejecting the said proposal.

8 Being aggrieved by the said order, the Petitioner has filed the present Writ Petition.

9 Mr.Bhavake, the learned counsel for the Petitioner has invited our attention to the impugned order and various documents annexed to the petition. He also placed reliance on a judgment delivered by this court on **07.10.2021 in Writ Petition No.8166/2019** filed by **Nitin D. Panchal Vs. State of Maharashtra & Ors.** and other companion matters in support of his submission that the ban would not be applicable to three categories (1) where the recruitment process is already commenced prior to Government Resolution dated 02.05.2012 (2) Insofar as the appointment made for the subjects of English, Maths and Science are concerned (3) where the recruitment is made to fulfill the backlog of reserved category candidates. He relies on paragraph 4 of the said judgment.

10 The learned AGP for the State relied on the Affidavit in Reply filed by the State notarized on 18.10.2021 and would submit that after considering the staffing pattern for the Academic Year 2014-2015 for 9th and 10th standard, there were three sanctioned posts of teachers available in Respondent No.5 school but as per record, 4 teachers were already working and therefore one teacher was surplus in the year 2016-17 and 2017-18. It is submitted that the Petitioner was denied the approval on the ground of non availability of vacant post in the Academic Year 2016-17 as per the documents available with the Education Officer. He invited our attention to the table mentioned in paragraph 3

of the said affidavit in support of his statement.

11 It is not in dispute that the Petitioner was appointed on 01.09.2012. Even according to the table submitted by the State in para 3, in the year 2013 one post was lying vacant. Merely because there was no post lying vacant in the year 2014-15 or there was surplus post in the year 2016-17 and 2017-18, the approval could not have been rejected on that ground. It is not the case of the State Government that the Petitioner was appointed in the year 2014-15, 2016-17 or 2017-18.

12 In our view, the Petitioner having been appointed for the subjects Maths as well as Science, the judgment delivered by this court on 07.10.2021 in the case of Nitin D. Panchal (supra) is squarely applicable to the facts of this case.

13 In our view, the impugned order is contrary to the view taken by this court and hence deserves to be set aside.

14 We, accordingly, pass the following order:

- a. The Writ Petition is made absolute in terms of prayer clause (b).
- b. It is made clear that the time granted to the Education Officer to grant individual approval to the appointment of the Petitioner would be 4 weeks from today and not 2 weeks.

- c. The Dy. Education Officer shall release salary / honorarium payable to the Petitioner with all arrears within a period of 4 weeks thereafter.
- d. The Dy. Director of Education is directed to include the name of the Petitioner in the Shalarth Pranali within 2 weeks from the date of granting approval.
- e. Rule is made absolute in terms of the above.
- f. The Writ Petition stands disposed of accordingly.
- g. Parties to act on an authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D.DHANUKA, J.)