

Gaikwad RD

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2180 OF 2022

1. **AKASH DIPAK ATOLE,**
Aged 28 years, Occupation: Service,
Residing at Shirsuphal, Taluka:
Baramati, District: Pune.
2. **SHIRSAI SHIKSHAN PRASARAK**
MANDAL,
(Through its Chairman/Secretary)
Having office at Village Shirsuphal,
Taluka:Baramati, District: Pune.
3. **SHIRSAI VIDYALAY,**
SHIRSUPHAL,
(Through its Head Master)
at Village Shirsuphal, Taluka:Baramati,
District: Pune.

... PETITIONERS

~ VERSUS ~

1. **THE STATE OF MAHARASHTRA,**
(Through the Secretary School
Education Department, Mantralaya,
Mumbai – 23).
2. **THE DEPUTY DIRECTOR OF**
EDUCATION,

Pune Region, having office at Dr.
Babasaheb Ambedkar Road, Camp,
Pune.

3. **THE EDUCATION OFFICER
(SECONDARY),**
Yashwantrao Chavan Bhawan, Old
Building, Pune Zilla Parishad, Somwar
Peth, Pune 411 011.

...**RESPONDENTS**

APPEARANCES

FOR THE PETITIONER Mr Laxman Shivajirao Deshmukh.

**FOR THE
RESPONDENT-STATE Mr VM Mali, AGP.**

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

RESERVED ON : 26th June 2023

PRONOUNCED ON : 6th July 2023

JUDGMENT (Per Neela K Gokhale, J.):-

1. **Rule.** The Respondents have filed their Affidavit in Reply. By consent of parties, Rule is made returnable forthwith.

2. This is the second round of litigation between the parties inter se. In the first round, this Court by order of 25th February 2021, observing the Respondents' failure to take any decision regarding approval of the Petitioner's appointment for more than a year, directed the Respondent-State to take an appropriate decision

on the proposal within a period of six weeks from the date of that order. About six months after the expiry of the permitted period, the Respondents refused approval to the Petitioner's services on the very same grounds considered by this Court in the previous round of proceedings. It is this refusal that is assailed in the present Petition.

3. The 1st Petitioner is an employee of the 3rd Respondent, School run by the 2nd Respondent Managing Trust. The Respondents No. 3 and 4 are, respectively, the Deputy Directors of Education, Pune region and the Education Officer (Secondary), Pune of the 1st Respondent, State of Maharashtra.

4. Provisions of successive Government Resolutions (“**GR**”) form the basis of relief sought in the matter. It is therefore necessary to note the relevant provisions of the GRs relied upon by both parties, before dealing with the facts in the matter. The GR of 6th February 2012 lays down certain procedures to be followed by all stake holders in matters of appointments, approval, promotions, etc. of teaching and non-teaching employees in government approved and aided primary schools, secondary schools, junior and senior colleges, etc. The procedure entails seeking approval of the Education Department prior to issuance of advertisement, the management providing information including relating to reserved category posts, the latter nominating candidate from the surplus candidates if available, etc. Once permission is given, the Management is to call for applications by issuing advertisements, followed by a selection procedure and finally appoint an eligible

candidate on the post. The Department would then consider the proposal of the Management for grant of approval to the employees' appointment. This entire procedure was set up with a stated object of promoting transparency and to streamline the process of appointments on government posts.

5. Then came the GR dated 2nd May 2012, with a stated object of reconciling the proportion of teachers against the strength of students. This decision was apropos an enquiry initiated into complaints alleging admission and registration of bogus students, poor quality of teaching, managements seeking increase in divisions by misrepresenting the strength of students, appointing unnecessary teaching staff, the name of students appearing multiple times in different registers, amongst other complaints. A slew of decisions in respect of the staffing structure were notified.

6. The third GR dated 7th March 2019 lays down the procedure to fill up the vacancies in the non-teaching staff.

7. The fourth GR, relevant to the facts of the present case is of 20th January 2019. It gives the staffing pattern of junior and senior clerks in educational institutions and specifically provides that institutions having strength of students of 5th to 12th standard to be less than 500 or between 501 and 1000, are sanctioned one post of junior clerk.

8. We have noted the contents of the aforesaid GRs since it is these resolutions that form the basis of conflicting claims.

9. The facts reveal that upon superannuation of a junior clerk, the 2nd Petitioner sought permission to issue an advertisement for appointment of another junior clerk in its school. It was a sanctioned post. The 20th January 2019 GR revised the staffing pattern of non-teaching staff in private aided schools. The Petitioner's school had a total strength of more than 250 students in the Academic Year 2018-2019 and thus, was entitled one sanctioned post of a junior clerk.

10. Despite requesting permission to issue an advertisement, neither was any surplus candidate nominated by the Education Department, nor was any reply forthcoming. Hence, the Management proceeded with the selection procedure and appointed the Petitioner as junior clerk by letter dated 16th August 2019. A proposal for approval followed his appointment and the Department conveyed to the Management that a decision would be taken and conveyed in due course of time.

11. There was neither any decision nor any communication. The 1st Petitioner thus filed a Writ Petition No. 699 of 2021 in this Court. By order dated 25th February 2021, the Respondents were directed to take appropriate decision within a period of six weeks from the date of the order. On 12th October 2021, after a period of six months, a refusal to grant approval was communicated to the Petitioners, which is the impugned order.

12. Mr Deshmukh, the learned Counsel appearing for the Petitioners, contests the impugned order by saying that there was

clearly a sanctioned post of junior clerk with effect from the Academic Year 2018–2019 since the erstwhile employee had served on that post till his superannuation. The staffing pattern as provided in the GR of 20th January 2019 made the Petitioner school eligible for a sanctioned post of one junior clerk. He further submits that it was only when the Respondents failed to respond to the request for nominating surplus employee or in the alternative grant permission to commence the selection procedure, including issuing advertisements, etc., that the Management proceeded with the selection procedure. Mr Deshmukh thus assails the refusal order on the ground that the same was unjust, illegal, and improper and seeks to have it quashed.

13. Mr Mali, the learned AGP for the State, supports the decision of the Education Department by relying on the three GRs dated 6th February 2012, 2nd May 2012 and finally 7th March 2019. He says that the Petitioners have not sought prior permission to publish an advertisement before recruiting the 1st Petitioner and have thus acted in contravention of the first GR. He further says that the Petitioners have also not followed the procedure mandated by GR of 7th March 2019 by which the government directed school authorities to absorb employees on vacant non-teaching posts. He further points to GR of 2nd May 2012, which, according to him, banned recruitment of non-teaching staff. For all these reasons, Mr Mali defends the refusal of approval to the 1st Petitioner's appointment. He prays for dismissal of the Petition.

14. The present case is just one amongst a series of cases in which orders refusing approval of recruitment are subject matter of cases seeking judicial review. The refusals are almost always on the basis of above noted GRs and their perceived interpretation by different education officers. It is for this reason that we have at the very outset detailed the provisions of the GRs being ordinarily relied upon by the Respondents with their stated object. A harmonious reading of the successive GRs indicates the endeavour of the government to streamline selection procedure and make it transparent. The spirit of the GRs is laudable. It is but necessary for the Education Department to periodically revise its guidelines and policies as per developing requirements. Thus, the ban on recruitment in certain conditions, structured staffing pattern and the requirement of permissions to commence selection procedures. All these provisions are meant to deter unscrupulous elements from abusing the recruitment process, including, and not limited to, creating artificial vacancies, recording bogus strength of students, recruiting ineligible staff.

15. The problems however arise when officers in the Education Department fail to act in aid of the spirit of the GRs. The present case is an example of the Respondent Education Officer failing to discharge his duty in responding to the request of the Management promptly or within a reasonable time to either nominate surplus candidate or respond to the Management. Having done neither, the Management followed the only remedy available to it by approaching this court. This Court by its order in the earlier round, directed the officer to take a decision within a stipulated period.

Even then the officer has brazenly taken the decision only after a period of six months, instead of six weeks as directed by this Court.

16. The basis for rejection is only that the Management failed to take permission prior to publishing an advertisement. As we have noted above, the Management had sought the required permission and proceeded only after considerable delay and a Court order. The Management cannot be expected to run the school without staff, especially when there is admittedly a sanctioned post of a junior clerk, and all the provisions of relevant GRs are complied. Thus, there is no merit in the repeated defence of the Respondents regarding ban on recruitment and not following the procedure of taking prior permission. The Respondent Education Officer cannot take advantage of his own wrong.

17. Successive and consistent decisions of this Court on this issue have settled the legal position. If the Department fails to respond promptly or to conform to the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and various GRs, neither the Management nor the employee can be allowed to suffer. It is necessary that the Department reconfigures its internal functioning to act in aid of the provisions of law, the various GRs issued from time to time to bring about the desired result and to ensure that all stakeholders in the appointment mechanism work in tandem with each other.

18. The 1st Petitioner is working in the school since 16th August 2019. There is no blemish on his performance. The Management is

well within its rights to commence the selection process in absence of any response from the Respondents. No lapse has been pointed out by the Respondents in respect of the selection procedure.

19. In view of above, the rejection letter dated 12th October 2021 is quashed and set aside. The 3rd Respondent is directed to grant the requisite approval to the appointment of the 1st Petitioner as junior clerk from the date of his appointment and include his name in the Shalarth Pranali within a period of two weeks from the date of this order. The Respondents are directed to release grant in aid against his salary and arrears, if any, if otherwise entitled within a period of two weeks from the date of this order.

20. Rule is made absolute in terms of prayer clauses (b) and (c). There will be no orders as to costs.

(Neela Gokhale, J)

(G. S. Patel, J)