

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9071 OF 2021

1. Sandeep Gautam Kamble

Age 36 years,

Indian Inhabitant of Sangli,

Permanent resident of A/P-

Kavathe Ekand, Tal. Tasgaon,

District Sangli.

2. Jeevan Vikas Sanstha

through its Chairman / Secretary,

Having Office at Tasgaon, Tal.

Tasgaon, District Sangli.

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3. Vidyaniketan Krishi Madyamik

Vidyalaya and Junior Science College

through its Principal, Tasgaon,

District Sangli.

...Petitioners

V/s.

1. The State of Maharashtra through

Principal Secretary, Ministry of

Higher Education Department

to be served through Government

Pleader, High Court, Bombay.

2. The Deputy Director of Education,
Kolhapur Region, Having its office at
Hattimahar, Somwar Peth Kolhapur
to be served through Government Pleader
High Court, Mumbai.

3. The Education Officer,
District Sangli to be served through
Government Pleader High Court,
Mumbai.

...Respondents

Mr. Vaibhav U. Ugle, for the Petitioners.

Mr. V. M. Mali, A.G.P. for the Respondent / State.

**CORAM : A. S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATE : 20 April 2022

JUDGMENT (Per G. A. SANAP, J.) :

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

2. The petitioners are seeking directions to quash and set aside the communication / letter dated 16 November 2017 rejecting approval to the appointment of petitioner No.1 to post of the Laboratory Assistant, issued by the respondent No.2. The petitioners are also seeking direction to the respondent No.2 to grant approval to the appointment of the petitioner with effect from 2 August 2010, with all consequential benefits.

3. The petitioner No.1 was selected and appointed as a Laboratory Assistant vide decision dated 1 August 2010. The appointment order is dated 1 August 2010, for three years with effect from 2 August 2010. After appointment, the petitioner No.1 joined the duty. The appointment of the petitioner No.1 was made in a vacant post by following the due procedure. The petitioner No.1 belongs to Scheduled Caste category. As per the advertisement, the said reserved category post was duly advertised. The Management forwarded the proposal to the respondent No.2 for approval. The respondent No.2 vide communication dated 16 November 2017 rejected the approval

to the appointment of the petitioner No.1 on the ground that at the relevant time there was ban on the recruitment. It is the case of the petitioners that the grounds stated by the respondent No.2 is not according to law. The respondent No.2 has wrongly refused the approval.

4. The respondent No.2 has filed the affidavit-in-reply and opposed the petition. In sum and substance, the respondent No.2 has denied material facts pleaded in the petition. According to the respondent No.2, the State Government vide the Resolution dated 23 October 2013 approved the staffing pattern for non teaching staff. As per this Government Resolution, the post of non teaching staff are abolished on superannuation of the present non teaching employees. Similarly, vide Government Resolution dated 12 February 2015, a direction was issued and it was made clear that vacant post of a non teaching staff should not be filled up until further order. It is contended that the approval was rightly rejected.

5. We have heard the learned Advocate for the petitioners and the learned Assistant Government Pleader for the respondents. We have perused the record and proceedings.

6. The learned Advocate for the petitioners submitted that the Government Resolution dated 23 October 2013 will not apply retrospectively to the appointment of the petitioner No.1 made on 1 August 2010. The learned Advocate submitted that at the relevant time, there was no ban on the recruitment. The learned Advocate for the petitioners submitted that the appointment of the petitioner No.1 made to a vacant permanent post by following the procedure. The learned Advocate in order to seek support to his submission placed reliance upon the decision in the case of *Suresh Hariba Mali and Ors. Vs. The State of Maharashtra and Ors.*¹ and *Rahul Namdev Patil and Ors. Vs. State of Maharashtra and Ors.*²

¹in Writ Petition No.2894/2020 decided on 25/1/2021

²in Writ Petition No.2827/2021 decided on 22/9/2021

7. The learned Assistant Government Pleader reiterated the facts set out in para 4 and 5 of the reply.

8. There is no dispute that appointment of the petitioner No.1 was made by following due procedure on a permanent vacant post. The petitioner No.1 has successfully completed his probationary period. The Management / petitioner No.2 has supported the claim of the petitioner No.1. The proposal was submitted for granting approval. The perusal of the record would show that for the relevant year, as per staffing pattern and staffing strength, the post of the Laboratory Assistant was sanctioned and available. It is further pertinent to note that the approval has not been refused on any other ground except the ban on the recruitment.

9. In our considered opinion, there is no substance in the objection. The issue in this petition has been squarely covered by the decision in *Rahul Namdev Patil (supra)*. In the case of *Rahul Namdev Patil*, the Coordinate Bench of this Court has held that the Government Resolutions dated 23 October 2013, 28 January

2019 and 7 March 2019 would not apply with retrospective effect. On consideration of the undisputed facts, we are of the opinion that the Government Resolution dated 23 October 2013 and the Government Resolution dated 12 February 2015, cannot be made applicable to the case of the petitioner No.1 retrospectively. The appointment of the petitioner No.1 was made on 1 August 2010. Therefore, the petition deserves to be allowed.

ORDER

- (i) The petition is allowed.
- (ii) The impugned communication dated 16 November 2017 issued by the respondent No.2 is quashed and set aside.
- (iii) The respondent No.2 is directed to grant approval to the appointment of the petitioner No.1 with effect from 2 August 2010 within a period of three weeks from the date of receipt of the copy of this order.
- (iv) The name of the petitioner No.1 shall be

included in Shalarth Pranali within a period of two weeks from grant of approval.

(v) The arrears of the salary and other benefits, if due and payable, shall be cleared at the earliest.

(vi) The rule is made absolute in the aforesaid terms.

(vii) The Writ Petition stands disposed of.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)