

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5428 OF 2022

- 1. SAGAR VIJAY JANGAM,**
Aged about 35 years,
Occupation: Service,
R/o Vijay Nagar Lane No.3,
CS No. 2011/71, Arohi Warnali Road,
Vishrambag, Sangli.
- 2. SEEMA BHIMGONDA PATIL,**
Aged about 32 years,
Occupation: Service,
R/o 187, Hudco Colony,
Laxmi Nagar, Kupwad Road,
Sangli.
- 3. SUMAN SUBRAO GAGADE,**
Aged about 32 years,
Occupation: Service,
R/o Plot No.43-B/5, Datta Nagar Way
No.4, West Vishrambag, Near
Willington College, Sangli.
- 4. SWATI DILIP BANSODE,**
Aged about 38 years,
Occupation: Service,
R/o Ashtavinayak Nagar,
Vijay Nagar, Kupwad, Tal Miraj,
District Sangli.

... PETITIONERS

~ VERSUS ~

ARUN
RAMCHANDRA
SANKPAL

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1. **THE STATE OF MAHARASHTRA,**
School Education Department,
Mantralaya, Mumbai 400 032.
Through the Secretary.
2. **THE DIRECTOR OF EDUCATION,**
(Secondary & Higher Secondary)
Maharashtra State, Central Bldg
Dr Anie Besant Marg,
Pune.
3. **THE EDUCATION OFFICER**
(SECONDARY),
Sangli Zilla Parishad,
Sangli.
4. **NAV MAHARASHTRA HIGH**
SCHOOL & JUNIOR COLLEGE,
Laxmi Nagar, Kupwad Road, Sangli,
Through its Principal/Headmaster.
5. **NEW MAHARASHTRA**
EDUCATION SOC,
Kupwad Road, Sangli.
Through its Secretary/Chairman.
6. **DEPUTY DIRECTOR OF**
EDUCATION,
Kolhapur Division,
Kolhapur.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr NV Bandiwadekar, Senior Advocate, i/b Nagesh Chavan.
FOR RESPONDENTS	Mr VM Mali, AGP.
NOS. 1 TO 3 & 6-STATE	

**FOR RESPONDENTS
NOS. 4 & 5**

Mr Nikhil N Pawar.

**Mr Vishal Dashwant, *Deputy
Education Officer, ZP, Sangli,
present.***

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

DATED : 25th July 2023

ORAL JUDGMENT (Per GS Patel J):-

1. There are four Petitioners. They are all teachers with the 4th Respondent School run by the 5th Respondent Society. Mr Bandiwadekar appears for the Petitioners. Respondent Nos. 4 and 5 are represented.
2. We believe the Petition can be disposed of with a short order and by noting just a few relevant dates. Hence Rule, returnable forthwith.
3. On 3rd June 2009, the 5th Respondent Society published an advertisement for recruitment of assistant teachers in the 4th Respondent School. The Petitioners applied. They were interviewed. All four were appointed between 2009 and 2010.
4. Ever since then, the Society has been in correspondence with Respondent Nos. 1 to 3, viz., the State Education Department, the Director of Education (Secondary and Higher Secondary), and the

Education Officer (Secondary) of the Sangli Zilla Parishad, Sangli, for approval to new additional divisions already started in the 4th Respondent School based on the increase in student strength.

5. On 6th October 2018, the Director of Education made a report recommending that instead of granting approval to the 5th to 10th standards, it would be appropriate to approve three additional posts of Assistant Teachers in the 4th Respondent School. He recommended that appropriate decisions be taken in this regard.

6. In 2018, these four Petitioners came to Court in Writ Petition No. 2782 of 2021. While that Petition was pending, the Director of Education ordered the School and the Society to advertise for recruitment of two sanctioned posts of Assistant Teachers under the so-called Pavitra Portal Teacher Recruitment Government Resolution (“GR”).

7. The present Petitioners’ earlier Writ Petition was amended. An order of status-quo was obtained on 19th March 2019 protecting the employment of the Petitioners. We are aware that there is a decision of 10th July 2017 in Writ Petition No. 8587 of 2016 and connected matters where a Division Bench ordered the Education Officer to examine individual cases for approval where these cases fell in three distinct categories. That Bench, headed by BR Gavai J (as he then was), said that the three categories were:

- (i) where recruitment process had already commenced prior to the Government Resolution of 2nd May 2012 forbidding further recruitment;

- (ii) where appointments had to be made to fill up vacancies in English, Mathematics and Science; and
- (iii) where the recruitment process was necessary to fill a backlog of reserved category candidates.

8. On 22nd July 2021, the Petitioners' earlier Writ Petition was allowed and the School and Society were to forward a proposal for the appointment of the Petitioners as Assistant Teachers in the aided secondary school called the Nav Maharashtra High School and Junior College. This was to be done in four weeks from the date of the order. Respondent Nos. 1 to 3 and the Deputy Director of Education Kolhapur Division, Kolhapur, the 6th Respondent were to consider the proposal within eight weeks and communicate a decision within a week thereafter.

9. The School and the Society submitted separate proposals for each of the Petitioners to the Education Officer seeking approval to the appointment of the Petitioners as Assistant Teachers. All necessary documents were submitted. Copies of the orders of this Court were also furnished.

10. It seems that without considering the directions of this Court, the 3rd Respondent, the Education Officer passed an order on 6th September 2021 rejecting all four proposals for the Petitioners. The only ground was that there were 'no posts vacant until 31st October 2017' in the school and, therefore, following a GR of 23rd June 2017, the proposals had to be rejected.

11. But these dates will tell us a quite different story and what the 3rd Respondent completely failed to appreciate. The question is not whether there were vacant posts ‘until 3rd October 2017’. The question is also not of a fresh appointment or recruitment after 23rd June 2017. The four Petitioners’ appointments are of 2009–2010, well prior to the GR of 23rd June 2017.

12. Indeed, page 484 of the Petition, a document dated 15th November 2021 by the School is revealing. It is a list of the eight vacant posts as on that date. The ones at Sr Nos. 2, 6 and 8 pertain to the post of a headmaster and therefore those can be taken out of the reckoning. The previous headmaster had retired. His post fell vacant. This is an addition, and therefore there is *for that subject* an available post (though not as a headmaster, i.e., subject-wise). But there are only four Petitioners and, viewed from any perspective, there are at least five vacant posts of Teachers.

13. If it comes to the question of subjects, the 1st Petitioner is an English teacher in the OBC category. The 2nd Petitioner is a History teacher in the Open category. The 3rd Petitioner is a Marathi teacher in the NT-C category. The 4th Petitioner is a Science teacher in the SC category. The teachers who retired against these posts were respectively for English in the Open category, History in the Open category, Marathi in the NT-C category and Science in the Open category.

14. Thus, whether one views it from the perspective of a reservation, availability, or otherwise, there is no impediment to the

absorption (and it is now only a question of absorption) of these four teachers in these available posts.

15. But let us consider what the possible consequences might be of declining relief and upholding the impugned order. The result would be undoubtedly that there would be no teachers at all. The present Petitioners could not be absorbed. There could not be, as Mr Bandiwadekar points out, any question of recruitment because the Pavitra Portal Recruitment Process cannot be operated presently. This means that not only the school but even the students of the school would have to go without teachers in English, History, Science and perhaps most amazingly, Marathi. This is not a situation that a Writ Court can ever contemplate. This is also not a question of unseating or disadvantaging any other candidate or aspirant. All that is being sought, not only for the college but for the students, is that available Teachers previously appointed in 2009 be absorbed into the school so that they may continue teaching the students at the 4th Respondent school. The alternative is simply unthinkable and renders the students at the school without any teachers at all in these four subjects.

16. Notably, the four Petitioners have already undergone a selection procedure, as we noted at the beginning of the judgment, including going through an interview process.

17. In these circumstances, we make Rule absolute, first in terms of the prayer clauses (b)(i) and b(iii) which read thus:

“(b) This Hon’ble Court be pleased to issue the writ of

mandamus or certiorari or any other appropriate writ/direction/order in the nature of writ of mandamus or certiorari under Article 226 of the Constitution of India, 1950,

(i) be pleased to quash and set aside the impugned order dated 06.09.2021 passed by the 3rd Respondent Education Officer (Secondary), Zilla Parishad, Sangli and be pleased to approve the proposals of the Petitioners for appointment as an Assistant Teachers in the 4th Respondent High School run by the 5th Respondent Institution.

(iii) be pleased to grant the approval/sanction to the Petitioners appointment as an Assistant Teacher on the vacant posts available in Secondary Schools run by the 5th Respondent.”

18. Prayer clause (b)(ii) reads thus:

“(b)

(ii) be pleased to direct the Respondent Nos. 1 to 3 and 6 to grant approval to the appointment of the Petitioners as an Assistant Teachers in the aided Secondary School namely Nav Maharashtra High School and Junior College run by the 5th Respondent Institution since 15.06.2009”.

19. This will have to be moulded and accordingly there will also be an order in the following terms:

“Respondents Nos. 1 to 3 and 6 are directed to approve within three weeks from the date of this order the appointment of the Petitioners as Shikshan Sevaks in the aided secondary school viz., Nav Maharashtra High School & Junior College run by the 5th Respondent institution from the date that the vacancies arose, i.e., 31st December 2019 for the 1st Petitioner, 31st October 2019 for the 2nd

Petitioner, 31st July 2021 for the 3rd Petitioner and 31st August 2021 for the 4th Petitioner”.

20. Petitioner Nos. 1 and 2 have clearly completed three years as Shikshan Sevaks and are therefore entitled to approval as Assistant Teachers computed with effect from three years after 31st December 2019 and 31st October 2019 respectively.

21. Necessarily, there will be an order not only in respect of the issuance of the necessary Shalartha ID if not already done but of payment of all arrears of salary and wages, i.e., monthly honorarium and monthly salary in accordance with the terms of this order. All payments are to be made within eight weeks from today.

22. We have noted that the Petitioners were all actually appointed in 2009–2010. We have reckoned their wages and salaries and the absorption from the date of vacancy. But between 2009 and 2021, other events have transpired. Notable amongst these is the 2013 requirement for completing the Teachers Eligibility Test (“**TET**”). It should not be argued that the TET requirement now applies to the Petitioners by virtue of this order. We cannot lose sight of the fact that they were appointed in 2009–2010. Had their approvals been granted as required, they would not have been expected to fulfil the TET criteria for eligibility.

23. Consequently, the TET requirement will not be made applicable to the four Petitioners in view of the above.

24. The Petition is disposed of in these terms. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)