

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

WRIT PETITION NO. 7678 OF 2021

Sagar Bapuso Bhise

... Petitioner

Versus

The State of Maharashtra,
Through the Secretary & Ors.

... Respondents

Mr. Prashant Bhavake, for the Petitioner.

Ms. P.G. Gavhane, AGP for State-Respondent Nos.1 to 5.

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

DATE : 29th NOVEMBER, 2021.

P.C. :-

1. Leave to amend to delete respondent Nos. 6 and 7 is granted. Amendment to be carried out forthwith.

2. Rule.

3. Ms. P.G. Gavhane , learned AGP for the respondent nos.1 to 5 waives service. By consent of parties, petition is heard finally.

4. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 30th May, 2019 passed by Respondent No. 5- Education Officer, thereby refusing to grant the approval to the proposal submitted by management seeking individual approval to the appointment of

the petitioner in the post of Shikshan Sevak for probationary period of 3 years with effect from 1st July, 2015 to 30th June, 2018 and for other reliefs.

4. The petitioner is B.A. B.Ed. by qualification. It is the case of the petitioner that due to the retirement of the Assistant Teacher Shri V.T. Jadhav on 31st May, 2013, post of Shikshan Sevak for English subject became vacant at respondent no. 7-Secondary School. The said post was required to be filled up from open category according to the roster. Respondent No. 6, accordingly approached the office of the Education Officer to ascertain whether suitable candidate for the said vacant post was available in the list of surplus teachers. No such surplus teacher was available for the said post according to the record of respondent no. 5-Education Officer. The Management thereafter issued an advertisement in the daily newspaper Krantsinh dated 13th June, 2015 and after following requisite procedure, appointed the petitioner on the said post of Shikshan Sevak on 23rd June, 2015.

5. The Management thereafter applied for individual approval to the appointment of the petitioner in the post of Shikshan Sevak. Respondent No. 5, however, did not consider the said proposal. The petitioner was thus required to file Writ Petition bearing No. 9736 of 2018 before this Court. This Court directed the Education Officer to consider the said proposal within the time prescribed.

6. The Education Officer thereafter on 30th May, 2019 rejected the proposal on various grounds.

7. 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 though the proposal was rejected on several grounds, most of the grounds are based on wrong factual premises. The main ground of rejection of the proposal is that no surplus teacher was absorbed by the Management before appointing the petitioner. There was no prior permission obtained from Education Officer before appointing the petitioner to the said post.

8. Learned counsel for the petitioner invited our attention to the Judgment of this Court in case of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra** with connected writ petitions delivered on 10th July 2017 and would submit that the Government Resolution dated 2nd May, 2012 is already relaxed by subsequent resolution dated 4th September 2013 in so far as subjects of English, Maths and Science are concerned.

9. In so far as the rejection of the proposal for want of permission of Education officer is concerned, the subsequent Government Resolution dated 4th September, 2013, brought to out notice would clearly indicate that by said Government Resolution, in so far as English, Maths and Science are

concerned, the relaxation was granted by the said circular to appoint the teacher for one or other subjects i.e. English, Maths, Science, there is thus no merit in this reason in the impugned order.

10. In our view the Judgment of this Court in case of **Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra** (supra) applies to the facts of this case. We are respectfully bound by this Judgment.

11. It is not in dispute that the petitioner was appointed on the vacant post due to the retirement of Shri V.T. Jadhav on 31st May, 2013 for English subject. According to the roster, the said post was required to be filled up in open category. Thus there was no violation of any of the Government Resolution issued by the State Government.

12. In our view, after considering the documents annexed to the petition, the impugned order passed by the Education Officer is based on wrong factual premises.

13. 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.]