

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

WRIT PETITION NO. 1887 OF 2020

Shri Sunil Bajirao Lohar

... Petitioner

Versus

The State of Maharashtra,
Through the Secretary & Ors.

... Respondents

Mr. Prashant Bhavake, for the Petitioner.

Mr. V. M. Mali, 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. Mr. Mali, 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 order dated 13th February, 2019 passed by the Education Officer, rejecting the proposal of individual approval for the appointment of the petitioner made by the Management in the post of Shikshan Sevak at respondent

no. 7- Secondary School and for other reliefs.

4. On 2nd June 2011, respondent no. 6 published an advertisement in the daily newspaper Tarun Bharat inviting applications for several vacant posts at respondent no. 7-School. On 10th July 2011, the Management selected the petitioner in the post of Shikshan Sevak and passed resolution in that regard. On 13th June 2011, respondent no. 6, appointed the petitioner in the said post of Shikshan Sevak with effect from 14th June 2011 for probationary period of three years. The headmaster of respondent no. 7-School submitted a proposal for approval to the appointment of the petitioner in the post of Shikshan Sevak in the office of respondent no. 5-Education Officer. On 13th February 2019, respondent no. 5 passed an order thereby rejecting the proposal for approval to the appointment of petitioner in the post of Shikshan Sevak. The petitioner thus filed this petition.

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 the appointment of the petitioner was made on vacant post in view of the retirement of an employee on the post of Shikshan Sevak. The said post was not eligible after 2nd May 2012. The Education Officer thus could not have rejected the approval on that ground.

6. Learned counsel for the petitioner 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, in support of submissions that recruitment process in the case of the petitioner had already commenced prior to 2nd May, 2012. He also placed reliance on the Judgment of this Court delivered on 23rd August, 2021 in case of **Sandiprao V. Savant Vs. President/Secretary, Agrani Shikshan Prasarak Mandal and others** and in particular paragraph no. 9 in support of the submissions that the it would not apply to the said resolution dated 2nd May 2012 would not apply to the appointment made on the vacant post.

7. Mr. Mali, learned AGP for the State placed reliance on paragraph no. 6 in the affidavit-in-reply dated 27th October 2021 and would submit that though the petitioner was appointed by the Management on 14th June 2010 the proposal was filed for the first time on 9th January 2019. The petitioner was appointed on vacant post as Art Teacher from the year 2013-14. The post of Art Teacher was not shown in Sanch Manyata.

8. In our view both the stands taken by the State Government are contrary to the view already taken by this Court in case of **Smt. Munoli Rajashri Karabasappa** (supra) and **Sandiprao V. Savant** (supra). Be that as it may; averments made in paragraph no. 6 of the affidavit in reply itself it clearly indicates that the petitioner was appointed by the Management on 14th June 2010

i.e. prior to said resolution dated 2nd May 2012. Even otherwise, the said resolution dated 2nd May,2012 would not apply to the facts of the case.

9. In our view, Judgments of this Court in case of **Sandiprao V. Savant** (supra) and **Smt. Munoli Rajashri Karabasappa** (supra), will apply to the facts of this case. The impugned order dated 13th February,2019 passed by the Education Officer, rejecting the individual proposal of the petitioner dated 9th January,2019 is contrary to the observations made in the judgments referred to above and we thus deserves to set aside the same.

10. We accordingly pass the following order.

- (a) The Writ petition is made absolute in terms of prayer clause (b).
- (b) The Education Officer is directed to grant approval as directed in prayer clause (b) within four weeks from today and to 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.]