

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 14064 OF 2021

Santosh Laxmansa Gathadi ... **Petitioner**
Age 52 years, Occu: Service,
R/o Plot No.42, Shivshakti Nagar, Near
Chalani Colony, Manwat Dist. Parbhani

VERSUS

1. The State of Maharashtra,
Through its secretary,
School Education Department,
Mantralaya, Mumbai 400 032
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad
Near Deogiri College, Station Road,
Aurangabad
3. The Education Officer (Secondary), ... **Respondents**
Zilla Parishad, Parbhani
4. Netaji Subhash Shikshan Sanstha,
Manwat, Tq. Manwat, Dist. Parbhani
5. The Headmaster,
Netaji Subhash Vidyalaya,
Manwat, District Parbhani

Mr. C. K. Shinde Advocate for the petitioner,
Mr. S. B. Yawalkar, AGP for respondent Nos.1 to 3,
Mr. K. J. Suryawanshi, Advocate for respondent Nos. 4 and 5

CORAM : SMT. VIBHA KANKANWADI &
Y. G. KHOBRAGADE, JJ.
RESERVED ON : 10th NOVEMBER, 2022
PRONOUNCED ON 8th DECEMBER, 2022

JUDGMENT (Per Y. G. Khobragade, J.):

1. Rule. Rule made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.
2. By the present petition under Article 226 of the Constitution of India, the petitioner seeks directions against respondent No.2 Deputy Director of Education, Aurangabad for inclusion of his name in Shalarth ID System in pursuance of Government Resolution dated 07.11.2012. The petitioner also prays for quash and set aside of the order dated 29.10.2021 passed by respondent No.2 rejecting his proposal for inclusion of his name in Shalarth ID System.
3. In nutshell, it is the case of the petitioner that, vide appointment order dated 24.04.2012, he was appointed as Class-IV employee(Peon) with respondent No.5 School after following prescribed procedure on clear vacant post. Initially, he was appointed on probation for a period of two years in pay-scale of Rs.1700/- and respondent No 3. Education officer accorded approval to his appointment on 06.10.2014. However, there were some complaints received by respondent No.3 Education Officer against respondent No.5 Headmaster for not allowing some employees to discharge their duties. Therefore, respondent No.2-Education Officer appointed Deputy

Education Officer (Secondary) Z.P. Parbhani to make enquiry in respect of teaching and non teaching staff members of the respondent No.5 school. Accordingly the Deputy Education Officer visited the respondent no.5 school and made detail enquiry in respect of employees who were not being allowed to sign muster rolls. The Deputy Education Officer submitted its report on 12.04.2014 and observed that the appointment of the present petitioner is under signature of Shri Marotroa Sorerkar, Secretary of respondent No.4, vide outward No. 173/2012 dated 24.04.2012. Appointment of the petitioner shown against the OBC category and signature of the petitioner appearing w.e.f. 27.04.2012. The enquiry officer (Deputy Education Officer) also made enquiry with Headmaster of respondent No.5 school and had called for production of muster roll but it was not produced. On enquiry it has been revealed that, names of employees whose appointments have been approved by the Education officer were included in the muster roll and appointment of the present petitioner not been approved.

4. Learned counsel appearing for the petitioner submitted that on 06.10.2014, respondent No.3 Education officer (Secondary) granted approval to the appointment of the petitioner as per Shikshan Sevak Scheme for the period from 27.04.2012 to 26.04.2015. As such, the petitioner successfully completed probation period, hence, he acquired

the status of permanent employee. Thereafter, on 16.05.2018, respondent No.3 granted continuity in service to the petitioner on successful completion of probation period with effect from 27.04.2015. Therefore, the school management submitted proposal to respondent no.2 for inclusion of name of the petitioner in Shalarth I.D. system as per GR dated 07.11.2012 but after enquiry, the respondent no.2 Deputy Director of Education passed order dated 29.10.2021 (Exh.E) and rejected claim of the petitioner for inclusion of his name in the Shalarth I.D system.

5. Learned counsel appearing for the petitioner further canvassed that, appointment of the petitioner was within the approved strength of class-4 employees with respondent no.5 and petitioner never been declared surplus. Respondent No.3 granted approval for appointment of the petitioner. Therefore, name of the petitioner needs to be included in Shalarth I.D. However, respondent No.2 passed impugned order on 29.10.2021 and refused to include name of the petitioner in Shalarth ID System. Therefore, impugned order is illegal, bad in law and prayed for quash and set aside the same.

6. Per contra, Shri S. B. Yawalkar, learned AGP appearing for respondent Nos. 1 to 3 submitted that, though the petitioner claimed that on 27.04.2012 he was appointed to the post of peon in OBC category and vide order dated 06.10.2014 respondent no.3 approved

his appointment. However, on 10.01.2020 and 17.06.2021, a proposal for inclusion of name of the petitioner in Shalarth ID was received from respondent No.5 and in pursuance of directions issued by this Court in Writ Petition Nos. 12857/2019, 3411/2019, 13248/2019, respondent No.2 made detail enquiry and granted opportunity of hearing to the petitioner. Roster was verified on 30.11.2012 and as per Roster, only 126 posts of Secondary teachers staff with respondent no.4 Education society were sanctioned and out of those posts, total 110 posts were already filled up by respondent no.4 Education Society and 16 posts were shown vacant. There were 44 non teaching sanctioned posts out of which 6 posts are vacant and there was backlog of 27 posts including 16 posts of secondary teachers, 5 posts of primary teachers, 4 posts of Jr. Clerk/Lab. Assistant and 2 posts of peons and respondent no.4. There were 24 posts of peon/Lab. Attendant and management filled up 25 posts. The appointment of the petitioner made against OBC quota which is against reserved posts and it is illegal appointment, is itself illegal. The Assistant Commissioner, B.C. Cell also informed to the Education Officer, ZP vide letter dated 14.2.2014 that due to pendency of change report roster cannot be verified. The petitioner's appointment was made by respondent No.4 without publication of advertisement and without prior sanction from the Education Officer.

7. The learned AGP further canvassed that, though the petitioner claimed about his appointment in the year 2012 but first time, proposal for inclusion of name of the petitioner in Shalarth ID received by respondent No.3 in the year 2020 and neither the petitioner nor Respondent no.4 Education society satisfied about delay in submitting proposal for inclusion of name of the petitioner in Shalarth ID. There is dispute between two groups of management for change report which is pending before the Assistant Charity Commissioner, Parbhani and it has not been decided which body of management was in power from 2006-2007 onward and appointment of the petitioner is illegal, therefore respondent no.3 refused to include name of the petitioner in Shalarth ID. So also, other 26 teaching and non teaching staff also claimed for inclusion of their names in Shalarth ID, though their appointments are made without considering vacancy. Therefore, the impugned order does not suffer from illegality.

8. Mr. K.J. Suryawanshi, the learned advocate appearing for respondent Nos. 4 and 5 vehemently submitted that the appointment of the petitioner was not made against the sanctioned and vacant posts and the petitioner himself stated that respondent no. 5 did not allow him to sign muster roll. Therefore, the services of the petitioner deemed to be terminated and the petitioner not worked with respondent no. 5 school. So also, no service record of the petitioner is available with

respondent no.4 Education Society. Therefore, name of the petitioner not been included in the Shalarth ID and respondent no.3 passed impugned order and declined to include name of the petitioner in Shalarth ID because the appointment of the petitioner is not made against sanctioned and vacant posts as well as as per roster. Hence, prayed for dismissal of the petition.

9. It appears that the respondent No. 4 Education society runs respondent No.5 school on Government aid basis and the petitioner allegedly been appointed under appointment order dated 24.12.2012 to the post of peon, however, the petitioner has not brought any material on record to show that prior to appointment of the petitioner, any advertisement was issued by respondent no. 4 after getting sanction from respondent no.3 to fill up the post of peon. The appointment of the petitioner shown against OBC quota without verifying roster points. In the appointment letter it was shown by respondent no.4 that appointment of the petitioner was made on the post of peon initially for the period of 2 years on probation on pay scale of Rs.1700/-. As per section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 prior permission of the Education Officer is required to be obtained, however, nothing has been brought on record to show that any prior permission was obtained from the Education Officer under section 5 of the MEPS Act which is mandatory.

10. On the face of record, it shows that due to some irregularities in respect of appointment of teaching and non teaching, several complaints were received by the Education officer, therefore, the Education Officer directed enquiry in respect of the appointment of the teaching and non teaching staff. The Deputy Education Officer conducted enquiry by issuing notices to the employees including respondent No.4 Education society. Thereafter the Deputy Education Officer submitted its report on 12.04.2014 and opined that appointment of the present petitioner was made under signature of Shri Marotroa Sorekar, Secretary of respondent No.4 Education Society at outward no. 173/2012 dated 24.04.2012. Since appointment of the petitioner allegedly made against OBC category without verifying roster and signature of the petitioner appearing on muster roll with effect from 27.04.2012, but it has not been specified till which date the petitioner signed muster roll. The Deputy Education Officer called the respondent No.5 for production of muster roll but it was never produced. The record further reveals that the Education Officer verified the roster of secondary teachers staff sanctioned with respondent no.4 and there were 126 sanctioned posts of secondary teachers staff in the Institution and out of those posts, total 110 posts were already filled up by respondent No. 4 Society and 16 posts were shown vacant and there are 44 posts of non-teaching staff out of which 6 posts were lying

vacant and there was backlog of 27 posts which includes 16 posts of secondary teachers, 5 posts of primary teachers, 2 posts of peon. But the respondent Management filled up 25 posts. Total 26 teaching and non teaching staff claiming including of their names in Shalarth ID. Appointment of the petitioner is against OBC category which is against the reserved posts, but there is no clarification about laying vacancy under OBC category on the date of appointment of the petitioner. Therefore, the appointment of the petitioner is illegal and the Assistant Commissioner, BC Cell informed to the Education Officer that the appointment of the petitioner was made by respondent No.4 without publication of advertisement and without prior sanction. Thereafter, the proposal for inclusion of name of the petitioner in Shalarth ID System received by respondent No.3 in the year 2020 i.e. after eight years from the appointment order of the petitioner, as per Government Resolution dated 07.11.2012 by which the State Government decided to include name of the teaching and non teaching staff in the Shalarth ID system. Since the appointment of the petitioner is illegal and no proposal was forwarded for eight years, the respondent No.4 refused to include name of the petitioner in Shalarth ID system along-with other 26 teaching and non teaching staff members of the respondent No.4 Education Society, which does not appear illegal.

11. Nonetheless, there is dispute between two groups of management and change reports bearing Nos. 589/2006, 197/2006, 1267/2013, 1269/2013, 748/2013 and 1022/2010 are pending before the Assistant Charity Commissioner, Parbhani and appointment of the petitioner appears to be made on 24.02.2012 under the signature of Marotrao Sorekar, Secretary of respondent No.4 Society.

12. Since name of the petitioner having not been appeared in the muster roll, respondent No.5 Headmaster did not allow the petitioner to sign muster roll, therefore, respondent No.3 not included name of the petitioner in Shalarth ID system. Though as per GR dated 07.11.2012 (Exh.F), it was mandatory to include names of teaching and non teaching staff members in Shalarth ID system, but the appointment of the petitioner and others are being made some time in the years 2008, 2009, 2010, 2012, 2014 but there is no clear whether the respondent No.5 Headmaster produced pay bills and there is no demand of salary and such explanation not been given either by the office bearers of the respondent No.4 Education society or the Education officer as to why name of the petitioner and other employees not been included in Shalarth ID system, though the appointment of the petitioner allegedly been made prior to coming into force the Government resolution dated 07.12.2012. So also there is no record available with the office of Education officer, Zilla Parishad, Parbhani

and with respondent No.4 Education Society and though only 24 posts are available, respondent No.4 made appointment of 25 persons. Therefore, respondent No.2 Deputy Director of Education refused to include name of the petitioner and others in Shalarth ID which does not appear illegal, bad in law. Therefore, to our conscious view, the present petition deserves to be dismissed. Accordingly we proceed to pass following order:

ORDER

- 1) Writ petition is dismissed.
- 2) Rule is accordingly discharged.
- 3) No order as to costs.

(Y. G. KHOBRAGADE, J.)

(SMT. VIBHA KANKANWADI, J.)

JPChavan