



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.14420 OF 2021**

Lalit s/o Sureshrao Shinde

Age: 29 years, Occu: Service as Assistant Teacher,
r/o: Samode, Tq.: Sakri, Dist.: Dhule.

..Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.
 2. The Education Officer (Secondary),
Zilla Parishad, Dhule.
 3. Karmavir Anandrao Manikrao Patil
Secondary & Higher Secondary School,
Pimpalner, Tq.: Sakri, Dist.: Dhule,
Through its Head Master.
- ..Respondents

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Mr. V. S. Panpatte, Advocate for the Petitioner.

Mr. S. K. Shirse, AGP for Respondent Nos.1 and 2.

Mr. B. P. Gonare, Advocate for Respondent No.3.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

JUDGMENT RESERVED ON :- 20th FEBRUARY 2024.

JUDGMENT PRONOUNCED ON :- 16th APRIL 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India with following prayers:

“B. By a writ of certiorari or any other appropriate writ or direction in the like nature, the order dated 12.10.2021

issued by the respondent no.2-Education Officer at Exhibit 'K' may kindly be quashed and set aside;

C. By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no.2-Education Officer may kindly be directed to grant approval to the appointment of the petitioner as Shikshan Sevak in the respondent no.3-School w.e.f. 01.01.2018 to 31.12.2020 and further to grant permanent approval to the services of the petitioner as Assistant Teacher in regular pay-scale from 01.01.2021 onwards and release arrears of salary of the petitioner within stipulated period;”

3. Mr. Panpatte, learned Advocate appearing for the petitioner submits that the petitioner is qualified as B.Sc., B.Ed., so also passed TET and TAIT, as such, he was eligible to be appointed as an Assistant Teacher / Shikshan Sevak. On retirement of one Mr. B. D. Pawar, who was working as an Assistant Teacher in respondent no.3-School, vacancy of one post of Shikshan Sevak in Science subject arose in the school. Consequently, respondent no.3-School submitted an application dated 19.06.2017 with respondent no.2-Education Officer (Secondary), Zilla Parishad, Dhule informing that in all three teachers working on the establishment of the school have been retired during the Academic Year 2016-2017 and school needs to fill up those vacancies in the interest of students. Consequently, permission was sought to advertise the posts and fill up the vacancies. Similarly, one more communication was made on 01.11.2017. In absence of the response from the office of respondent no.2-Education Officer, respondent no.3 advertised the post in Science subject in “Daily Khandesh Khabhar” dated 10.11.2017. The petitioner responded to the said advertisement. Thereafter, the petitioner was interviewed, selected and appointed vide order dated 01.01.2018 in respondent no.3-School as Shikshan Sevak. The petitioner joined the services in pursuance of the appointment order. The proposal seeking approval to the

petitioner's appointment was forwarded. However, respondent no.2 declined to approve the proposal vide order dated 01.04.2019 giving reason that the petitioner's appointment is not made through Pavitra Portal in terms of the Government Resolution dated 23.06.2017.

4. The petitioner had assailed the said order before this Court in Writ Petition No.10270/2019. This Court after considering the submissions advanced and after recording fact that the Pavitra Portal was not activated till the date of petitioner's appointment i.e. June 2018, set aside the order passed by respondent no.2 and directed him to reconsider the proposal afresh, with specific rider that same shall not be rejected on the ground on which the impugned order is passed. However, respondent no.2 again rejected the proposal for grant of approval to the petitioner's appointment giving reasons that there are surplus teachers in Dhule district, permission was not obtained before advertising the post, proposal was forwarded belatedly, recruitment is made without intimation to the office of respondent no.2 and that advertisement was not published in widely circulated newspaper.

5. Mr. Panpatte, learned Advocate would submit that the Education Officer has passed the impugned order contrary to the directions issued by this Court in earlier round of litigation by digging out the reasons which were not available in the facts of the present case. In support of his contentions he placed reliance on the judgment of this Court in case of ***Rajan Sahadeo Ratul and Others Vs. State of Maharashtra and Others***¹.

6. Mr. Panpatte, learned Advocate would further submit that the petitioner is appointed against the clear vacancy as per

¹ 2023 (6) Mh.L.J. 234.

reservations roster. He holds requisite qualification including TET and TAIT and discharging his duties as Science Teacher since 2018 i.e. for more than six years. He would, therefore, urge to set aside the impugned order and direct respondent no.2-Education Officer to grant approval to the petitioner's appointment and release consequential benefits.

7. Mr. Shirse, learned Advocate appearing for respondent nos.1 and 2, relying upon the contents of the affidavit-in-reply dated 28.03.2022 filed by Mr. Mahendra Shridhar Joshi, Deputy Education Officer (Secondary) would submit that the appointment of the petitioner is made after promulgation of the Government Resolution dated 23.06.2017, which mandates the recruitment procedure through Pavitra Portal, which is made operative. He would submit that the petitioner's appointment is against the vacancy occurred on 31.12.2017 due to retirement of Mr. B. D. Pawar on attaining age of superannuation. However, the advertisement was issued much before the retirement of the said employee without adhering to the procedure of the Pavitra Portal. Therefore, entire procedure adopted by the Management is invalid. He would further point out that there were 65 surplus teachers in the Academic year 2017-2018. The Management failed to intimate vacancies or seek prior permission to fill up the post. As such, the petitioner's appointment cannot be approved.

8. We have considered the submissions advanced on behalf of the learned Advocates appearing for the respective parties. Admittedly, the petitioner holds the qualification as B.Sc., B.Ed. with TET and TAIT and he has been recruited against the vacancy that occurred on retirement of Mr. B. D. Pawar, an Assistant Teacher with respondent no.3-School. The documents

annexed to petition shows that on 19.06.2017 a communication was addressed to the Education Officer on behalf of respondent no.3-School, informing that on account of retirement of teachers during the Academic year 2016-2017, there are three vacancies on school establishment and the permission was sought to advertise those post. The said communication bears the signed acknowledgment of the same day, however, there is no stamp of the office of respondent no.2-Education Officer. In reply filed by Management one more document dated 18.08.2016 addressed by the office of the President of the Educational Institution can be seen wherein intimation is given regarding vacancies occurred till 31.12.2017. It bears the stamp and signature of the office of respondent no.3. Similarly, there are some more documents that depicts communications made to the office of respondent no.2 pertaining to the retirement of the teachers. It is, therefore, evident that office of respondent no.2 was well informed of the vacancies of the teachers with respondent no.3-School. Consequently, in absence of Education officers response, an advertisement dated 10.11.2017 appears to have been issued in "Daily Khandesh Khabar" newspaper and the petitioner is appointed as against the said advertised vacancy.

9. Pertinently, the Education Officer vide his order dated 11.04.2019 rejected the proposal for grant of approval to the petitioner's appointment, giving reason that such appointment is made de-hors procedure of Pavitra Portal introduced under Government Resolution dated 23.06.2017. This Court while setting aside the earlier order in Writ Petition No.10270/2019, had specifically directed the Education Officer to reconsider the petitioner's proposal seeking approval to the appointment with specific rider that it shall not be rejected on the grounds stated in

the impugned order. Apparently, the Education Officer could not have rejected the proposal giving reason of non-observance of the Pavitra Portal or any such ground. Similarly, the affidavit-in-reply is silent as regards to the communication made by respondent no.3 intimating vacancies and permission for advertisement. If the Education Officer or his office failed to respond the communication made by the School, the Management cannot be blamed. It is not the case of respondent no.3 that any surplus teacher was deputed for absorption to respondent no.3-School and ignoring such direction, the advertisement was issued. In this background, now the Education Officer cannot raise the same objection. So far as other objections raised in the impugned order those does not constitute sufficient ground to threshold rejection of approval to the petitioners appointment. We find that the petitioner is well qualified person and rendering his services for more than six years by this time. His claim for grant of approval could not have been frustrated giving technical reasons, when office of respondent no.3 failed to discharge its own obligation. Resultantly, the impugned order cannot be sustained under law. Hence, we proceed to pass following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 12.10.2021 passed by the respondent no.2-Education Officer (Secondary), Zilla Parishad, Dhule is hereby quashed and set aside.
- c. The respondent no.2-Education Officer shall grant approval to the petitioner's appointment as Shikshan Sevak in respondent no.3-School for the period from 01.01.2018 to 31.12.2020 and further grant permanent approval to his services as

an Assistant Teacher w.e.f. 01.01.2021 and release consequential benefits.

d. Writ Petition is disposed of.

e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE