

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1004 CIVIL APPLICATION NO. 6978 OF 2023 IN WP/5270/2023

SOPAN ANKUSH BEMBADE AND OTHERS
VERSUS

THE STATE OF MAHARASHTRA THROUGH
THE SECRETARY AND OTHERS

...

Advocate for applicants / petitioners : Mr. Ghute Patil Kishor J.

AGP for the respondent – State : Mr. A.S. Shinde

Advocate for respondent no. 5 : Mr. S.R. Yadav

Advocate for the respondent no. 6 : Mr. V.C. Patil h/f. Mr. U.B. Bondar

Advocate for respondent no. 7 : Mr. A.R. Nikam

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**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

DATE : 13 JUNE 2023

PC :

Notice.

2. Learned AGP waives service for respondents no. 1 to 4, Mr. Yadav waives service for respondent no. 5. Mr. Patil h/f. Mr. Bondar waives service for respondent no. 6 and Mr. Nikam waives service for respondent no. 7.

3. Heard both sides.

4. The applicants - petitioners who were appointed and have been serving as Assistant Teachers under various zilla parishads since 2019 after following due process, are aggrieved by the fact that,

inconsistent with the notification dated 10-06-2014 issued in exercise of the powers under section 274(2) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, clause 7B 1(b) providing for a limited departmental competitive examination for being appointed / selected to the post of *Kendra Pramukh* and making eligible inter-alia the candidates who have completed not less than three years continuous service in zilla parishad on the post of Trained Graduate Teacher (Primary), by another circular issued in the Department of School Education and Sports dated 09-03-2023, qualification has been added expressly mentioning that while counting the service of three years as Trained Graduate Teacher (Primary), the period put in as *Shikshan Sevak* should be excluded.

It is also pointed out that even while issuing the resolution dated 01-12-2022, the government has committed the same error while providing for recruitment of cluster head posts by reserving 50% seats by way of promotion and the remaining 50% to be recruited by the limited departmental examination.

5. It is being submitted on behalf of the petitioners that no such distinction could have been made while counting the eligibility criterion of putting three years of continuous service. The period put in by the petitioners as *Shikshan Sevaks* is eligible to be counted while considering their eligibility.

6. By way of this civil application, the petitioners are seeking the interim relief in the form of a direction to allow them to appear for the limited departmental examination pursuant to the advertisement dated 05-06-2023.

7. Obviously, there is a dichotomy between the rules for promotion and the subsequent circulars as far as the eligibility criterion for the candidates for appointment through limited departmental examination. The issue as to whether the period put in by the petitioners as *Shikshan Sevaks* is eligible to be counted against the clause providing for three years of continuous employment, needs to be considered but will take some time to decide on merits.

8. Admittedly, the last date for submission of applications is 15 June 2023. Considering the exigency, we allow the civil application and permit the petitioners to apply and appear at the limited departmental competitive examination, however, their candidature would be subject to the outcome of the writ petition.

9. Parties to act on an authenticated copy of this order.

[S. G. CHAPALGAONKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/