

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

WRIT PETITION NO.6738 OF 2021

Amit Irappa Naik and Anr. Petitioners
Vs.
The State of Maharashtra and Anr. Respondents

Mr. N. V. Bandiwadekar a/w. Mr. Vinayak Kumbhar i/b Mrs. A.
N. Bandiwadekar for the Petitioners.
Mr. V. M. Mali, AGP for Respondent-State.

**CORAM: SUNIL B.SHUKRE &
G. A. SANAP, JJ.**

DATED : 16 MARCH 2022.

P. C.

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. The only reason for which the appointment of Petitioner No.1 to the post of Junior Clerk has been refused is that there was ban on recruitment of non-teaching staff during pandemic period as per Government Resolution dated 4/5/2020.

3. The reason so given, in our considered opinion has no relevance to the issue of grant of approval to the appointment of Petitioner No.1 as Junior clerk as Petitioner No.1 was admittedly appointed in the year 2017 by following proper procedure and at

that time no covid pandemic was existing much less was in sight and therefore, there is no question of applying with retrospective effect Government Resolution dated 4/5/2020 to the situation prevailing in the year 2017. It is clear that the impugned order is premised upon wrong reasoning and therefore, the impugned order is to be treated as illegal.

4. Now, the question would be whether this Court should record a conclusion that Petitioner No.1 being eligible for seeking approval to his appointment, must be granted approval and for this, the Court would have to satisfy itself about Petitioner No.1 meeting the other requirements before such a conclusion is recorded. In the reply filed by the Education Officer, some additional reasons are given to explain as to why the approval could not be granted to the appointment of Petitioner No.1. According to the Education Officer it could not be granted because clause (v) of Government Resolution dated 23/10/2013 was in the nature had an effect of policy and the post of Junior Clerk fell vacant in the present case on account of superannuation of the erstwhile employee.

5. We find this submission as inconsistent with clause (v) of Government Resolution dated 23/10/2013, which speaks not of abolition of non teaching post but makes reference to only the manner in which surplus non-teaching staff must be dealt with. Therefore, the approval to the appointment of Petitioner No.1 cannot be refused by taking recourse to clause (v) of Government

Resolution dated 23/10/2013. In fact, the impugned post to which Petitioner No.1 is appointed is admittedly a sanctioned post and it is clear from the staffing pattern which came into force in the year 2019.

6. In view of the facts and circumstances of this case referred to above, there appears to be no reason for the Education Officer to have refused approval to the appointment of Petitioner No.1 as Junior Clerk in an aided Secondary School of Petitioner No.2.

7. With these observations, the Petition is allowed. The impugned order is hereby quashed and set aside. The matter is remanded back to Respondent No.2 for taking a fresh decision in accordance with law keeping in view the observations made hereinabove. The decision shall be taken as early as possible and within 4 weeks from the date of receipt of a copy of the order. In case approval is granted, Petitioner No.1 shall be allotted Shalarth ID within two weeks from the date of decision and his salary with admissible arrears shall be released to him within a further period of two weeks from the date of allotment of Shalarth ID.

8. Rule is made absolute in the above terms. No costs.

(G. A. SANAP, J.)

(SUNIL B.SHUKRE, J.)