

Ashwini V

REPORTABLE

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8488 OF 2022**

- 1. PRIYANKA SANTOSH HEGISHTHE,**
Aged 32 Years, Occ. Service,
R/o. Devrukh,
Tal. Sangameshwar,
Dist. Ratnagiri 415 804.
- 2. DEVRUKH SHIKSHAN PRASARAK
MANDAL, DEVRUKH,**
Tal. Sangameshwar, Dist. Ratnagiri,
Through its Chairman / Secretary.

...Petitioners

~ VERSUS ~

- 1. THE STATE OF MAHARASHTRA,**
Through the Secretary,
School Education Department,
Mantralaya, Mumbai 400 032.
- 2. THE DEPUTY DIRECTOR OF
EDUCATION,**
Kolhapur Region, Kolhapur.
- 3. THE EDUCATION OFFICER
[SECONDARY],**
Zilla Parishad, Ratnagiri.

...Respondents

APPEARANCES

FOR THE PETITIONERS **Mr NV Bandiwadekar, i/b AN**
Bandiwadekar.

FOR RESPONDENT-STATE **Mrs PJ Gayhane, AGP.**

**CORAM : G.S.Patel &
Neela Gokhale, JJ.**

DATED : 28th February 2023

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.** Rule returnable forthwith. Respondents waive service. Petition taken up for hearing and final disposal.
2. A two-page letter of March 2022, with 16 separate points, has resulted in the complete obliteration of nine years of unblemished service as a teacher of the 1st Petitioner. As Mr Bandiwadekar points out, there is a wholesale non-application of mind. Every single one of the relevant documents has been ignored. Accusations of delay are made against the 2nd Petitioner management, but the wholly unexplained and unconscionable delay on the part of the 3rd Respondent is simply papered over as if it is immaterial. The Petition has, unusual for such cases, taken every single one of the 16 points in the impugned communication of 22nd March 2022 at pages 52 and 53 and provided an answer based on the records.
3. The relevant facts are these. The 2nd Petitioner is a Trust and an Educational Institution under the Maharashtra Public Trusts Act

1950. It runs one school called the New English School and Guruvarya Kakasaheb Sapre Science Junior College (“**the School**”) at Devrukh, Taluka Sangameshwar, District Ratnagiri. The School has standards 5 to 12 and is a fully-aided school: it receives 100% aid from the State Government. The service conditions of teaching and non-teaching staff in the School are thus governed by the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 (“**the MEPS Act**”) and the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (“**the MEPS Rules**”). The 1st Respondent is the State of Maharashtra through the School Education Department. The 2nd Respondent is the Deputy Director of Education, Kolhapur Region. The 3rd Respondent is the Educational Officer (Secondary) of the Zilla Parishad, Ratnagiri. It is he who has issued the impugned order.

4. The Petitioners seek the following substantive reliefs:

“(b) By a suitable writ, order or direction, this Hon’ble Court may be Pleased to quash and set aside the impugned order dated 22.3.2022 issued by the Respondent No. 3, and accordingly the Respondent No. 3 may be directed to grant approval to the appointment of the Petitioner No. 1 as a Shikshan Sevak w.e.f. 1.7.2014 for a period of 3 years, and thereafter the further approval as Full Time Assistant Teacher in pay scale w.e.f. 1.7.2017, and to release the grant-in-aid for payment of monthly honorarium for 3 years and monthly salary in pay scale w.e.f. 1.7.2017, with all arrears.

(c) After the approval would be granted by the Respondent No. 3 as prayed in prayer clause (b) above, that by a suitable writ, order or direction, this Hon’ble Court may be pleased to direct the Respondent No. 2 grant

permission to enter the name of the Petitioner No. 1 in Shalartha Pranali and to allot Shalartha I.D. to the Petitioner No. 1 as Shikshan Sevak / Assistant Teacher in the aided Secondary School of the Petitioner No. 2 Management, with all consequential benefits.”

5. On 30th June 2013, a permanent and approved full-time teacher, one Smt Shital Prakash Sardesai, retired from service in the 2nd Petitioner’s school. Mrs Sardesai was in the open category. She had a B.A. and B.Ed. (Marathi). She taught Marathi to 9th and 10th standard students. Her post was a sanctioned post. On her retirement, it fell vacant. The School needed a qualified Marathi teacher.

6. On 9th January 2014, the Headmaster of the School told the 3rd Respondent about Mrs Sardesai’s retirement and sought guidance for a new appointment of a teacher for the Marathi subject.

7. There was no response. At this very stage, Mr Bandiwadekar draws our attention to a Circular or Government Resolution of 5th April 2018 which says, referring to various orders of the Courts noting the lack of timely decision making, that approvals after appointments must be decided within eight weeks.

8. The underlying principle of this and of the High Court decisions is clear,, namely that when approval or guidance is sought, a response is expected in a reasonable time. Every principle of good governance and proper administration demands this. If this is not

done, there are adverse consequences to all concerned, including the Government itself.

9. To return to our narrative, by a letter of 9th June 2014, the Headmaster of the School informed the 3rd Respondent that a vacancy had occurred on 30th June 2013 and sought permission to publish an advertisement to fill that vacancy. A proforma of the proposed advertisement was annexed to this letter. That draft advertisement clearly spoke of appointment to the post of a Shikshan Sevak with a B.A., B.Ed. degree for the Marathi subject on an aided basis and being available for the open category.

10. There was no response from the 3rd Respondent to this communication either. Nobody told the Headmaster that the permission had been refused. The 2nd Respondent also did not inform the Headmaster of the School at any time that a surplus teacher qualified in the subject was available on the list of surplus teachers maintained at the office of the 3rd Respondent. No authority asked the Headmaster to absorb a surplus teacher in the School.

11. This silence from the authorities created a peculiar situation for the 2nd Petitioner and its school / junior college. The 9th and 10th standard Marathi teacher had retired. Her post was approved. It was now vacant. Nobody was telling the Headmaster how that vacancy was to be filled. Nobody was responding to his communications. Therefore, when the Petitioners say that the management had no alternative but to proceed with the selection

process, we believe this is a justifiable and legitimate submission to make. The Petition also says that since the retired teacher Mrs Sardesai was in the open category, the vacancy had to be filed from that category. The staffing pattern or roster of the School as of the 30th April 2014 and verified by the backward class Cell, Konkan Division, Navi Mumbai on 10th June 2014 showed available vacancies in the open category. The School was sanctioned 49 posts of teachers. Of these, 40 posts were filled. The remaining nine were vacant. Applying the 48% reservation, a total of 24 posts were available for the open category, of which 17 posts were filled, leaving available a deficit of seven unfilled posts in the open category. This was of course in addition to the fact that Mrs Sardesai who retired was herself in the open category. Taking these factors into account, the management proceeded on the basis that the vacancy had to be filled from the open category.

12. The 2nd Petitioner therefore published an advertisement in “Ratnagiri Express” on 15th June 2014, inviting applications for the appointment of a Shikshan Sevak with a B.A., B.Ed. (Marathi) degree against that open category vacancy. All eligible candidates were to remain present on 30th June 2014. In response to this advertisement, four candidates were present at the interview on 30th June 2014, including the 1st Petitioner. All four candidates were interviewed by a three-member committee. They were assigned marks based under various heads. The 1st Petitioner secured the highest marks and was therefore selected and recommended for appointment. About these marksheets there is no dispute. Copies are annexed to the Petition. On 30th June 2014, the School Committee passed Resolution No. 03 at its meeting

resolving to appoint the 1st Petitioner as a full-time Shikshan Sevak for Marathi from 15th June 2014 against the vacancy of the sanctioned and approved post caused by the retirement of the Mrs Sardesai. That appointment was on a monthly honorarium of Rs. 8,000/-. The 2nd Petitioner issued an appointment order dated 1st July 2014 to the 1st Petitioner. This was for the period of three years from 1st July 2014 to 30th June 2017. The 1st Petitioner accepted the appointment. She joined the School as a Shikshan Sevak on 1st July 2014. A written joining report is available. By a letter of 8th July 2014, a copy of which is at Exhibit 'H' to the Petition at page 45, and which will be important for the discussion a little later, the School Headmaster submitted the proposal to the 3rd Respondent and sought approval to the 1st Petitioner's appointment. The submission included all particulars as required by Government Circular dated 6th February 2012.

13. By 30th June 2017, the Petitioner had successfully completed three years in the post as a Shikshan Sevak. She was thus entitled under the MEPS Act and Rules to be continued in service as an Assistant Teacher on a regular basis and in pay scale: see Section 5 (2A) of the MEPS Act. On 10th July 2017, the School committee passed a resolution continuing the Petitioner No. 1 in service but now as a full-time Assistant Teacher with effect from 1st July 2017. This was of course subject to approval of the 3rd Respondent and on 20th July 2017, the Headmaster submitted that proposal to the 3rd Respondent. A copy of that submission is at Exhibit 'J' at page 50. There was no decision on either of these submissions, i.e., either the one regarding the initial appointment as a Shikshan Sevak or the second as for approval as a full time Assistant Teacher. The

Petitioner says that repeated visits to the office of the 3rd Respondent were without success. On 23rd February 2022, another date of some significance to later events, the Headmaster once again resubmitted the proposal for the approval of the appointment of Petitioner No. 1.

14. It is at this point that an already disheartening story now takes a dismaying turn. For, on 26th March 2022, the 3rd Respondent issued the impugned communication, a copy of which is at Exhibit 'L' at pages 52 and 53 and cited 16 reasons for refusing the approval sought by the Petitioners. This is the challenge in this Petition.

15. Almost everything about this communication is misconceived. The trouble begins with the reference line itself. This is a reference to and only to the 23rd February 2022 reminder resubmission. A copy of that reminder is at page 51 at Exhibit 'K'. That reminder refers to the previous submission of 20th July 2017. The submission of 20th July 2017 is at Exhibit 'J' at page 50, and this in turn references to the 8th July 2014 submission which is at page 45. In the impugned communication of 22nd March 2022, there is no reference at all to the communications of 8th July 2014 (with its annexures), or 20th July 2017. The reason is crucial because the first objection at Serial No. 1 is that the proposal was 'delayed' and was not submitted within 15 days. But if we see the 8th July 2014 proposal at page 45, it not only references the earlier letters seeking guidance and directions of 9th January 2014 and 9th June 2014, but clearly points out that the resolution in question of the School Committee was of 30th June 2014. This indicates that the proposal

sent by the 2nd Petitioner's Headmaster for the 1st Petitioner's initial appointment as a Shikshan Sevak was within 11 days. There is no question therefore of it being delayed beyond 15 days.

16. Pausing briefly for a moment, we cannot but help notice the sheer incongruity in what the 3rd Respondent is saying. He demands the proposal within 15 days. But he says nothing at all about his own failure to respond for weeks, months, and years on end. If a person in administration demands that an applicant before it must act in a timely manner, then it is not unreasonable for a Court to expect — or even to demand — that the decision-making authority must also display the same degree of reasonable promptitude and despatch.

17. Reasons 2, 3, 9 and 10 in the impugned communication display a complete non-application of mind. There is a repeated reference to the reserved category without any consideration of the fact that Mrs Sardesai who retired and whose retirement created a vacancy was herself from the *open* category. There is no reference to the availability of open category posts even as per the available School roster. There is no mention of the fact that approval was sought for an appointment in the open category and that there was no answer or reply to the submissions or proposals. No consideration is given to the fact that the advertisement issued was *for a vacancy in the open category*. It is entirely unclear how or on what basis the 3rd Respondent could therefore insist that because the appointment was not from the reserved category, therefore the appointment could not be approved.

18. Apart from anything else, this approach has been deprecated by the Court. Even if there is a backlog of reservations in a school, the Management can make appointments in the open category if there is an open category post available. There is no requirement that an open category post must remain unfilled because there are reserved category backlogs. That is not even the case and there is no information or data to this effect. As we noted earlier, neither of the contesting Respondents has ever informed the School about the availability of surplus teachers for absorption for teaching Marathi.

19. The fourth reason is that the prescribed selection process was not followed in accordance with the Government Resolution of 6th February 2012 and that there was a freeze on appointments for all except three subjects. Marathi was not one of those three excepted subjects. Therefore, it is submitted, the initial appointment of the 1st Petitioner was invalid and unlawful and could not have been approved even to the post of a Shikshan Sevak. No question therefore arose of appointment as an Assistant Teacher after three years.

20. As to the process, Mr Bandiwadekar points out that the requirements of the Government Resolution was scrupulously followed. There was an advertisement. There was an interview. Marks were allotted. The candidate chosen was the one who had the highest marks.

21. On the question of a ban or freeze on recruitment, we cannot but help wondering what precisely the answering Respondents

would have us hold. Is it being suggested that 9th and 10th standard students at Devrukh, Taluka Sangameshwar, District Ratnagiri do not need a Marathi teacher? If that is the submission, then for this Government to make that submission in the State of Maharashtra is utterly extraordinary. Quite apart from this being a wholly untenable position, if such an appointment was banned or prohibited, then nothing prevented the 3rd Respondent from saying so, not just after the 1st Petitioner was appointed but as far back as on 9th January 2014 when the School first informed the 3rd Respondent of the occurrence of a vacancy in an open category Marathi teacher's sanctioned and approved post on the retirement of Mrs Sardesai. A copy of that letter is at Exhibit 'A' to the Petition. and it is not even referenced in the impugned communication. For that matter, nor is the subsequent letter of 9th June 2014 from the Headmaster of the School informing the 3rd Respondent of this vacancy. Notably that vacancy had occurred a whole year earlier on 30th June 2013.

22. By 30th June 2013, students of the 9th and 10th standard at the School in Devrukh, Taluka Sangameshwar, District Ratnagiri had already been without a full time Marathi teacher. If the submission is to be accepted, then it necessarily means that from that point on and for nearly the next decade, this School in Devrukh, Taluka Sangameshwar, District Ratnagiri was not 'allowed' to have a Marathi teacher at all. This is what we mean when we say that the submission is utterly extraordinary.

23. The second and equally extraordinary aspect of the matter is that nobody can deny that the 1st Petitioner has since her

appointment on 1st July 2014 taught Marathi without adverse comment or record until now. It is impossible to accept the submission that these services of teaching Marathi should count for nothing and that the entire service should be set at naught.

24. This is Mr Bandiwadekar's next point. He says if the 22nd March 2022 impugned communication is upheld, the result is catastrophic. The entire career of the last nearly a decade of the 1st Petitioner will stand wiped out. Yet the students, the Management and, consequently, because it is aided, the Government has received the benefit of the 1st Petitioner's tutelage.

25. Oddly enough, the ground of freeze on recruitment is not one of those noted in the impugned communications at all although it is taken in the Affidavit in Reply.

26. Reason No. 5 in the impugned order is again a reference to the 6th February 2012 Government Resolution and about the procedure. Immediately after the appointment was made on 1st July 2014, the Headmaster submitted a proposal on 11th July 2014. To this, as we noted, there was no response. The proposal was not returned. There was no "approval camp" conducted. There are no details of any such so-called approval camps. We fail to understand how this can be cited as a reason.

27. Reason No. 6 has only stated to be rejected. At no point was the School or the Trust asked to submit a copy of the PTR extract relating to the Trust. Had this been sought, it would have been

immediately supplied. We do not know how the Petitioners can be prejudiced for non-compliance with a non-demand.

28. Reason No. 7 repeats the case of the ban on recruitment after 2nd May 2012. We have already addressed this point earlier.

29. Reason No. 11 is that there are no details about the vacancy. Obviously, the 3rd Respondent did not find those details because he simply did not open the file and did not apply his mind to the previous correspondence. Had he done so, as we are compelled to do in his stead, he would have found Annexure 'A' to the 8th July 2014 proposal and submission with complete particulars.

30. Reason No. 12 is of the 3rd Respondent's purest imagination. He says that the advertisement should have been in two newspapers. But there is no provision in the MEPS Rules for this at all. We do not see how any executive instructions can be contrary to a properly issued Government Resolution prescribing a procedure, and which speaks of only *a* newspaper publication. In any case, this is at best an irregularity and not an illegality.

31. Reason No. 13 can only be described as utterly fantastic. The ground is that the 3rd Respondent's permission was not sought for issuing the advertisement. If anything betrays a complete and wanton non-application of mind, this does. In fact, precisely that very permission was sought, and not once but twice by the communications of 9th January 2014 and 9th June 2014. We assume that this wording of Reason No. 13 is a typographical error. As it is

currently placed, it says that permission *has* been taken for the advertisement. When we see this as a reason, we are perhaps being unnecessarily generous to the 3rd Respondent. If permission *was* taken for the advertisement, then the consequences must follow, and the entire impugned communication falls. If the case is that no permission was taken, then that is a fault that lies at the 3rd Respondent's side, because permission was very much sought but met with no response.

32. Then come objections or reasons 14, 15 and 16 which reference between them subsequent Government Resolutions of 2017, 2018 and 2020. The 1st Petitioner was appointed in 2014 and those Government Resolutions cannot operate retrospectively to the case of the Petitioner. They are only prospective in operation. This error of non-application of mind again occurs because of what we first noted. The 3rd Respondent looked only at the reminder letter of 23rd February 2022 and therefore invoked these Government Resolutions of 2017, 2018 and 2020. But had he looked at the document of 23rd February 2022, he would surely have found a reference to the earlier communication of 20th July 2017 and from that the communication of 8th July 2014 received in his office on 11th July 2014. What seems utterly bizarre is that the 3rd Respondent seems to have picked up only the reference to the earlier communication of 23rd February 2022 but has never actually opened a file to see the document of 23rd February 2022.

33. An Affidavit-in-Reply dated 22nd July 2022 is filed by the Deputy Education Officer. Primarily this says only two things. One,

that no permission has been granted. That is the obvious pretext, and the reason for this Petition. The Affidavit does not say why despite repeated applications, applications for permission met with no response. Then it references the GR of 2nd May 2012 to say in effect that there could not have been an appointment of a Marathi teacher. We only note this submission, and we resist the temptation to have a copy of this order sent on to the highest authority in the State of Maharashtra, to bring to their attention that here are Directors of Education who are opposing the appointment of teachers *of Marathi*, despite there being students learning Marathi. Third, there is a reference to the Government Resolutions of 2017 and 2018 which, as we have seen, are entirely without application of mind because here again nobody seems to have realised that the Petitioner's appointment is of 2014.

34. From Exhibit 'M' onwards to the Petition, Mr Bandiwadekar provides us what is essentially a compilation of judgments. There is an order of 16th July 2009 of learned Single Judge of this Court in Writ Petition No. 4635 of 2009. Paragraph 10 notes that this Court has repeatedly told the Deputy Director of Education not to refuse approval only on ground that there is a backlog of reserved category candidates. Then there is a Division Bench order of 5th May 2010 of an Appellate Court dismissing the Appeal. The matter seems to have gone all the way to the Supreme Court which, by an order 26th April 2011 dismissed the Special Leave Petition, albeit on refusal to condone delay. There are further orders of Single Judges of 3rd October 2011 following the same line, and of a Division Bench on 16th March 2022 in Writ Petition No. 1997 of 2015. On 16th July 2018, a learned Single Judge of this Court made Rule absolute in

Writ Petition No. 13485 of 2016. Paragraph 5 of that judgment is a particular relevance, and it reads thus:

“5. There are a number of judgments of our court, making it clear that the ban on recruitment of teachers pending absorption of surplus teachers under Government Resolution dated 2 May 2012 could not be invoked by the State, when despite communication of a vacancy of a teacher’s post by the school management to the Education Officer and seeking of his permission for filling the post, the Education Officer does not reply or forward any name of a surplus teacher to be appointed in the vacancy and, as a result, the school management proceeds to select and appoint a teacher in the vacant post. Admittedly, the Respondent-State has neither responded to the school management’s communication in this case nor sent any name of a surplus teacher at any stage prior to the impugned order dated 28 November 2016. As this court has reiterated time and again, when the school management informs the education office about a vacancy in its school seeking the latter’s permission for appointment, the Education Officer is expected to either forward names of suitable persons from the list of surplus teachers maintained by him or if no surplus teacher is available for absorption, give permission to the management to appoint a teacher following regular appointment procedure. Education Officer, in the present case, has done neither of these things. The school management is not expected to carry on with the vacancy awaiting indefinitely the Education Officer’s response. The second reason cited, namely, the appointment not being in compliance of the backlog of reserved category, also does not hold water. Admittedly, the post which had become vacant and in which the Petitioner was appointed, was an open category post and

there was no question of it being filled up from amongst reserved category candidates.”

(Emphasis added)

35. The same learned Single Judge on 26th June 2018 also made Rule absolute in the group of other Petitions and a copy of that order is from page 77. We must note paragraph 5 and 8 of this judgment which are at page 81 to 83 and 85 to 86:

“5. Even otherwise, the impugned orders of the Education Officer cannot pass muster for various reasons. In the first place, in case of each of these six vacancies, the school management had communicated to the Education Officer about the existence of the vacancies in the school and seeking his permission to fill-in the posts. The Education Officer, despite receipt of these communications, neither replied to the same nor forwarded names of any surplus teachers to be appointed to any of these six posts. The management, therefore, was constrained to commence the process of appointment and appoint teachers and librarian. Candidates responded to the advertisement issued and were selected and appointed after following due process of law. No fault could be found in such appointments. Aurangabad Bench of this Court, by its order dated 17 October 2016, in the case of *Anant Kamlakar Joshi vs. State of Maharashtra*, was concerned with similar appointments. The Division Bench noted that the management in the particular case had sought permission to fill-in vacant posts and even issued reminders to the Education Officer, in response to which there was neither reply nor direction from the Education Officer for absorption of any surplus candidates; the candidates were appointed by the management upon inaction of the Education

Officer and after issuing advertisements and: following proper selection process; the teachers so appointed could not be denied approval on the ground that no recruitment was permissible without 100% absorption of surplus teachers. This Court was of the view that in a case like this, the applicant teachers responded to the advertisement, and after due process of law, were selected and appointed. This whole process was adopted only after due communication was addressed by the management to the Education Department seeking the latter's approval. The Court was of the view that it was not the case of the Respondent State that at any point of time they had asked the school management to absorb any surplus teacher. The Court, in the premises, directed the Education Department to consider approval to the appointments of the petitioners before it as Assistant Teachers in accordance with law and not reject it on the ground of the ban on recruitment of fresh teachers contained in the G.R. of 2 May 2012. This judgment has since been followed in a number of judgments passed by our Court.

8. The learned AGP relies on Section 5(1) of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act") and submits that under the proviso to Section 5(1) the management was duty-bound to ascertain from the Education Officer of the Zilla Parishad about availability of suitable persons from the list of surplus teachers maintained by him for absorption before proceeding to fill the vacancies. The learned AGP submits that the appointments purportedly made by the management without following the mandate of the proviso were bad in law and the approval was rightly declined by the Education officer. There is no merit in this contention. The management in the present case did not communicate the vacancies to the Education

Officer and sought the latter's permission to fill up the same. That was not just once but by two separate communications with a gap of about two months. The Education Officer was expected to forward names of suitable persons from the list of surplus teachers maintained by him in response to these communications and if no surplus teacher was available for absorption, give a go-ahead to the management to appoint the teachers through regular appointment procedure. The Education Officer did not communicate his response either by communicating any names or by objecting to the appointments proposed. **The school management is not expected to carry on with the vacancies, waiting indefinitely for the response of the Education Officer. Schools cannot function without teachers; and students cannot be deprived of education. The school management was, in the premises, within its rights to proceed to fill the vacancies. The construction of Section 5(1) suggested by the learned AGP, namely, that it is not sufficient for the management to communicate vacancies to Education Officer and seek his permission to appoint teachers, it must expressly ascertain availability of suitable surplus teachers from him, is too artificial and does not commend itself to this Court. MEPS Act is a piece of welfare or beneficial legislation seeking to regulate the recruitment and conditions of service of teachers and other employees of schools. The object of the Act is to provide the teachers and other employees with security and stability of service to enable them to discharge their duties towards pupils and their guardians in particular, and the institution and the society in general, effectively and efficiently. Such welfare legislation must be construed liberally and broadly, so as advance its object and not strictly or narrowly. If any provision of it is capable two**

constructions, that construction should be performed which fulfils the policy of the Act and is more beneficial for the persons in whose interest the Act is passed. The MEPS Act is primarily enacted in the interest of Students, and for their sake, of teachers and institutions, and generally in the interest of the society. The construction suggested by the learned AGP has the effect of impeding, rather than advancing the cause of students and education. It would have the effect of depriving students of timely appointment of their teachers and the teachers of security and stability of service.”

(Emphasis added)

36. There is little to be gained by multiplying authorities. We do, however, find entirely appropriate the very succinct observations of a Division Bench of this Court at Aurangabad (SV Gangapurwala J as he then was, and KL Wadane J) in *Anant Kamlakar Joshi & Ors v The State of Maharashtra & Ors*.¹ In paragraph 7, 8 and 9, that Division Bench held:

“7. The petitioners are not at fault. They have responded to the advertisement issued and after following due process of law are selected and appointed. In case there is any collusion between institution and Education Officer as contended by the Education Department, the petitioner cannot be made to suffer for the same.

8. We could have taken into consideration the case of respondent Nos. 3 and 4, had the respondent No. 3 and 4 approached this Court with a case that, they had directed the respondent No.5 management to absorb surplus teachers on the posts to which these petitioners were

1 Writ Petition No. 4232 of 2016, decided on 17th October 2016.

appointed and the respondent No. 5 refused to absorb them. In that case, certainly, the respondent No. 5 management would not have any *locus standi*, but that is not the case. It is nowhere the case of respondent Nos. 3 and 4 that, at any point of time they had asked the respondent No. 5 to absorb any surplus teacher in these four years on the post on which these petitioners are appointed. **The respondent No. 5 could not have kept the said posts vacant for a long slumber of period as in that case the students would have suffered. The respondent Nos. 3 and 4 have not taken steps, directing the respondent No. 5 to appoint available surplus candidates. In absence thereof, they cannot blame, the petitioners and the respondent No.5.**

9. Even approval is granted to the appointment of the petitioner and they have completed period of three years as Shikshan Sevak. Considering aforesaid conspectus of the matter, we are inclined to exercise our discretion. In case the then Education Officer had committed any flaw or is guilty of any misdeeds, then certainly, the respondent Nos. 1 and 2 are entitled to take proceedings as contended in the affidavit in reply.”

(Emphasis added)

37. Similarly apposite observations may be found in paragraph 8 of another Division Bench judgment of 3rd April 2017 in Writ Petition No. 10584 of 2016 of the Bench at Aurangabad which we also reproduce below:

“8. Be that as it may, it was for the Education Officer to direct absorption of the surplus candidate or to pass some order on the application made by the Institution seeking permission to fill-in the posts. In absence of this, it could not have been said that the institution has faulted in issuing the advertisement and appointing the

petitioners. It is for the Education Officer to consider the roster approved by the B.C. Committee and confirm about the vacant posts of O.B.C./Open category candidates and thereafter, consider grant of approval.”

(Emphasis added)

38. We are entirely in agreement to these observations. Many of these orders proceeded on the basis only of a failure to respond. That is one thing. But there is a response and it is found to display such a complete and utter non-application of mind, and, shockingly in this case, a failure to even to open the file and to look at the preceding correspondence, we do not see what option any Court has but to make Rule absolute.

39. That is what we proceed to do. Rule is made absolute in terms of prayer clause (b) and (c) set out above. The necessary steps are to be taken by the Respondents Nos. 2 and 3 to enter the name of the 1st Petitioner in the Shalarcha Pranali and to allot a Shalarcha ID within three weeks from today. All amounts that are due to her first as a Shikshan Sevak and then later as an Assistant Teacher from the respective dates of her appointment (not from today’s date) are to be released to her within period of four weeks thereafter.

40. Having regard to this discussion, we are of the considered view that it is about time that a message went out to these officers that they cannot play with the services, lives and livelihoods of our teachers and students. We find this happening again and again where rendered unblemished service is sought to be reduced to dust on some frivolous reason or ground and there is demonstrable

inaction, lethargy and a refusal to act by those charged with the performance of public duties.

41. In the present case, all this could have been avoided. We do not expect that the officer who served on the post of the 3rd Respondent in 2014 and 2017 should still be there. But certainly, the impugned communication of 2022 could not have been issued in this mindless and, dare we say it, utterly indolent, manner with no reference at all to the file or its contents. We are making in clear that the next time there is such a case, we will most certainly make an order of costs, even punitive costs, and we will make it against the officer or officers concerned.

42. The Petition stands disposed of.

(Neela Gokhale, J)

(G. S. Patel, J)

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