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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8369 OF 2022**

Amit Irana Kharabe)
Age 36 years, Occupation)
service, residing at Nesri,)
Tal. Gadhinglaj, District – Kolhapur) Petitioner.

V/s

1] State of Maharashtra)
Through Department of Education)
having Office at Mantralaya,)
Mumbai 400032.)
)
2] Education Officer (Secondary))
Zilla Parishad Kolhapur)
)
3] Shikshan Samiti, Kasaba sari)
Taluka : Gadhinglaj)
Dist : Kolhapur Through its)
President/Secretary)
)
4] S.S. High School, Nesari)
Taluka:- Gadhinglaj, Dist. Kolhapur)
Through its Headmaster)
)
5] Deputy Director of Education)
Kolhapur Division, Kolhapur) Respondents.

Mr. Chetan G. Patil a/w Mr. Mandar G. Bagkar for the
Petitioner.

Mr. V.M. Mali, AGP for Respondent Nos. 1, 2 and 5.

**CORAM: A.S. CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ**

DATE: 14th DECEMBER, 2023

ORAL JUDGMENT: (Per A.S. Chandurkar, J.)

1] Rule. Rule made returnable forthwith.

2] Petitioner is aggrieved by the order dated 06/05/2022 passed by the Education Officer (Secondary) Zilla Parishad, Kolhapur, refusing to approve the appointment of the Petitioner on the post of Naik for two reasons. It has been stated that by Government Resolution dated 10/06/2010, there was restriction on appointment of non-teaching staff. By subsequent Government Resolution dated 12/02/2015, there was a ban on recruitment with effect from 23/10/2013. On the premise that post in question was not sanctioned, approval came to be refused.

3] We have heard the learned Counsel for the parties and we have perused the documents on record. It is not in dispute that the incumbent holding the post of Naik retired on

31/05/2013 which is prior to 23/10/2013 when restrictions were sought to be imposed on making recruitment on the basis of existing staffing pattern. The Petitioner was appointed on 01/12/2013 on the very same post. The fact that Government Resolution dated 23/10/2013 seeks to introduce a new staffing pattern cannot be the reason for not approving the appointment of the Petitioner to the post that was already sanctioned and on which an incumbent was serving, superannuated on 31/5/2013. Recruitment of the Petitioner on such vacant sanctioned post therefore would not be affected by the Government Resolution dated 23/10/2013. This issue has been considered by this Court in decision dated 19/1/2021 in Writ Petition No.3525 of 2019 (*Mr. Shrikrishna Bhikaji Bondge vs. State of Maharashtra and Ors.*) and also in Writ Petition No.5157 of 2021 (*Shrikant Baburao Walvekar vs. The State of Maharashtra and Ors.*) decided on 28/02/2022.

4] For the aforesaid reasons, we find that rejection of the proposal seeking approval to the appointment of the

Petitioner to the post of peon is without justification. Consequently order dated 06/05/2022 is set aside. In the light of similar directions issued in the Writ Petitions referred to hereinabove, it is held that the Petitioner is entitled to grant of approval to his appointment. Respondent No.2 shall accordingly pass necessary orders in that regard approving the appointment of the Petitioner from his initial date of appointment. Same be done within a period of four weeks from today. Consequential steps shall be taken for granting Shalarth ID.

5] Rule is made absolute in the above terms with no order as to costs.

[FIRDOSH P. POONIWALLA, J.] [A.S. CHANDURKAR, J.]