

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 310 OF 2023**

Prakash Vishnu Pagi ...Petitioner
Versus
The State of Maharashtra through the Secretary ...Respondents
School Education Department & Ors

Mr NV Bandiwadekar, i/b AN Bandiwadekar, for the Petitioner.
Mr VM Mali, AGP, for the Respondent-State.
Mr Sandeep Sangave, Dy Director of Education, Mumbai Region.

**CORAM G.S. Patel &
Dr Neela Gokhale, JJ.**
DATED: 2nd February 2023

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1. Rule. There is an Affidavit in Reply from Mr Sunil Sawant Deputy Education Inspector, Mumbai. Rule returnable forthwith.
2. Mr Bandiwadekar has also amended the Petition. The first challenge in the Petition is to the refusal by the 2nd Respondent, the Deputy Director of Education, Mumbai Region to permit the entry of the Petitioner's name in the Shalarnya Pranali and to allot him a Shalarnya ID for the post of a peon in the 5th Respondent aided school. Amended prayer (b1) seeks that an order dated 26th October

2018 issued by the Education Officer, Zilla Parishad, Palghar be quashed and set aside.

3. The facts are these. The Petitioner belongs to the Hindu Varli Tribe, a Scheduled Tribe. He has passed his SSC. His caste claim has been validated by the relevant caste scrutiny committee. About this, there is no controversy. The 4th Respondent is an Educational Charitable Trust registered under the Maharashtra Public Trusts Act 1950, as also under the Societies Registration Act 1860. It runs one school, viz., the 5th Respondent school. This has classes from Standard I to Standard VII sanctioned on a fully aided basis. Consequently, the service conditions of teaching and non-teaching employees are governed by the provisions of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act 1977 and the applicable MEPS Rules 1981. Typically, posts are sanctioned inter alia on the basis of the student strength of an aided educational institution. It is on that basis that, in accordance with Rule 115(3)(b) of the Mumbai Primary Education Rules, one post each of a junior clerk and a peon were admissible for sanction and approval to the 5th Respondent school. The 1st Respondent, the State issued a GR on 1st April 2011. One post each of peon and junior clerk were sanctioned. That GR covered other schools in various other districts in Maharashtra. On the posts being sanctioned, the school's management was entitled to fill up those posts by following the prescribed selection process.

4. At that time, there was a unified Thane District and Palghar was under the administrative control and jurisdiction of the

Educational Officer (Primary), Zilla Parishad, Thane. By an order 2nd February 2013, the Educational Officer sanctioned the staff schedule for the school for the academic year 2012-2013. This obviously took into account the number of sanctioned divisions or classes and the student body strength. On that basis, the Educational Officer sanctioned one post for a clerk and one post for a peon apart from other teaching posts with which we are not concerned. There were some posts also sanctioned on an unaided basis. However, amongst the non-teaching staff, there was no additional post on a non-aided or unaided basis. These two posts of junior clerk and peon were therefore sanctioned on a 100% fully aided basis.

5. In light of this, the 4th Respondent began the selection process for filling up the posts including that of the peon. The Petitioner responded to the advertisement and participated in the selection process. He was successful and came to be appointed as a peon in that aided post with effect from 1st June 2012. Following this, the Headmaster or Principal of the school sought to submit a proposal to the Educational Officer Primary, Zilla Parishad seeking approval to the appointment. But the Educational Officer refused to accept the proposal on diverse grounds inter alia claiming that the post was not sanctioned by the Government, the staffing pattern has not yet been finalised, there was a ban on recruitment of non-teaching employees, and that the Bombay Primary Education Act 1947 had been then repealed with the introduction of the right of children to Free and Compulsory Education Act 2009.

6. To these objections, the Headmaster responded referring to the GR of 1st April 2011 and pointing out the appointment for which approval was sought was made to the sanctioned post and there was no question of any illegality. The Educational Officer did not accept these representations.

7. On 1st August 2014, the new Palghar District came to be formed bifurcating Thane District. This necessarily meant that the Educational Officer, Palghar came to be appointed. This is the 3rd Respondent. He had and has administrative control over all primary schools within Palghar District. Accordingly, the Headmaster of the school now approached the 3rd Respondent for approval to the appointment of the Petitioner as a peon. The headmaster did so. Now the objection was that the appointment was made at the time when Thane District had not been split and therefore according to the Educational Officer, Palghar, it was for the Educational Officer Primary, Thane to take a decision. It was also said that since the Thane Officer had refused, the Palghar officer could do nothing. The Headmaster pointed that there were no valid reasons for rejecting or refusing the approval. Yet it was claimed that by GR of 12th February 2015, the State Government has stayed the staffing pattern finalised under a GR issued in the year 2013 and said that until the staffing pattern of non-teaching staff was revised, status quo should be maintained and no new appointments should be made. To this the Headmaster correctly pointed out that these GRs could not apply since the Petitioner had been appointed in the year 2012 and was therefore not covered by the 2013 GR or the stayed staffing pattern. The ban under the GR of 12th February 2015 was

restricted to the GR of 2013 and did not go back to previous final and concluded staffing patterns in the preceding years.

8. The 3rd Respondent refused to accept this explanation and submission. Ultimately on 28th January 2019, the State Government issued a GR declaring a revised staffing pattern for non-teaching posts. But for Class IV employees, including peons, this GR stated that the Government should issue separate orders.

9. The Headmaster made repeated requests. Finally, by a letter dated 7th September 2020 the 3rd Respondent accepted the proposal. After scrutinising the proposal and bearing in mind that the post of a peon was sanctioned on 1st April 2011, the 3rd Respondent issued an order of 7th December 2020. A copy of this is at Exhibit "B" to the Petition. Now this means that finally after eight long years of this going back and forth, from 2012 to 2020 the appointment of the Petitioner as a peon in the 5th Respondent-school was finally approved. The approval was with effect from 1st June 2012 in the Scheduled Tribe category and in the prescribed pay scale.

10. By a letter of 29th December 2020, the Headmistress of the school submitted a proposal to the 3rd Respondent, this time to enter the name of the Petitioner in the Shalartha Pranali. This is a procedure that is required because against that entry an employee of an aided school is issued a Shalartha ID. That ID is the basis of disbursement for grant-in-aid institutions. Without the Shalartha ID, disbursements are not possible, these being now done digitally.

The 3rd Respondent scrutinised that proposal and forwarded it to the 2nd Respondent, the Deputy Director of Education, Mumbai Region.

11. This brings us to the impugned order of 28th May 2021. A copy is at Exhibit “E”. The 2nd Respondent now said to the 3rd Respondent that after considering the proposal he was of the view that the post of peon to which the Petitioner was appointed was not sanctioned and hence his name could not be entered in the Shalarnya Pranali as a Shikshan Sevak. This is why the Petitioner has come to Court.

12. An Affidavit in Reply was filed on 17th January 2023. Among other things, it said that by an order of 26th October 2018, the post of a peon was not sanctioned to the 5th Respondent school. This was the first time the Petitioner learnt of this and accordingly Mr Bandiwadkar sought leave to amend the Petition to challenge the 26th October 2018 order. A copy of this is now included in the Petition at Exhibit “F1”. At page 42-A.

13. The order of 26th October 2018, said to be a cancellation of the previous sanction, is not in fact a document that says so in explicit terms. It simply sanctions teaching posts. But it leaves blank the matter of non-teaching posts. What it then says is a revision of teaching and non-teaching posts for the academic year 2013-2014 is being taken up. It is on this basis that the learned AGP seeks to justify the impugned action.

14. We are wholly unable to appreciate the actions of the Respondents in first refusing Shalartha ID and, second, claiming that the sanctioned post of 2011 was cancelled by the impugned order of 26th October 2018.

15. From the narrative above, the errors are self-apparent. Once the 3rd Respondent had approved the post, there was no question of the 2nd Respondent revisiting that approval and refusing the Shalartha ID on that basis. The 26th October 2018 document relied on in the Affidavit in Reply is wholly inapplicable to the case of the Petitioners. On the face of it, it pertains to a staffing pattern for the academic year 2013–2014. It cannot possibly invalidate a previously sanctioned staffing pattern of the year 2011. Nor was an appointment made on the basis of the 2011 sanctioned post in the academic year 2012–2013. Indeed, this leads to a patent absurdity because it is now sought to be said that by an administrative action of the 2nd Respondent and 3rd Respondent, the original GR of 1st April 2011 of the State Government stands nullified or cancelled. It is impossible to accept such a proposition. Nobody has been able to show us how the 1st April 2011 GR of the State Government, on the basis of which the post of peon and junior clerk were sanctioned and later filled up, was ever called into question, stayed, reversed or cancelled. That is not even the case in the Affidavit in Reply.

16. *Ex facie* the impugned actions failed every test applicable in judicial review of administrative action. We are at a loss to understand how these officers can conduct themselves in this manner. No error is pointed out on the part of the educational

institution. No mistake is pointed out on the part of the Petitioner. No attempt is made to deal with the 1st April 2011 State Government GR. This is a mindless application of the latest GRs but with complete non-application of mind. That would vitiate the entire decision-making process apart from, in our view, fully meeting the standard of *Wednesbury Unreasonableness* as set out by Diplock J in the following words:¹

So outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

17. There is no question that both actions have to be set aside. The Petition must succeed, and it does. It is made absolute in terms of prayer clauses (b), (b1) and (c) which are set out below. A formal approval is to be granted to the proposal for Shalartha ID and that Shalartha ID is to be issued to the 2nd Respondent to the Petitioner by 13th February 2023. The entire amount of monthly salary with arrears and interest according to the rules, if any, is to be released to the Petitioner by 20th February 2023.

“b) By a suitable writ, order or direction, this Hon’ble Court may be pleased to quash and set aside the impugned order dated 28.5.2021 issued by the Respondent No. 2, and accordingly the Respondent No. 2 may be directed to granted permission to enter the name of the Petitioner in Shalartha Pranali, and to allot him Shalarth I.D. on the aided post of Pon in teh Respondent No. 5 School, with all consequential benefits.

b1) By suitable writ, order or direction, this Hon’ble

¹ *Council of Civil Service Unions v Minister for the Civil Service*, [1983] UKHL 6 at para 410 : [1984] 3 All ER 935 : [1984] 3 WLR 1174; House of Lords.

Court may be pleased to quash and set aside the impugned order dated 26/10/2018 issued by Respondent No. 3.

c) After the relief would be granted as per prayer clause [b] above, that by a suitable writ, order or direction, this Hon'ble Court may be pleased to direct the Respondent No. 3 to immediately sanction and release the grant-in-aid for payment of monthly salary to the Petitioner as a Peon w.e.f. 1.6.2012 in the Respondent No. 5 School, together with all arrears."

18. No costs.

19. The Petition is to be listed on 22nd February 2023 for compliance.

(Dr Neela Gokhale, J)

(G. S. Patel, J)