

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE**

WRIT PETITION NO. 204 OF 2019

- 1] Shri Nitin Bhika Tadge,
Aged 31 Yrs, Occ. Service,
R/at Room No.1, Bodke Chawl,
Near Gaondevi Mandir, Mharal,
Post Varap, Tal. Kalyan,
Dist. Thane
- 2] Maraleshwar Shikshan Prasarak Mandal,
Mharal, Tal. Kalyan, Dist. Thane,
Through its Chairman / Secretary ... Petitioners
- Versus
- 1] The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai – 400 032.
- 2] The Education Officer [Secondary],
Zilla Parishad, Thane ... Respondents

**WITH
WRIT PETITION NO. 10933 OF 2022**

SANJAY
KASHINATH
NANOSKAR

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Smt. Kiran Madhav Karanjkar,
(Name after marriage: Prajakta Prasad
Hendre),
Age : 35 Years, Occupation : Service,
R/o. A/P. Mandangad, Tal. Mandangad,
District : Ratnagiri. ... Petitioner

Versus

- 1] The State of Maharashtra,
Through the Secretary,

School Education & Sports Department,
Mantralaya,
Mumbai – 400 032.

- 2] The Commissioner of Education School
Education Department, Maharashtra
State, Pune.
- 3] The Director of Education,
(Secondary and Higher Secondary),
Maharashtra State, Pune -1.
- 4] The Deputy Director of Education,
Kolhapur Region, Kolhapur,
Having Office at, Hatti Mahal,
Ganji Galli, Somwar Peth,
Kolhapur.
- 5] The Education Officer (Secondary),
Zilla Parishad, Ratnagiri,
Having Office at Zilla Parishad
Building, Ratnagiri.
- 6] Mandangad Taluka Vikas Mandal,
(Registration No. F- 1428, Mumbai),
Address : C/o. Dr. Babasaheb Ambedkar
High School and Junior College,
Mandangad, Tal. Mandangad,
District : Ratnagiri,
Through its President/ Secretary.
- 7] Dr. Babasaheb Ambedkar High School
and Junior College, Mandangad,
Tal. Mandangad, District : Ratnagiri,
Through its Head Master.

... Respondents

**WITH
WRIT PETITION NO. 155 OF 2024**

Shri. Yuvraj Vasantrao Pandhare,
Age : 31 Years, Occupation : Service,

R/o. A/P. Kudanur, Kokale, Taluka: Jath,
District : Sangli.

... Petitioner

Versus

- 1] The State of Maharashtra,
Through the Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 400 032.
 - 2] The Commissioner of Education,
School Education Department,
Maharashtra State, Pune.
 - 3] The Director of Education,
(Secondary and Higher Secondary),
Maharashtra State, Pune -1.
 - 4] The Deputy Director of Education,
Kolhapur Region, Kolhapur, having office
at Somwar Peth, Hatti Mahal, Ganji Galli,
Kolhapur – 416 002.
 - 5] The Education Officer (Secondary),
Zilla Parishad, Sangli, Having Office at
Zilla Parishad Building, Sangli.
 - 6] Bhagatsing Shiksham Sanstha, Miraj,
Having office at Shaniwar Peth,
Near Patil Houd, Miraj,
Taluka: Miraj, District: Sangli,
Through its President/ Secretary.
 - 7] Maharaje Yashwantrao Holkar Vidyalaya,
Kudnur, Taluka : Jath, District : Sangli,
Through its Head Master.
- ... Respondents

**WITH
WRIT PETITION NO. 1182 OF 2024**

- 1] Mrs. Anuja Sangram Kadam,
Age about 33 of Chinchghar,
Prabhuwadi Khed, Taluka- Khed,
District – Ratnagiri ... Petitioner

Versus

- 1] State of Maharashtra,
School Education Department,
Mantralaya, Mumbai.
- 2] Deputy Director of Education,
Kolhapur Region, Hatti Mahal,
Ganji Maal, Somwar Peth,
Kolhapur
- 3] Education Officer (Secondary),
Zillah Parishad, Ratnagiri.
- 4] Sahjeevan Shikshan Sanstha,
Khed, District Ratnagiri,
Through its Secretary.
- 5] Shriman Cahndulal Sheth High School
And Arts, Science and Commerce Junior
College, Khed, Taluka Khed,
District : Ratnagiri. ... Respondents

**WITH
WRIT PETITION NO. 1493 OF 2024**

- 1] Mangaon Taluka Education Society,
Through its Chairman,
Goregaon, Tal Mangaon,
District – Raigad.
- 2] N.M.Joshi Vidya Bhavan, Goregaon,
Through its Head Master,
Tal. Mangaon, District – Raigad 402 201
- 3] Rajesh Madhukar Pansare,
Age: 43 years, Occ.: Service,

O/a. N.M.Joshi Vidya Bhavan,
Goregaon, Tal. Mangaon,
District – Raigad 402 103.

... Petitioners

Versus

1] The State of Maharashtra,
Through its Secretary,
Ministry of Education and Sport
Department, Mantralaya, Mumbai -32.

2] The Education Officer (Secondary),
Zilla Parishad, Raigad,
District – Raigad 402 201

... Respondents

WRIT PETITION NO. 204 OF 2019 :

Mr.Narendra V. Bandiwadekar, Senior Advocate with
Mr.Vinayak Kumbhar, Mr.Aniket S. Phapale i/b. Ms.
Ashwini N. Bandiwadekar for the Petitioner.

Mr. P.P. Kakade, Government Pleader with Mr. V.M.
Mali, Assistant Government Pleader for the State.

WRIT PETITION NO. 10933 OF 2022 :

Mr. Prashant Bhavake for the Petitioner.

Mr. P.P. Kakade, Government Pleader with Mr. V.M.
Mali, Assistant Government Pleader for the State.

Mr. Utkarsh Desai for Respondent No 6.

WRIT PETITION NO. 155 OF 2024 :

Mr.Prashant Bhavake for Petitioner.

Mr. P.P. Kakade, Government Pleader with Ms. Pooja Joshi-Deshpande, Assistant Government Pleader for the State.

WRIT PETITION NO. 1182 OF 2024 :

Mr. Milan Topkar with Ms. Pavitra Manesh for Petitioner.

Mr. P.P. Kakade, Government Pleader with Mr. V.M. Mali, Assistant Government Pleader for the State.

WRIT PETITION NO. 1493 OF 2024 :

Mr. Ram D. Karode i/b Mr. Vinod P. Sangvikar for Petitioners.

Mr. P.P. Kakade, Government Pleader with Mr. V.M. Mali, Assistant Government Pleader for the State.

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 16 April 2024.

JUDGMENT : (Per Nitin Jamdar, J.)

Rule in all the Petitions. Rule made returnable forthwith.
Taken up for disposal by consent of parties.

2. These petitions primarily arise from the orders passed by the authorities of the Education Department of the State of Maharashtra. The petitions are not connected but have been taken up together to highlight the serious issue of needless litigation that the educational institutes and their employees have to face in their dealing with the Education Department. In most cases, the educational institutes and their employees have to approach this Court even though the legal position in their favour is settled by this Court and ignored by the Authorities of the Education Department in passing the orders.

3. Numerous petitions fall in this category. We have heard several of them together to dilate on the broader issue. With the consent of the learned Counsel for the parties, we have taken these writ petitions to pass an elaborate order on the subject matter.

4. In Writ Petition No.204/2019, the impugned order refuses to grant approval to transfer the Petitioner- employee from an unaided post to an aided post. The Petitioners have relied upon the decision of this Court, as far back as 2019, in the case of *Pramod s/o. Prabhakar Pokale vs. State of Maharashtra and others*¹. In this decision, it was observed that the stand of the Education Department that till the surplus teachers are absorbed no approval should be granted to transfer from an unaided school to an aided school of the same institution is contrary to the ratio laid down by several

¹ 2019 (4) Mh.LJ 278

decisions of this Court. The Division Bench in *Pramod s/o Prabhakar Pokale* relied upon sixteen decisions in the said judgment. In Writ Petition No.1182/2024 also the Petitioner is aggrieved by the order passed by the Deputy Director of Education refusing to approve the Petitioner's transfer from aided to partly aided division of the Respondent– College. In this case, the Petitioner relied upon various judicial pronouncements that held the field. Writ Petition No.1493/2024 is filed by the Education Institution, and its employee is challenging the order passed by the Education Officer, who has refused to grant approval to transfer the employee from unaided to aided school. According to the Petitioners, the law is already settled by the Division Bench of this Court in various judgments, including that in the case of *Friends Social Circle Versus State of Maharashtra and others*². In Writ Petition No.10933/2022, the prayer is made to decide the proposal pending since 2022. In Writ Petition No.155/2024, the order rejecting the grant of approval is a subject matter of challenge on the ground that the issue is covered by the judgments of this Court.

5. We will now highlight the broader concern that has led to us to pass this elaborate order, though in the individual petition, the legal issues are already covered, and the petitions can be disposed of by a standard order routinely. In fact, the recurrence of such routine petitions and orders is the reason for this judgment.

2 2023 SCC OnLine Bom 1503

6. A large body of litigation arises from the tripartite relationship between the educational institutes (the managements), their employees and the State Government. The State of Maharashtra provides grants to the management on certain terms and conditions as per the Grant in Aid Code to advance the object of education. The terms and conditions of service of the employees of the private schools are governed under section 4 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The State Government is empowered to frame Rules to provide minimum qualifications for recruitment, including the recruitment procedure. Under section 5, the management has to fill every permanent vacancy in the private school by appointing a person duly qualified to fill it. Before filling out the vacancy, management is required to verify the availability of surplus persons with the education department. The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, have been framed under the Act of 1977, wherein qualifications have been laid down. Under the Rules of 1981, the management is required to forward the details of the persons appointed to teaching and non-teaching posts to the Education Officer or the Deputy Director of Education, as the case may be.

7. The Full Bench of this Court in *St. Ulai High School v. Devendraprasad Jagannath Singh*³ had an occasion to examine this position. One of the questions that arose before the Full Bench was

3 2007 (1) Mh.L.J. 597

whether it is necessary for the Management to get approval of the Education Authorities and whether non-grant of approval would invalidate the appointment made by the management. The Full Bench declared that a non-grant of approval cannot invalidate the appointment. This is so because the matter concerning the grant of approval is between the management and the education authorities and is relevant for releasing the grant by the State Government to the Management. The Full Bench held that the Grant in Code is a body of administrative instructions, and if there is a breach concerning the grant-in-aid, the Government can take action against the management, but it would not invalidate the appointment of the teacher. Thus, the management seeking grant-in-aid is responsible for ensuring compliance with the requirements imposed by the State for disbursal of aid. It was held that the rejection of the proposal of the management for disbursal of the grant is a *lis* between the management and the Government. The Full Bench clarified that in appropriate cases where the non-approval of the services of the employee affects the rights of the employee, such as regarding disbursal of pensionary benefits or declaration as surplus employee, the right to challenge the order of non-approval in proper proceeding would be preserved.

8. The management of the educational institutes have to seek approval from the authorities of the Education Department of the State with respect to various issues. Considering the number of aided schools and institutions in Maharashtra, the number of

applications seeking approval is extremely large. Consequently, the litigation that arises from the actions of the Education Department authorities on the applications made by the Management is substantial.

9. As per the statistics provided by the Registry, writ petitions relating to service matters in respect of teaching and non-teaching staff at present pending before the principal seat of this Court are 3,979; before the Nagpur Bench are 1,943; and 3547 before the Aurangabad Bench. Taking into consideration the older petitions, the number would cross 10,000.

10. It is not the number of petitions that is a matter of concern, but the reason why these petitions arise is the matter of concern. The counsel for the petitioners have pointed out that in a large number of cases, the legal grounds on which the authorities of the Education Department reject the proposal for approval made by the management are already ruled upon by this Court, and yet disregarding the law laid down, the authorities of the Education Department keep rejecting the proposal for approval forcing the management and the employees to file writ petitions. Despite the mandate to give an opportunity, the authorities of the Education Department reject the proposals unilaterally without giving a chance to the Management or the employees to demonstrate that the legal grounds taken in the impugned orders are already held to be bad in law by the Court.

11. The facts Writ Petition No.204/2019 will illustrate this position. In this case, Petitioner No.2- Management submitted a proposal to the Education Officer seeking approval for the transfer of Petitioner No.1 from an unaided post to an aided post in the secondary school. This was rejected by the Education Officer on the ground that, as per the Government Resolution dated 28 June 2016, approval cannot be granted, citing the presence of other surplus teachers. The Division Bench of this Court (Aurangabad Bench) in the case of *Pramod s/o Prabhakar Pokale v. State of Maharashtra*⁴ considered an identical situation, and the said Government Resolution was dated 28 June 2016. This Division Bench, in turn, referred to earlier decisions, namely, (i) *Sudhir Dnyandeo Gadakh v. State of Maharashtra in Writ Petition No. 5978 of 2014 along with connected Writ Petitions, decided on 9 October 2014 [2014 MhLJ Online 100]*, (ii) *Ganesh s/o Raghu Jadhav v. State of Maharashtra, 2015 MhLJ Online 103 : (2016) 1 Bom. C.R. 248*, (iii) *Sachin Babanrao Deshmukh v. State of Maharashtra in Writ Petition No. 7813 of 2015 along with connected Writ Petitions, decided on 9th September, 2015 [2015 MhLJ Online 105]*, (iv) *Mrs. Rajabai Baba Shinde v. State of Maharashtra in Writ Petition No. 3979 of 2015 along with connected Writ Petition, decided on 18th April, 2015 [2015 MhLJ Online 104]*, (v) *Chandrakali Pandurang Dhongde v. Secretary, Department of School Education, Mantralaya, Mumbai in Writ*

4 2019 (4) Mh.L.J. 278

Petition No. 7230 of 2011 along with connected Writ Petitions, decided on 30-11-2011 [2011 MhLJ Online 66], (vi) Ms. Rupali Maruti Shingte v. State of Maharashtra in Writ Petition No. 9173 of 2013 along with connected Writ Petitions, decided on 18th February, 2014, (vii) Phiroj Chandsaheb Momin v. State of Maharashtra in Writ Petition No. 3197 of 2014, decided on 16th September, 2014 [2014 MhLJ Online 101], (viii) Ashok Dinkar Kale v. State of Maharashtra in Writ Petition No. 676 of 2014, along with connected Writ Petitions, decided on 17th September, 2014, (ix) Rajashri Shahu Shikshan Sanstha Sillod through its Secretary v. State of Maharashtra in Writ Petition No. 11719 of 2016, decided on 9th November, 2017, (x) Rajashri Shahu Shikshan Sanstha Sillod through its Secretary v. State of Maharashtra in Writ Petition No. 11720 of 2016, decided on 9th November, 2017, (xi) Manisha Kisan Jadhav v. State of Maharashtra in Writ Petition No. 11216 of 2016, decided on 9th November, 2017, (xii) Rajya s/o Divlya Tadvi v. State of Maharashtra in Writ Petition No. 10618 of 2016 along with connected Writ Petition, decided on 30-11-2017, (xiii) Shri Laxman Shivaji Shindiwale v. State of Maharashtra in Writ Petition No. 4871 of 2017, decided on 25th April, 2017, (xiv) Mrs. Shilprekha Vinayak Joshi v. State of Maharashtra in Writ Petition No. 11065 of 2014 along with connected Writ Petition, decided on 14th February, 2017, and (xv) Shekhar P. Deshmukh v. Deputy Director of Education in Writ Petition No. 1166 of 2018, decided on 3rd July, 2018. The Division Bench, following these decisions held that the proposal for

transfer from unaided to aided section cannot be rejected on the ground that surplus teachers are to be absorbed. The Division bench held that the stand of education authorities that till the surplus teachers are absorbed, no approval should be granted for the transfer of the Assistant Teacher from an unaided school to an aided school of the same Institution runs contrary to the ratio laid down in the aforesaid Judgments of the High Court. One would expect that when the legal position is so clearly laid down, it would be followed by the authorities in the education department. Yet, again the Education Authorities in the impugned order in this petition refused to grant approval on the same ground of surplus contrary to the entire body of law as above, forcing the Petitioner to approach this Court. laid to be set aside by this court.

12. As the counsel for the petitioners point out such orders are routinely passed contrary to the law and since there is no appellate forum provided, management and the employees are forced to file writ petitions and they are routinely disposed of, directing the authorities to decide the proposal afresh. Either the proposal is then allowed, or it is rejected on new ground not taken earlier, or the orders are not complied with, leading to the issuance of contempt notices against the Educational Authorities. This scenario has created a large body of unnecessary litigation, which is not only harassment to the Management and the employees but also drains the state government's resources. Even when this Court rules on the legal position governing the grant of approval and if the State

Government accept the decision by not challenging the same, the State does not issue a clarificatory resolution/ circular instructing the officers of the Education Department to follow the legal position.

13. Taking note of this deluge of such writ petitions, on 19 March 2021, the Division Bench (Coram: Nitin Jamdar and C.V.Bhadang, JJ.) passed the following order in Writ Petition (St.) No.5450/2019 and other connected petitions:

“ This group of matters is one more instance where a large number of cases are being filed in spite of the law laid down by this Court because the State has not issued clarificatory Government Resolution to bring the position in consonance with the law laid down and the officers are not passing the orders in consonance with the law. We have not been shown any order by which the legal position consistently laid down is varied or set aside. Routinely, such orders are passed by the authorities, and following the law laid down, the court sets aside the same.

2. The State will be well advised to take a note of this situation. The State and the Central Government have a litigation policy in place. Such non action/acts on the part of the authority not only adds to the already crowded dockets of the Courts, it also forces the teachers to come to the Court spending time and money. To defend such matters, the government machinery, is also burdened. We, therefore, direct that a responsible officer who can take a decision will remain present in the Court on the next date.

3. As of suitable date, the Additional Government Pleader states that the concerned officer will remain present in the Court on 30 March 2021.

4. Stand over 30 March 2021.”

(emphasis supplied)

14. Thereafter, on 1 April 2021, the Division Bench (Coram: Nitin Jamdar and C.V.Bhadang, JJ.) passed the following order:

“ These petitions, though unconnected, are placed on board under the caption "For Directions" to enable the learned Advocate General for the State to address the broader issue that arises in these matters. A common feature is that the impugned orders are challenged on the ground that they are illegal since various orders by this Court have already been passed covering the issue.

2. It has been brought to our notice that there are specific recurring issues regarding which a large number of petitions have been filed by teaching and non-teaching staff in the State of Maharashtra. The recurring issues are, for instance, transfer from unaided to aided section, the benefit of the Carrier Progression Scheme to those working in Ashram Shalas, qualifying period of service for the Librarians, additional increment for the awardee teachers, etc.

2. Once this Court lays down the position of law and if the State does not challenge the view taken, there is no reason why the State Government should not issue clarificatory instructions to its Officers to bring the position in consonance with the law laid down. That not being done, the Education Authorities keep passing the same orders, which are then challenged in writ petitions which simply annex the impugned order and the orders already passed by this Court and such impugned orders are then set aside following the earlier decisions. Countless petitions keep getting filed on the same subject by the teaching and non-teaching staff with the same result, and we are informed that the number at the Principal Seat and the Benches at Nagpur and Aurangabad of such petitions would cross four digits. This is a creation of needless litigation. The teaching and non-teaching staff are forced to come to the Court, spending money and time. Time also important as the petitioners can invest the same in imparting education for which grants are paid by the State. The State spends money on defending such petitions, and,

thus, the resultant position is of enormous social and economic costs. Apart from adding to the already crowded docket of this Court.

3. *The learned Advocate General states that such a situation will not be healthy and further states that a Study Group would be set up to examine the issue and to find out in which areas such recurring petitions arise where the issue is already concluded by the orders of this Court.* He states that the information will be collected from the Principal Seat and the Benches at Nagpur and Aurangabad and advocates so that the Study Group can give suggestions as to how this type of litigation does not arise in the first place.

4. *At the request of the learned Advocate General to inform us about the progress, stand over to 26 April 2021. To be listed under the caption "For Directions".*

(emphasis supplied)

15. The State of Maharashtra then issued a Government Resolution dated 26 April 2021, whereby a Study Group was set up. The Study Group was set up in the School Education and Sports Department to, *inter alia*, identify the common areas of disputes between employees on the one hand and their employers or the concerned authorities of the State Government on the other hand, where recurring judicial proceedings arising out of issues or controversies that the judgments and orders of this Court or the Supreme Court have finally concluded. This Study Group was to suggest how this type of litigation should not arise in the first place.

16. The group of Petitions was then taken for consideration by the Division Bench (Coram: R.D.Dhanuka and R.I.Chagla, JJ.) on

30 July 2021. The learned Advocate General Advocate General placed on record the copy of the Resolution dated 26 April 2021. The Bench was informed that the State Government has also formulated 21 issues relating to the School Education Department, which the State Government will discuss on a priority basis. Learned Advocate General assured the Court that all these issues would be looked into as soon as possible, and an appropriate solution would be suggested to the Court to reduce pending litigation on those issues and to obviate fresh litigation on the concluded issues. The learned Advocate General submitted that the Study Group would crystallize the issues based on the judicial verdicts already declared by this Court and the Supreme Court on various issues relating to education and would be circulated amongst all the officers of the Education Department with a direction to follow such decisions in every case where such decisions are applicable. The Division bench accepted the statements and the assurance made to this Court by the learned Advocate General and made further suggestions. Thereafter, on 7 March 2022, the Division Bench (Coram: S.B.Shukre and G.A.Sanap, JJ.) noted that it is almost six months since no report of Study Group was placed on record. Despite the assurance of the Advocate General, the State took no steps in curtailing litigation where it was one of the largest litigants.

17. In 2023, in the case of *Rupali Dhananjay Patil v. State of Maharashtra*⁵, the Division Bench expressed its anguish that courts

⁵ 2023 (3) AIR Bom R 722

are told that there are mounting arrears of cases and an indefinite delay, yet, the State Government was contributing by permitting its officers to pass the same order set aside on a position which has already been held to be incorrect in law. The Division Bench observed that in the reply affidavit filed in the said writ petitions, no reference was made to all these decisions by the concerned Education Officer, and there was an obstinate refusal to follow the large body of law already laid down.

18. In spite of the setting up of the Study Group, observations of the Court, and assurance by the learned Advocate General on behalf of the State, the inflow of such petitions has remained unabated.

19. Having taken note of the earlier orders we had heard the learned counsels in this group of petitions and others and the learned advocate general on various dates to find a solution to the issue. The learned counsel for the petitioners in this group and in similarly situated groups have given their suggestions. The learned Advocate general has also given inputs.

20. It is not informed to us whether the State of Maharashtra has forwarded a specific litigation policy. However, considering the the negative effect of litigation on government resources, the Central Government had issued the National Litigation Policy 2010, which aimed to manage government litigation effectively. It proposed

creating an internal monitoring system to track the legal burden of each department and recommended inter-ministerial bodies to oversee litigation nationally and regionally. The Department of Justice released an 'Action Plan to Reduce Government Litigation' in 2017, detailing each department's case burden. The Status Note on National Litigation Policy was issued by the Department of Legal Affairs. It will be fruitful to reproduce the Note to highlight the impact of the litigation concerning the State. The relevant part of the Note reads thus:

Status Note on National Litigation Policy

As per Government of India (Allocation of Business) Rules, 1961, Department of Legal Affairs is mandated to conduct of cases in the Supreme Court, High Courts and all other courts on behalf of the Central Government. The courts' dockets are clogged by pending litigations. As per the Supreme Court website, as on 01.03.2015, total 61,300 cases are pending before the Supreme Court. As on 31.03.2014, total 44,79,023 cases were pending in the High Courts. In Districts and Subordinate Courts, as on 31.03.2014, total 2,73,60,814 cases were pending. Out of these pending cases, many litigation are undertaken or contested by the Government, both States and Central, and public sector undertakings. It is often said that the Government is the biggest litigant.

2. *Repeatedly it is pointed out that the indifference of the Government compels people to come to courts in search of relief and thus the Government enjoys the dubious distinction of being the largest litigants in the courts involving a big draught on public exchequer. Commenting on the absence of litigation policy on the part of the State, Justice Krishna Iyer in Dilbagh Rai Vs. UOI & Ors. AIR 1974 SC 130 has observed as follows:*

"The judgment just delivered has my full concurrence

but I feel impelled to make a few observations not on the merits but on governmental disposition to litigation, the present case being symptomatic of a serious deficiency. In this country the State is the largest litigant to-day and the huge expenditure involved makes a big draft on the public exchequer. In the context of expanding dimensions of State activity and responsibility, is it unfair to expect finer sense and sensibility in its litigation policy, the absence of which, in the present case, has led the Railway callously and cantankerously to resist an action by its own employee, a small man, by urging a mere technical plea which has been pursued right up to the summit Court here and has been negated in the judgment just pronounced."

Justice Iyer, further stated, "It is not right for a welfare State like ours to be Janus-faced and while formulating the humanist project of legal aid to the poor, contest the claims of poor employees under it pleading limitation and the like.

3. Again in the case of State of Punjab v. Geeta Iron & Brass Works Ltd., (1978) 1 SCC 68, Supreme Court made following observations regarding litigation policy of the Government:

'We like to emphasise that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction.An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in Court. We are constrained to make these observations because much of the litigation in which Governments are involved adds to the case load accumulation in Courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in Courts of cases which deserve to be attended to.'

4.

....

5. *In its 126th Report on "Government and Public Sector Undertaking Litigation Policy and Strategies", the Law Commission expressed the need of having a Litigation Policy to avoid litigation or reduce it at any cost which will bring down the load on the court system resulting in reduction of expenses on judicial set up.*

6. *The Ministry of Law and Justice, earlier held a 'National consultation for strengthening the judiciary, towards reducing pendency and delays', on 24th and 25th October, 2009 on how best to tackle problem of huge pendency in courts. The resolution presented by the then Minister of Law and Justice in the said consultation acknowledged the initiative undertaken by the Government of India to frame a National Litigation Policy (NLP) with a view to ensure conduct of responsible litigation by the Central Government and urges every State Government to evolve similar policies.*

7. *To implement the said Resolution, Department of Legal Affairs, formulated a National Litigation Policy in the year, 2010 and launched the same on 23rd June, 2010. The National Litigation Policy, 2010 was based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country. Its aim is to transform Government into an Efficient and Responsible litigant. This policy was also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle. However, the said Policy of 2010 could not be implemented.*

8. *The said National Litigation Policy of 2010 has been reviewed and formulation of a National Litigation Policy, 2015 is under consideration of the Government with a view to bring down pendency and reduce the Government Litigation."*

(emphasis supplied)

The need to reduce the burden of litigation involving the State is clear from the above Note.

21. One factor that contributes to this litigation is that once the Court lays down a precedent and the State does not contest it, the State Government does not issue clarifying directives to the authorities of the Education Department to ensure compliance with the law. The Education Authorities persist with similar erroneous decisions, leading to repetitive legal challenges and subsequent reversals, adding unnecessarily to the judicial workload. The sheer volume of petitions on identical matters surpassing almost five digits across the Principal Seat and benches in Nagpur and Aurangabad underscores the proliferation of needless litigation. This compels management to divert resources and time from their core responsibilities, impacting the quality of education.

22. The learned Advocate General assured the Court that the matter would be looked into seriously and that the Government would come out with proactive measures. The learned Advocate General stated that the State is also concerned about the problem and suggested various solutions. The learned Advocate General requested the Advocates for the Petitioners to give their inputs. The learned Advocate General also submitted that the necessary government resolutions would be issued.

23. From the inputs and arguments advanced by the learned Counsel for the petitioners, there are three stages at which directions are required, and modalities must be set in place. The first stage is the procedure to be followed at the time of passing orders by the Educational Officers of the State. Second, the stage of an appellate forum, and third, after the orders are passed by this Court declaring the position of law to issue follow-up instructions by the State Government.

24. Regarding the first part, the Government Resolution issued by the State of Maharashtra on 6 February 2012 already holds the field. This Government Resolution laid down instructions regarding the appointment, approval and other aspects regarding the teaching and non-teaching staff. The Government Resolution, in its preamble, has taken note of the increase in litigation because the Education Authorities pass the orders without giving any opportunity or without giving any show cause notice. Reference is made to the proceeding in Writ Petition No.3889/2011 when this Court taking note of the number of writ petitions because of such ex-parte orders had directed the Principal Secretary of the Department of Education to remain present in the Court on 4 January 2012. During the hearing, the State informed the Court that the State Government would issue necessary guidelines regarding the procedure to be followed when considering the grant of approval. Accordingly, the Government Resolution of 6 February 2012 was issued. The Government Resolution in Part A laid down the

procedure to be adopted by the Management. Part B prescribes the procedure to be adopted by the Educational Authorities. The reference is made to the earlier Government Resolution dated 6 September 1999, laying down the procedure. It is stated therein that once the proposals are received, if there are any shortfalls or irregularities, the Management should be called upon to remove the shortfalls within fifteen days, and after giving this opportunity, the order should be passed.

25. The Government Resolution dated 6 February 2012 was issued because, in view of the volume of litigation, the Principal Secretary of the Department of Education had to be called to this Court and upon the commitment given by the State in the year 2012, the methodology of giving advance opportunity was evolved. The Educational Authorities, despite this commitment and Government Resolution binding on them, still, in the majority of the cases, do not give any opportunity to the Management as required by the Government Resolution dated 6 February 2012, resulting in the same position which was taken note of in the year 2012 itself. In almost every petition challenging such orders, a grievance is made by the Management that if the shortfalls or objections would have been conveyed to them in advance, they would revert the same and /or point out that the objections are already relied upon by the orders of the Court. Therefore, in a series of orders passed, we had to convert such orders passed by the Educational Authorities to show cause notices as contemplated in the Government Resolution dated 6

December 2012 and permitted the Management/ Employees to submit their say and, thereafter, the Educational Authorities to pass a detailed order. One of such orders dated 8 January 2024 passed in Writ Petition No.16644/2023 reads thus:

“ Heard learned counsel for the parties.

2. The Petitioner No. 1/ Employee and Petitioner Nos.2 and 3 - Management and Educational Institute have jointly filed this petition challenging the order dated 29 August 2023 by Respondent No. 3 /Education Officer rejecting the approval for appointment of Petitioner No. 1 on the post of Peon.

3. The learned counsel for the Petitioners submitted that the impugned order is passed without giving any opportunity to the Educational Institute to submit explanation to the grounds on which the proposal is rejected.

4. Indeed, we find in many such matters that the proposals are rejected without communicating the grounds for rejection and we also find that had the Educational Institute been given an opportunity, it would have given explanation dealing with the grounds of rejection. This method adopted by Education Officer of directly rejecting the proposals, without informing proposed grounds of rejection, is giving rise to flood of litigation which takes precious judicial time of this Court because an inquiry about the grounds of rejection is required to be done in this Court at the first instance.

5. In that view of the matter, we dispose of this petition by directing that the impugned order dated 29 August 2023 will be treated as notice to Educational Institute of the proposed grounds of rejection. The Petitioners' proposal stands restored. If there are any other grounds on which the Education Officer intends to reject the proposal, he is directed to communicate the same to the Educational Institute within a period of 3 weeks from today.

6. The Educational Institute shall thereafter submit its explanation to the proposed grounds of rejection, along with

supporting material and case laws/orders of this Court, if relied upon. The Respondent / Education Officer is directed to decide the proposal by dealing with the explanation given by the Educational Institute as also dealing with case law/orders of this Court, by passing a reasoned order within a period of 8 weeks from the receipt of explanation from the Educational Institute, subject to other time bound directions and pressing public duty, if any.

7. We have not expressed any opinion on the merits of the Petitioners' proposal and the same shall be decided on its own merits in accordance with law. Needless to mention that if the Respondent/Education Officer proceeds to grant approval, the aforesaid procedure/directions will not apply.

8. The writ petition is disposed of in the aforesaid terms."

Directions issued as above mentioned above are, in fact, the methodology as stated by the State in Government Resolution dated 6 February 2012, yet the same is not being followed. Just to illustrate the point, such orders had to be passed in approximately 150 petitions in just the last two and a half months from January 2024.

26. Learned Advocate General also stated that the State Government is in the process of issuing a Government Resolution in line with the Government Resolution dated 6 February 2012 to streamline the procedure for the consideration of proposals for approval submitted by the Management, more particularly providing that before passing a final order, an opportunity be given after informing proposed grounds of rejection, if any, to one who submitted the proposal. Till then, directions are required to be issued that the Education Authorities should communicate their

proposed grounds of rejection of approval to the Management, if any, within a stipulated period. Subsequently, the Management should be given time to submit its explanation to the proposed grounds along with supporting materials and case laws/orders of this Court. Then, the Education Authorities should decide the pending proposals by considering the explanation given by the Management, as well as by referring to case law/orders of this Court, and to pass a reasoned order within a stipulated period from the receipt of the explanation from the Management. Therefore, we intend to issue specific directions similar to the one of which is reproduced above in consonance with the Government Resolution on 6 February 2012 till the State government issues a better-detailed methodology to be followed by the education authorities. The learned Advocate General is not averse to this position.

27. During the hearing on 6 February 2024, the learned counsel for the Petitioners suggested creating an appellate forum from the orders passed by the officers of the Education Department against the Management and/or the employees arising out of a tripartite relationship concerning approval, etc. The learned Advocate General had also agreed that an appellate forum would substantially reduce this litigation. The learned Advocate General informed us that the State is seriously considering creating an appellate forum.

28. The learned Advocate General called for input from the

advocates appearing for the parties and held a joint meeting with them. On 29 February 2024, the learned Advocate General circulated a draft resolution that the Government proposed to issue regarding the constitution of the Appellate Committee for the redressal of various grievances of teaching and non-teaching staff of Private Schools and the Management of State Government.

29. As on the draft of the Government Resolution to be issued for constituting the Appellate Committee, the learned counsel for the Petitioners suggested that while the appeal/representation is pending before the Appellate Committee, the Appellate Committee should consider passing certain interim or ad-interim directions. The learned Advocate General stated that the Resolution will include appropriate provisions. Certain other clerical and typographical errors were pointed out, and the learned Advocate General states that these errors would be rectified, and a final Resolution would be issued before the next date.

30. Thereafter, during the hearing on 27 March 2024, the Government Resolution creating appellate Authority was tendered by the State. The English translation of the said Government Resolution supplied by the office of the Government Pleader reads thus:

Regarding the formation of a revised Grievance Redressal Committee for filing appeals/complaints against the order passed by the Zonal Officers on the application of teachers and non-teaching staff

of recognized private aided/unaided/partially aided schools and educational institutions.

***Government of Maharashtra
Department of School Education and Sports***

*Government Resolution No. : Grievance 2019/P.No.75/TNT 4
Madam Kama Road, Hutatma Rajguru Chowk, Mumbai 400032,*

Date :- 27 March, 2024

Read :- Government Resolution of Serial No dt. 7 March 2024.

Introduction :-

The Maharashtra Private Schools Employees (Conditions of Service) Regulation Act, 1977 does indeed establish provisions for a school tribunal under Section 8. There is currently no formal mechanism in place to address grievances that do not fall within the jurisdiction of the School Tribunal. It has been observed that the number of court cases is increasing due to the lack of a system for filing appeals/complaints against the order passed by the field authorities on the application of teachers and non-teaching staff of private aided/unaided/partially aided schools and educational institutions. The Hon'ble High Court, Bombay while giving judgment in the petitions No. 11613/2014 and 2527/2017 filed against the Higher and Technical Education Department, the Hon'ble Court has also directed the School Education Department to create a Grievance Redressal Mechanism. According to the Government Resolution dated 18.12.2018 of the Department of Higher and Technical Education, a Grievance Redressal Committee has been constituted to take action on the complaints of teachers/non-teaching staff and officers. On the same lines, Grievance Redressal Committees have been formed by this Department as per Government Resolution dated 20th July 2019, 29th August 2019, and as per Government Resolution dated 01st October 2019 to take action on the complaints of private aided/partly unaided/unaided (partially aided), teaching and non-teaching staff in the School Education Department. However, the Hon'ble High Court while deciding the Writ Petition No.1182/2024 filed in the Hon'ble High Court, Bombay has directed to reform the Grievance Redressal Mechanism. Accordingly, a reformed Grievance Redressal

Committee/Appellate Authority was constituted as per the Government Resolution referred to deal with the grievances of private aided/unaided/unaided (partially aided), teaching and non-teaching staff and educational institutions in the school education department.

But in the Writ Petition No. 1182 /2024 the Hon'ble Bombay High Court issued instructions from time to time, that it was under the consideration of the Government to issue a Government Resolution containing instructions in a more elaborate form superseding the Government Resolution in the above reference Read.

Government Decision :- *A revised Grievance Redressal Committee/Appellate Authority is being constituted as follows to file appeals/complaints against the orders passed by the Zonal Officers on the application of private aided/unaided/unaided (partially aided), teaching and non-teaching staff and educational institutions in the School Education Department.*

A) Committee for Primary and Secondary Schools :-

The following Grievance Redressal Committee/Appellate Authority is being constituted for cases related to primary and secondary schools which are rejected by the Education Officer/Inspector of Education Primary and Secondary or they take no decision within the prescribed period.

<i>Sr. No.</i>	<i>Officer designation</i>	<i>Designation</i>
<i>1.</i>	<i>Regional Deputy director of Education ((Department concerned)</i>	<i>Chairperson</i>
<i>2.</i>	<i>Junior Administrative Officer/ Superintendent, concerned Departmental Deputy Director of Education Office. (Department concerned)</i>	<i>Member Secretary</i>

B) Committee for Higher Secondary Schools :-

The following committee is being constituted for the

cases related to higher secondary schools as well as the cases related to Shalarth, service breaks in primary and secondary schools that are rejected by the Divisional Deputy Director of Education or the decision is not taken by them within the prescribed period.

<i>Sr, No. .</i>	<i>Officer designation</i>	<i>Designation</i>
<i>1.</i>	<i>Divisional Chairman, Maharashtra State Board of Secondary and Higher Secondary Education. (Department concerned)</i>	<i>Chairperson</i>
<i>2.</i>	<i>Divisional Secretary, Maharashtra State and Board of Higher Secondary Education. (Department concerned)</i>	<i>Member Secretary</i>

C) Committee for Higher Secondary Schools :-

Cases relating to Higher Secondary Schools as well as cases relating to Higher Secondary Schools that are rejected by the Divisional Chairman, Maharashtra State Board of Secondary and Higher Secondary Education like rejection of Shalarth or matters are not decided by them within the prescribed period (excluding appeal cases), the following Committee is being constituted for such cases.

<i>Sr. No.</i>	<i>Officer designation</i>	<i>Designation</i>
<i>1.</i>	<i>Director of Education, Secondary and Higher Secondary, Maharashtra State, Pune.</i>	<i>Chairperson</i>
<i>2.</i>	<i>Superintendent, in the office of Directorate of Education (Secondary and Higher Secondary), Maharashtra State, Pune. (subject concerned)</i>	<i>Member Secretary</i>

2. Subjects of complaints/appeals coming before the committee:-

1. *Cases of denial of personal recognition of teaching and non-teaching staff.*
2. *Cases of rejected transfers of teaching and non-teaching staff.*
3. *Cases of denial of appointment on compassionate ground.*
4. *Appointment Disputes on Eligibility of Employees.*
5. *Cases of rejection of SHALARTH ID.*
6. *Cases of refusal to up-gradation of part-time posts to full-time higher secondary teachers.*
7. *Cases rejected on up-gradation from Part-Time Librarian to Full-Time Librarian post.*
8. *Cases in which the Accountant (Education) has refused pay revision, pay increment, and pay scale.*
9. *Workload related disputes/complaints.*
10. *Complaints/disputes regarding pension and pension benefits.*
11. *Disputes regarding cancellation of posts.*
12. *Absorption of surplus employees on account of abolition/reduction of post.*
13. *Complaints regarding violation of the rule in making surplus employees due to cancellation/reduction of post.*
14. *Appeals against orders refusing to condone service breaks within the jurisdiction of the Deputy Director of Education.*
15. *Cases against the decision of the Regional Officer that the case cannot be covered under section 9 of the Maharashtra Private School Employees (Conditions of Service) Regulation Act, 1977.*

3. Procedure for submission of complaint/appeal :-

- 1) *Teachers and non-teaching staff and educational institutions to whom the Maharashtra Private Schools Employees (Conditions of Service) Regulations Act, 1977 and Rules, 1981 apply may file complaints/appeals to the Committee.*
- 2) *Teachers and non-teaching staff may submit their grievances in writing to the Grievance Redressal Committee/Appellate Authority themselves by intimation to their respective school managements.*

3) *Complaints/appeals should be submitted in writing along with relevant supporting documents and details of the issue raised.*

4. Hearing Procedure of Grievance/Appeal:-

1) *Complaints/appeals may be filed with the Committee/Appellate Authority against the order passed by the competent authority with effect from 1st January 2024. Also, if the Hon'ble Court has ordered after hearing in an earlier case, it will be binding on the Committee/Appellate Authority to decide the case after hearing it.*

2) *After receiving the decision of the concerned authority the aggrieved party or the respondent may submit a written appeal to the Grievance Redressal Committee/Appellate Authority within 30 days (working days) from receipt of the order. If in case the aggrieved party or the respondent is unable to file the complaint/appeal within 30 days due to unavoidable reasons and after that requests for condoning the delay with prescribed reasons, and after the Committee/Appellate Authority is satisfied that there is reasonable cause for the delay, the Committee/Appellate The authority can condone the delay and file a complaint/appeal up to a maximum of 6 months and decide on it. Also, if the Hon'ble court orders a hearing after six months, the committee/appellate authority will be bound to hear and decide the case.*

3) *The appeal shall clearly state the grounds of the appeal and provide such additional evidence or information as may be necessary in support of the appeal.*

4) *Upon receipt of the complaint, the Committee/Appellate Authority shall conduct a preliminary review to ensure completeness and relevance of the complaint.*

5) *On receipt of the appeal, the Committee/Appellate Authority shall schedule a hearing within a reasonable time.*

6) *The Committee/Authority shall fix the date of hearing within a reasonable time frame and intimate the same to all concerned parties.*

7) Both the parties shall be given an opportunity to present their arguments and to adduce such additional evidence as may be necessary during the hearing.

8. If necessary, the Committee/Appellate Authority may call for additional information or documents from the parties concerned. Papers submitted before the committee after pagination will be considered.

9. During the hearing, both the aggrieved party and the respondent shall be given an opportunity to present their respective cases.

10. The Committee/Appellate Authority may seek clarification from the concerned if necessary and collect relevant information to facilitate the grievance redressal process.

11. If necessary, the Committee/Appellate Authority may adjourn the hearing to collect additional evidence or information.

12. After considering all the relevant information, evidence, and arguments submitted, the Committee/Appellate Authority will take the appropriate decision on the appeal fairly and transparently.

13. The decision taken by the Committee/Appellate Authority shall be communicated in writing by registered letter to all the concerned parties within a specified time limit.

14. The decision of the Committee/Appellate Authority shall be final and binding on all parties.

15. The Grievance Redressal Committee/Appellate Authority shall, after giving reasonable opportunity to both the parties to present their views, hear the complaint following law within 6 months from the date of filing of the complaint and decide on the same with reasons. Government policies, relevant Acts/Notifications, Government Resolutions/Circulars/Orders, and judicial decisions related to the subjects should be taken

into consideration while making such a decision.

16. The Committee shall have the authority to pass necessary interim orders/decisions.

5. FOLLOW-UP AND IMPLEMENTATION:-

1) After the decision, the Committee/Appellate Authority shall monitor the implementation of any remedial action or measures proposed.

2) Both parties shall be notified retroactively in the order of the outcome and any follow-up/implementation steps required.

3) The Committee/Appellate Authority should issue guidelines and instructions as to the procedure for dealing with appeals after receipt.

6. Implementation of Decision:-

1) The Grievance Redressal Committee and all parties involved shall ensure implementation of the decision taken by the appellate body/authority.

2) Proceedings to implement any remedial action or measures directed by the Committee/Appellate Body shall be carried out promptly and effectively.

3) It shall be the responsibility of the concerned competent authority to implement the decision of the Committee/Appellate Authority within 30 days from the date of decision.

4) If the decision of the Committee/Appellate Authority is not implemented by the concerned competent authority within the prescribed time frame, disciplinary action will be taken against them. Also, if it is noticed that the school management is delaying or evading the implementation of the said decision, action will be taken against the school management as per prevailing rules.

7. Revision :

1) The Grievance Redressal Committee/Forum shall periodically review its functioning and effectiveness and procedure itself to ensure continuous improvement.

2) To assess the efficiency of the Grievance Redressal Committee/Appellate Authority and for promotion, the monthly report will be examined through the Commissioner of Education and necessary instructions will be given to the concerned Committee/Appellate Authority from time to time.

8. The Grievance Redressal Committee/Appellate Authority aims to provide a fair and efficient mechanism for redressal of grievances of teachers and non-teaching staff in private government aided schools and the institution. The Chairperson shall be responsible for the functioning of the Grievance Redressal Committee/Appellate Authority, quasi-judicial principles to ensure transparency, accountability and fairness in redressal of grievances received.

9. The Commissioner of Education should immediately ensure the functioning of the said Grievance Redressal Committee and give necessary instructions to the concerned Committee/ Appellate Authority.

10. Earlier Government Resolution / Corrigendum issued regarding the said subject No.: Grievance 2019/ P.No. 75/TNT-4, dated 20 July 2019, dt. 29 August 2019, dt. 01 October 2019 and 07 March 2024, is being superseded by this Government Resolution and pending complaints related to this Government Resolution will be transferred to the reconstituted Grievance Redressal Committee.

11. The said government Resolution has been made available on the website www.maharashtra.gov.in of the Government of Maharashtra and its reference is as 202403271638418721. This government Resolution is being certified by digital signature.

By order and in the name of the Governor of Maharashtra.

Deputy Secretary,
School Education and Sports Department,
Government of Maharashtra

We take on record the Government Resolution dated 27 March 2024, which provides an appellate forum/ Grievance Redressal Committees.

31. The Government Resolution dated 27 March 2024 has established the Appellate authorities Committees at three levels. The Appellate Authorities have the power to look into the grievances regarding various issues arising from the tripartite relationship between the employee, Management and the State Government. The Appellate Authorities have the power to set aside the orders and issue directions to the authorities of the State. The Appellate Authorities also have the power to issue interim directions. Therefore, we are of the opinion that this appellate forum is an efficacious appellate remedy provided to Management and employees before approaching this Court.

32. The learned Advocate General requested that although the Court has the power to send matters relating to orders prior to 1 January 2024 to the Appellate forum, not all matters should be sent, as otherwise, the appellate authorities will not be able to cope with the workload. We note this legitimate concern.

33. The third aspect is regarding the follow-up action to be taken by the State Government after this Court passes the orders in individual cases and the law is declared. The learned Advocate General and the learned Government Pleader also accepted the

position that a large number of contempt notices are issued against the officers of the Education Department of the State for non-compliance more than any of the departments. To note, before this Bench, since January 2024 almost 100 contempt petitions against the Educational Authorities came up for consideration. The learned Advocate General accepted that this was not a healthy situation, and these matters were adjourned at the request of the learned Advocate General to issue necessary instructions.

34. On 28 February 2024, the State Government issued a *Govt. Circular No: Circulation-2022/P.No.57/TNT-1*, regarding the follow-up action to be taken regarding the litigations and orders passed. The Circular is for the issuance of instructions at the field and ministerial level regarding court cases. The Government has noted that A significant number of court cases have been initiated in the courts against the School Education Department covering various issues. Additionally, contempt petitions have been lodged due to failure to involve senior officials in court cases and governmental levels. The frequency of such petitions is on the rise. These matters have led to contempt petitions, with the government sometimes exhibiting reluctance to comply with court judgments, contrary to its stated policy. To address these issues, the department is considering issuing instructions to all concerned at regional and ministerial levels involved in court cases. Instructions were issued at both the regional and departmental levels to ensure timely action in court cases and to prevent delays. At the field level, responsibilities

would include appointing a responsible officer immediately after filing a case, maintaining regular communication with the Assistant Government Pleader, updating the superior office on case status, promptly implementing court decisions, notifying the Government of policy-challenging cases, disposing of cases promptly, avoiding contempt petitions, timely submission of proposals for affidavit approvals, contacting relevant government officers for approvals, and taking action against negligence. At the ministerial department level, tasks would involve periodic review of cases by Legal Advisers/Law Officers, prompt consideration of correspondence from Assistant Government Pleaders, immediate notification to Legal Advisers/Law Officers upon receipt of case proposals, timely submission and processing of review petitions, adherence to court orders and policies within specified time-frames, and strict vigilance against unnecessary contempt petitions.

35. The learned counsel for the Petitioners pointed out that the core issue is that despite the legal position being declared and though the State does not challenge the said decision, no follow-up instructions are given by the Government to implement the position of law. It is always open to the State if a view taken in the judicial pronouncements by the High Court is not acceptable to it then to challenge the same in a higher forum. But if the State accept the legal position as laid down by this Court, then the State Government must issue necessary instructions to its officers to follow the legal position. We do not say it is a general procedure of law, but in

matters governing approval of the Education Department, the non-issuance of such instructions leads to maladies that we have highlighted. The State will have to examine the legal position laid down in the judgments and orders rendered by this Court interpreting or setting aside any Government Resolution or Circular or Instructions concerning the tripartite relationship and if the State Government does not challenge the said decision then, within a reasonable time, the State should issue necessary Government Resolution/ Circular/ Instructions to align with the position of law so declared and accepted.

36. To summarize, the earlier orders reproduced above are self-explanatory, as are the Government Resolutions. Therefore, taking an overall view of the matter and the purpose for which the entire exercise is carried out, we propose to issue certain directions. Our main emphasis is on the refusal of educational authorities to follow the legal position in judicial pronouncements. Almost all authorities of the Education Department of the State are well-versed in their subject, and it cannot be that it is out of ignorance that the judicial pronouncements are side-stepped. Such conduct results in notices for contempt being issued. Either an apology is tendered, or the Court proceeds to pass a deterrent order. Therefore, we make it clear that if any judicial pronouncement is cited before the Educational Authority, which has a bearing on the subject matter, then it shall be the duty of the concerned officer to deal with the same. If the officer intends to distinguish the same as not applicable

to the facts of the case, then reasons can be given, but if it completely ignores the decision placed before it, it cannot be countenanced. Therefore, such conscious refusal to deal with the decisions cited will amount to and would be considered a breach of the directions of the Court. This is necessary because this behaviour is giving rise to unwarranted litigation. Furthermore, the same is also expected from the appellate forum. In fact, the Government Resolution dated 6 February 2012 specifically provides for the same.

37. The constant burden of litigation between teachers, Management, and the State Government harms society in several ways. Firstly, it puts unnecessary strain on school management and teachers, diverting their time and resources from teaching and learning. This affects the quality of education and creates uncertainty within employees and management. Moreover, the financial costs associated with litigation are significant. Litigation drains resources that could otherwise be invested in improving educational facilities.

38. We propose to divide the operative part of the judgment into two parts. In Part -I, we dispose of the individual petitions with direction. In Part -II, we lay down the procedure and mandate to be followed in the matters governing permission and approvals of the education authorities. According to us, the directions in Part- II as regards the procedure to be followed by the Educational Authorities while deciding the proposals in consonance with the Government Resolution dated 6 February 2012, directions to the appellate

authorities/grievance redressal committees and directions to the State Government to issue necessary instructions in consonance with the legal position laid down by this Court and accepted by the State Government would substantially alleviate the hardship suffered by the Management and the employees. It may also reduce the burden on the State exchequer and curtail needless litigations involving the State Authorities. It is to be noted that the directions in Part II of the operative part of the judgment are issued after various hearings with inputs from the Advocates for the parties, the learned Advocate General and the officers of the State.

39. Accordingly, we dispose of the Writ Petitions as under and issue the following directions:

PART-I

i) Writ Petition No 204/2019:

The impugned order dated 15 December 2018 rejecting the proposal for permission to transfer from unaided to aided division is quashed and set aside. The Respondent- Education Officer is directed to process the proposal submitted by the Respondent- Management and pass necessary orders within four weeks, keeping in mind the observations made in Part-II of the judgment.

ii) Writ Petition No.10933/2022:

Respondent No.5- Education Officer (Secondary) Zilla Parishad, Ratnagiri, will decide the proposal submitted by the Respondent- Management as per the following methodology: Upon

scrutiny of the proposal, the Education Officer will inform the Respondent- Management of all objections and shortfalls within four weeks, calling upon the Respondent- Management to submit an explanation. The Education Officer will pass a reasoned order upon written explanation so submitted by the Respondent- Management and the Petitioner, if any, keeping in mind the observations made in Part-II of the judgment. If any judicial pronouncement is cited in the explanation, the Education Officer shall be bound to consider the legal position and deal with the same in order to be passed. Any attempt made not to consider the judicial pronouncements would be viewed seriously.

iii) Writ Petition No.155/2024:

The impugned order dated 22 September 2023 passed by Respondent No.4- Education Officer refusing to grant the proposal submitted by the Management shall be treated as show cause notice. The Respondent- Management is permitted to submit an explanation to the said show cause notice within four weeks. It is also open to the Petitioner to submit a written explanation. The Education Officer will deal with the explanations so submitted and pass a reasoned order, keeping in mind the observations made in Part-II of the judgment. If any judicial pronouncement is cited in the explanation, the Education Officer shall be bound to consider the legal position and deal with the same in order to be passed. Any attempt made not to consider the judicial pronouncements would be

viewed seriously.

iv) Writ Petition No.1182/2024:

The impugned order dated 14 July 2023 rejecting the proposal for permission to transfer from unaided to aided division is quashed and set aside. The Respondent- Deputy Director of Education is directed to process the proposal submitted by the Respondent- Management and pass necessary orders within four weeks, keeping in mind the observations made in Part-II of the judgment.

v) Writ Petition No.1493/2024:

The impugned order dated 24 January 2024 passed by Respondent No.2—Education Officer, Secondary, Zilla Parishad, Alibaug, Raigad, is quashed and set aside. Respondent No.2- Education Officer is directed to process the proposal submitted by the Respondent- Management and pass necessary orders within four weeks, keeping in mind the observations made in Part-II of the judgment.

PART- II

- A. (i) We direct that upon receipt of a proposal seeking approval, the Educational Authority, as per the methodology laid down in the Government Resolution dated 6 February 2012, will communicate the shortfalls/ objections in the proposal submitted by the Management/ Employer as the case

may be calling for explanation giving them reasonable time. Upon receipt of such explanations, the Educational Authority will examine the explanation and pass a reasoned order.

(ii) If any judicial pronouncement is cited regarding the shortfalls/ objections in the explanation, then in the reasoned order, the Educational Authority will specifically address the legal position laid down by the said judicial pronouncement.

(iii) It is emphasized that avoiding referring to and avoiding considering the legal position laid down in the judicial pronouncement would be viewed seriously and may result in action under the contempt jurisdiction of this Court.

(iv) The State Government will issue necessary instructions or government resolutions in furtherance of the Government Resolution dated 6 February 2012, incorporating the aforesaid directions to all Educational Authorities in the State within six weeks. We place the responsibility on the Director of Education, State of Maharashtra, for the issuance of such instructions.

- B. (i) The State Government, within six weeks, will issue necessary instructions to the Educational Authorities whose orders are appealable as per the Government Resolution dated

27 March 2024 to incorporate in the order that the aggrieved party has the remedy of appeal to the appellate forum/ grievance committee constituted under the Government Resolution dated 27 March 2024.

(ii) The State Government shall give adequate publicity to the constitution of the appellate forum/ grievance committees through various modes as may be available.

(iii) The State Government will issue necessary directions to the appellate forum/ grievance committees within two weeks to finalize the internal procedure as contemplated under the Government Resolution dated 27 March 2024 within a period of six weeks thereafter.

(iv) We place emphasis on the Clause in the Government Resolution dated 27 March 2024 that the appellate forum/ Grievance Committees will consider not only government policies, resolutions, circulars, and orders but also judicial decisions relating to the subject.

C. (i) We take note of the Government Resolution dated 28 February 2024 laying down the procedure for complying with the Court orders. The Educational Authorities will scrupulously follow the mandatory directions issued by the

State Government regarding compliance with the Court orders.

(ii) It is directed that if any legal position concerning the tripartite relationship between the employees, Management and the State Government in respect of the subject matter is laid down by this Court and if the said legal position is accepted by the State Government, then within a reasonable time the State Government shall issue circular/notification/government resolution instructing the Educational Authorities in consonance with the legal position so laid down.

D. The above timelines will come into effect from the date the order is uploaded.

40. Rule in all the petitions is made absolute in the above terms. Writ petitions are disposed of.

41. We record our appreciation for the assistance rendered and suggestions made by the learned Advocate General, the Government Pleaders and the Counsel appearing for the parties.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)