

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 16547 OF 2023

Nayeem Akhtar Gouse Mohiuddin Sherpyade

Age: 28 years, Occupation: Service,

R/at Anjanwel, District Ratnagiri

... Petitioner

versus

1. The State of Maharashtra
Through Principal Secretary
Department of School Education
Having Office at Mantralaya, Mumbai

2. The Deputy Director of Education,
Kolhapur Division, Kolhapur

3. The Education Officer (Secondary)
Zilla Parishad, Ratnagiri,
District Ratnagiri

4. United Education Society,
Anjanwel, Taluka Guhagar,
District Ratnagiri) Through
President/ Secretary

5. New Bharat Urdu High School
Anjanwel, Taluka Guhagar,
District Ratnagiri,
Through its Head Master

... Respondents

....

Mr.Chetan Patil i/b. Mr.Mandar G.Bagkar for the Petitioner.

Ms. Nisha Mehra, AGP for Respondent Nos. 1 to 3-State.

Mr.Bhushan Jadhav for Respondent Nos. 4 and 5.

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**CORAM : RAVINDRA V. GHUGE &
M.M. SATHAYE, JJ.**

DATE : 7TH OCTOBER 2024

ORAL JUDGMENT (*Per: Ravindra V. Ghuge, J.*)

1. Rule. Rule made returnable forthwith and heard finally by the consent of parties.

2. The Petitioner has put forth prayer clauses (a) and (b) as under :

*“(a) That this Hon’ble Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing and setting aside the impugned Order dated 26-09-2023 issued by Respondent No.3 herein (being **Exhibit “F”** hereto) and further be pleased to direct Respondent No.3 to grant approval to the appointment of Petitioner on the post of Shikshan Sevak in Respondent No.5 School with effect from 01-10-2022.*

(b) That this Hon’ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction thereby directing Respondent No. 2 to enter the name of the Petitioner in the Shalarth Pranali and issue Shalarth Identity to Petitioner and further direct the Respondents to release grant in aid for the payment of monthly honorarium/ salary to the Petitioner from the date of his appointment i.e. 01-10-2022 with all consequential benefits”.

3. Having considered the strenuous submissions of the learned

Advocates for the respective sides and having perused the affidavit in reply, dated 17th January, 2024 filed by Smt.Survarna Shivaji Sawant, Education Officer (Secondary), Zilla Parishad, Ratnagiri, we find that impugned order dated 26th September, 2023 refusing to grant approval to the Petitioner's appointment, is primarily supported by the contents of the affidavit in reply, more specifically paragraphs 2 and 3.

4. The employer of the Petitioner published an advertisement in daily Ratnagiri Times, on 22nd September, 2022. The interviews of the Applicant candidates were held on 28th September, 2022. The decision of the selection committee was accepted by the Management and the Petitioner was appointed on 1st October, 2022 as a Shikshan Sevak. A Shikshan Sevak has to put in three years of service before becoming an Assistant Teacher. By the impugned order dated 26th September, 2023, the Education Officer has taken exception on the ground that the Government Resolution dated 6th February, 2012, with regard to the manner of the recruitment process as prescribed, was not followed. We find this reason to be as vague as it is.

5. There are no details set out, save and except, a reference to the Government Resolution dated 6th February, 2012. Second ground supported by the learned AGP on the basis of the affidavit in reply, is that

the circular was issued by the Education Department on 5th May, 2020 declaring that recruitment should not be conducted until further orders. We are informed by the learned AGP that this was in view of the Covid pandemic.

6. There is no dispute that the Petitioner is fully qualified. He has a Teachers Eligibility Test (TET) qualification. He had applied for the post of a Shikshan Sevak for mathematics, in tune with the advertisement that was published. Affidavit in reply filed by the Education Officer indicates that Government Resolution dated 6th February, 2012 expects a gap of fifteen days between the date of advertisement and the date of interview.

7. This is an issue which has to be followed by all the Managements. In any case, the interviews having been held on 28th September, 2022 would not strike at the root of the selection of the Petitioner. This could have been a lapse on the part of the Management. The Management can be warned that henceforth, in whichever selection process undertaken by the Management, it shall ensure that a gap between the date of publishing of the advertisement and the date of the interview, should be at least fifteen days. This would not make the Petitioner's selection bogus and illegal. The Education Officer has

canvassed that the Government Resolution dated 10th June, 2022 would require the Management to publish it's advertisement in daily 'Prahaar' and daily 'Ratnagiri Times'.

8. In our view, the advertisement in the case in hand, was published in Ratnagiri Times, which is said to have a large circulation in District Ratnagiri. Non-publication of the advertisement in Daily Prahaar, would not convince us to set aside the selection of the Petitioner, who is otherwise qualified and there is no issue with regard to the requisites that he possess.

9. The Education Officer, though has been silent in the impugned order, has taken a ground in the affidavit in reply, that the Government Resolution dated 28th August, 2015, more specifically, clause 2.3.2 requires a group of subjects to be formed, for the purpose of selecting candidates for imparting education in the 9th and 10th standard. The first group is as regards languages, the second is as regards Mathematics and Science subjects and the third pertains to Social Science.

10. In this backdrop, we have perused the advertisement which clearly indicates that advertisement was for the group of Mathematics

and Science. In this view of the matter, the said ground would also not be sustainable. The statement made in paragraph 5 of the affidavit in reply, by the Education Officer, that the vacancy was only for Social Science group, is also not borne out from the impugned order. Nevertheless the learned Advocate for the Petitioner has placed a copy of Annexure -A with title अल्पसंख्यांक संस्थेमध्ये रिक्त अल्पसंख्यांक पदांची माहिती (अनुदानित) and which is signed by the Headmaster (three pages). The said Annexure -A is taken on record and marked 'X' for identification. Insofar as the educational institution at issue is concerned, the vacancy is clearly shown for the subject of Mathematics.

11. In view of above, **this Writ Petition is allowed in terms of prayers clauses (a) and (b).**

12. Rule is made absolute in the above terms.

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)