

Prajakta Vartak

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

WRIT PETITION NO. 6014 OF 2018

Mr. Ajit Shankar Dhirde ..Petitioner
Versus
The State of Maharashtra & Ors. ..Respondents

**AND
WRIT PETITION NO. 5818 OF 2018**

Mr. Dilip Vinayak Bhoir ..Petitioner
Versus
The State of Maharashtra & Ors. ..Respondents

Mr. Sushant Prabhune for Petitioner in WP 6014/18.
Mr. N. V. Bandiwadekar, Senior Advocate with Mr. R. B. Khaire and Mr.
A. S. Phapale i/b. Mr. Vinayak Kumbhar for Petitioner in WP 5818/18.
Mr. V. M. Mali, AGP for State.
Mr. Ajit Ram Pitale for Respondent Nos.2 & 3.

**CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : NOVEMBER 01, 2023**

P.C.:

1. We have heard Mr. Bandiwadekar, learned senior advocate for the petitioner in Writ Petition No. 5818 of 2018, Mr. Prabhune, learned counsel for the petitioner in Writ Petition No. 6014 of 2018, Mr. Mali, learned AGP for the State and Mr. Pitale, learned counsel for respondent nos.2 and 3. We have also perused the detailed order dated 01 March,

2023 passed by the co-ordinate Bench of this Court (G. S. Patel & Neela Gokhale, JJ). In such order the Court, at the very outset has observed that there is no doubt that respondent nos.2 and 3 must issue orders to absorb the petitioners as Assistant Teachers on aided posts in the schools in question. In so far as the approval which is required to be granted, respondent nos.2 and 3 were directed to submit a proposal to the Education Officer-respondent no.4 for confirmation or approval of the absorption as Assistant Teachers on an aided basis. The Court also observed that the absorption is to be on permanent sanctioned aided posts.

2. It appears to be not in dispute that in pursuance of the said order passed by this Court, which was also accepted by the management, a proposal dated 14 March, 2023 was forwarded by the management to the Education Officer who has taken a decision on the same dated 03 April, 2023 in respect of both the posts in question. Quite surprisingly, the Education Officer has not approved the proposal for the following reasons:-

“ (official translation)
 I) On perusal of the proposal, it is found that Shri Dilip Vinayak Bhoir has been got joined in the service on the post of Assistant Teacher on the date 06.03.2023 as per the resolution passed in the meeting of the Managing Committee held on the date 04.03.2023. The original appointment of Shri Bhoir was w.e.f the date 13.06.2003 on the post on unaided basis. As the number of students were reduced in the unit approval for the year 2014-15 and also for

the year 2015-16, the posts on unaided basis had not been sanctioned and therefore, Shri Bhoir was not working in the School. However, it is seen that you have issued order to Shri Bhoir to join on the date 06.03.2023. Since order has been issued to Shri Bhoir to join on the date 06.03.2023, it appears that the said appointment is a fresh appointment. The pure system regarding filling up the posts of teachers has been made applicable under the Government Resolution dated 23.06.2017, and orders have been issued that new recruitment shall be made only as per the directions given in the said Government Resolution.

Further, as per the Government Resolution dated 01.04.2021, orders have been issued to make transfers from the post on unaided basis to the post on aided basis. As the original appointment of Shri Bhoir was on the post on unaided basis and as the post was not sanctioned on unaided basis in unit approval for the year 2020-21, the appointment of Shri Bhoir made on aided basis w.e.f. the date 06.03.2023, is disapproved.

II Further, despite there was no post vacant, Shri Ajit Shankar Dhirde has been got joined in the service on the post of Assistant Teacher w.e.f. the date 13.03.2023 as per the resolution passed in the meeting of the Managing Committee held on the date 04.03.2023. The original appointment of Shri Dhirde was on the post on unaided basis w.e.f. the date 13.06.2003. As the number of students were reduced in the unit approval for the year 2014-15 and also for the year 2015-16, the posts on unaided basis had not been sanctioned and therefore, Shri Dhirde was not working in the School. However, it appears that you issued order to Shri Dhirde to join on the date 06.03.2023. Since orders have been issued to Shri Dhirde to join w.e.f. the date 06.03.2023, it appears that the said appointment is a fresh appointment. The pure system regarding filling up the posts of teachers has been made applicable under the Government Resolution dated 23.06.2017, and orders have been issued that new recruitment shall be made only as per the directions given in the said Government Resolution.

Further, as per the Government Resolution dated 01.04.2021, orders have been issued to make transfers from the post on unaided basis to the post on aided basis. As the original appointment of Shri Dhirde was on the post on unaided basis and as the post on unaided basis was not sanctioned in the unit approval for the year 2020-21, the appointment of Shri Dhirde as an Additional Teacher w.e.f. the date 06.03.2023, is disapproved.”

3. As to how the Education Officer in the teeth of the order dated 01

March, 2023 and on the backdrop of the prior litigation to which the

Education Officer was also a party, could refuse to grant approval on such grounds. It appears from the first part of the reasoning of the Education Officer that it is nothing but an attempt to re-open what had culminated into the orders passed by the tribunal wherein the Education Officer himself was a party, who did not contest the proceedings, as also further orders which were passed in the execution proceedings, and ultimately the order passed by this Court on 01 March, 2023. It was not permissible for the Education Officer to re-open the issues or delve on issues which would be contrary to the observations made by this Court in its order dated 01 March, 2023 as noted above.

4. In so far as the reason as set out by the Education Officer is concerned that the appointment was required to be made following the procedure of Pavitra Portal, in our opinion the same is completely misconceived in as much as the appointments were not fresh appointments, which is also clear from the Education Officer's own reasoning as contained in the letter dated 03 April, 2023. For both these reasons, the decision of the Education Officer is not correct. In fact, it is contrary to the record and/or more so, contrary to the order dated 01 March, 2023 passed by this Court.

5. In the aforesaid circumstances, we direct the Education Officer to

grant approval to the petitioners' appointments within a period of two weeks from today and communicate the said order to the petitioners, as also to the respondent-management. Ordered accordingly.

6. In view of our above directions, further adjudication of the present petitions is not called for.

7. Needless to observe that once approval is granted, necessary consequential benefits in regard to the release of grant-in-aid need to take place and appropriate action in that regard be taken within a period of four weeks from the date of approval.

8. Both the petitions are accordingly disposed of in the above terms.
No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]