

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

WRIT PETITION NO. 3175 OF 2020

Mr. Dilip Baburao Patil	... Petitioner
<i>Versus</i>	
State of Maharashtra and Ors.	... Respondents

Mr. Chetan G. Patil for the Petitioner.
Mrs. P. J. Gavhane, AGP for the Respondent Nos. 1 and 2.

**CORAM: R. D. DHANUKA AND
R. I. CHAGLA, JJ.**

**DATE : 30th JULY, 2021.
(Through Video Conference)**

P.C. :-

. Leave to amend is granted to the petitioner for deleting the respondent nos.3 and 4. Amendment shall be carried out within one week from today.

2. Rule. Learned AGP appearing for respondents waives services. Heard finally by consent of parties.

3. The petitioner was appointed in the post of clerk in Shri Ramgiri Vidyalaya Charan (aided school) run by Shree Charanai Education Society w.e.f. 4th January, 2013. The said aided school sent proposal for seeking approval to the appointment of the petitioner to the respondent no.2-Education Officer (Secondary) Zilla Parishad. The respondent no.2-Education Officer refused to grant approval to the

appointment of the petitioner vide order dated 13th December, 2018. Being aggrieved by the impugned order, the petitioner has filed present petition.

4. The learned counsel for the petitioner states that this issue is squarely covered by the judgment dated 19th January, 2021 delivered by the Division Bench of this Court in case of **Mr. Shrikrishna Bhikaji Bondge v/s. State of Maharashtra and Ors.** He has submitted that the sole basis for issuing the impugned order are the Government Resolutions dated 12th February, 2015 and 10th June, 2010, which impose general ban on recruitment. The impugned order was operational only for one year. He has submitted that in the said judgment of the Division Bench of this Court in case of **Mr. Shrikrishna Bhikaji Bondge** (supra) this Court held that the Government Resolution dated 12th February, 2015 directing that no posts or vacant posts should be filled in would by no stretch of imagination apply to the post of peon occupied by the petitioner since 1st July, 2009. Such post was neither vacant nor new post was contemplated by the Government Resolution dated 12th February, 2015. It was further held that the prior Government Resolution dated 5th August, 2010 in that case would apply with prospective effect. Accordingly, the Division Bench of in case of **Mr. Shrikrishna Bhikaji Bondge** (supra) directed the respondent no.2-Education Officer to grant approval to the appointment of the petitioner as peon in the establishment of respondent no.4, since the date of his appointment and release the grant in aid for payment of salary of the petitioner since date of his appointment with all consequential benefits. He has

submitted that in view of the said decision of this Court in case of **Mr. Shrikrishna Bhikaji Bondge** (supra), this petition be similarly allowed.

5. The respondents were unable to show any contrary decision of this Court or place material which would be in support of their contention that there is no infirmity in the impugned order passed by the respondent no.2-Education Officer.

6. Having considered the submissions, it appears that the issue of this petition is squarely covered by the decision of this Court in case of **Mr. Shrikrishna Bhikaji Bondge** (supra). This Court in the said decision has squarely held that the appointment of the petitioner which was prior to the said Government Resolution dated 12th February, 2015 cannot be considered for the general ban imposed by the said Government Resolution on recruitment. The post occupied by the petitioner cannot be said to be either vacant or new post as contemplated by the said Government Resolution.

7. We have perused the decision of the respondent no.2-Education Officer dated 13th December, 2018, it appears that the said decision was based solely on the Government Resolution dated 12th February, 2015. Admittedly, the appointment of the petitioner was prior to the issuance of said Government Resolution. Hence, the said Government Resolution dated 12th February, 2015 is not applicable to the appointment of the petitioner. Thus, the present Writ Petition deserves to be allowed.

8. We have in our recent decision dated 16th July, 2021 in case of ***Shital Kumar Patil v/s. State of Maharashtra*** followed the decision of this Court in case of ***Mr. Shrikrishna Bhikaji Bondge*** (supra) and held that the said Government Resolution dated 12th February, 2015 having been issued subsequent to the appointment of the petitioner was not applicable in the case of the petitioner.

9. We therefore pass the following order :-

- (i) Writ Petition is allowed in terms of prayer clause (a). The respondent no.2-Education Officer shall grant approval to the appointment of the petitioner since the date of his appointment i.e. 4th January, 2013 and shall release the grant in aid for payment of salary of the petitioner since the date of his appointment with all consequential benefits within a period of four weeks from today.
- (ii) Writ Petition is disposed of in aforesaid terms.
- (iii) Rule is made absolute accordingly.
- (iv) There shall be no order as to costs.

[R. I. CHAGLA, J.]

[R. D. DHANUKA, J.]