

Petitioner No.1 is the Management which runs a school at Pune.

3. It is the case of the Petitioners that there arose a vacancy for a regular post in the year 2012. Petitioner No.1 made an application to Respondent No.3/Education Officer on 16 July 2012, 7 August 2012, 9 August 2012, 13 August 2012, 21 January 2013, 26 May 2014, 1 September 2016 and 25 April 2017. There was no response from the office of the Education Officer, and left with no option, Petitioner No.1 decided to advertise for the post in the newspaper. Accordingly, an advertisement was given on 1 June 2014 in a widely circulated daily newspaper.

4. Petitioner No.2, amongst several others, applied pursuant to the advertisement. Petitioner No.2 was selected and was appointed on 19 June 2014. After the completion of the requisite probation period, the approval for the Petitioner's appointment was submitted to the Education Officer on 15 December 2016. Since there was no decision taken on the approval, Petitioner No. 1 filed a Writ Petition No. 1466 of 2022, where this Court disposed of the Writ Petition directing Respondent No.3-Education Officer to decide the same in a time bound manner.

5. Thereafter, the Education Officer – Smt. Sunanda Wakhare rejected the proposal submitted by Petitioner No.1 primarily on the ground that no approval was taken prior to appointing Petitioner

No.2 by issuing an advertisement as required under Government Resolution dated 24 August 2018. Three aspects were not fulfilled i.e. the post is not of English, Mathematics and Science subjects, it is not a reserved post, and the advertisement was not prior to 2 May 2012.

6. The Petitioners then filed Writ Petition No. 6826 of 2022. In this petition, an affidavit-in-reply was filed by the Education Officer Smt. Sunanda Wakhare reiterated the grounds taken in the impugned order. Writ Petition No. 6826 of 2022 came up before the Division Bench and the following order came to be passed.

"1. The proposal seeking approval to the appointment of the petitioner No.2 as 'Shikshan Sevak' is rejected.

2. The proposal is rejected basically on the ground that recruitment process was prior to 2nd May 2012, the appointment of petitioner No.2 was not on reserved post and that the petitioner No.2 is not appointed to teach Maths, English and Science subjects. The reliance is placed on Government Resolution dated 24" August 2018.

3. The petitioners relied upon the application given by the Management on 16th July 2012 to fill in the post. Thereafter, the advertisement was issued on or about 1st June 2014. The petitioner No.2 was appointed thereafter.

4. In light of that, the procedure under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 appears to have been followed. The Education Officer did not pass any order on application of the Management seeking permission to fill in the post for almost two years and thereafter the

advertisement is issued.

5. The Education Officer does not state in the order that the post of general category was not available.

6. *In light of the above, the impugned order is quashed and set aside. The Education Officer shall decide the proposal seeking approval to the appointment of the petitioner No.2 afresh preferably within four months from today. It shall not reject the proposal on the ground on which the impugned order is passed.*

7. *The writ petition is accordingly disposed of. No costs.”*

7. It is clear from this order that the ground that ‘prior permission before the advertisement and appointment was not taken by the Petitioner’ was examined by this Court and held in favour of the Petitioner. The Education Officer was directed to decide the proposal afresh, and it was categorically stated that it will not be rejected on the ground on which the impugned order was passed. The order dated 27 September 2022 reproduced above clearly admits no other interpretation.

8. Yet, on 9 January 2023, the Education Officer – Smt. Sunanda Wakhare rejected the Petitioners’ proposal for approval on the ground that before filling the post and issuing the advertisement, no permission was taken. There was no other ground given in the impugned order.

9. Apart from the general legal position, the order was passed in the petition filed by the Petitioner to which this same Education Officer – Smt. Sunanda Wakhare was a party and had filed reply affidavit, and was bound by this order. Yet this Education Officer has rejected the proposal on the ground that permission before advertisement was not taken. Having noted this fact, we were of the opinion that the action of the Education Officer is contemptuous and therefore, on 8 February 2024 a notice was issued to this Education Officer – Smt. Sunanda Wakhare. Pursuant to the notice, the said Education Officer, who is now working as Administrative Officer at, Primary Education Department, Pune Municipal Corporation remained present on 29 February 2024. Having recorded that *prima facie* case is made out, we had issued notice to Smt. Sunanda Wakhare under the Rules framed under the Contempt of Courts Act, 1971 and under Article 215 of the Constitution of India as to why action should not be taken.

10. Pursuant thereto, the Contemnor has filed a reply affidavit. We have gone through the reply affidavit. Apart from the usual averments regarding apology, the reply is filed to justify the conduct. It is stated in the reply that the impugned order is not passed on the same ground, nor rejected on flimsy ground. In paragraph 5, the contemnor seems to convey that the Education Officer is bound by Government Resolution in respect of individual approvals, and if the appointment contradicted the clause of the Resolution, it can be rejected. It is stated that the earlier rejection is not on the ground

that prior permission for advertisement was not taken, but it was stated that the advertisement was not given before 2 May 2012 because the recruitment process was prior to the Government Resolution. It is sought to be stated that it is not on the same ground and both rejections are based on different grounds. There is no reference to the fact that this ground was taken earlier and was rejected by this Court, and it was specifically directed that it shall not be taken again. According to us, the Education Officer is trying to make an artificial distinction between two orders dated 19 April 2022 and 9 January 2023, completely glossing over the observations of this Court in the order dated 27 September 2023.

11. Apart from the specific Government Resolution, the Division Bench observed that while appointing Petitioner No.2, the procedure under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 was followed. It was observed that the Management made applications on which no orders were passed for 2 years, and it was not stated that there was no general category candidate available. This observation was in furtherance of the legal position which the Petitioner had relied upon, that if, despite reasonable efforts made by the Management, there is no response, then the Management is not expected to wait indefinitely. The order dated 27 September 2022 was not challenged further. The reply filed by the Education Officer – Smt. Sunanda Wakhare was before the Court when the order was passed on 27 September 2022. The Education Officer was fully aware of the

purport of the order. Yet again, on the ground of not taking permission, the present impugned order came to be passed, which is contrary to the observation of this Court in the order dated 27 September 2022. In the reply, the said Education Officer has not adverted to the observations made by this Court in paragraphs 3, 4 and 5 of this order. It is not argued and cannot be argued that the Education officer was not bound with the observation of this Court regarding the aspect of advertisement.

12. It is therefore clear to us, that the Education Officer has committed contempt of the order dated 27 September 2022. We may note here that there are a large number of contempt petitions filed against the Education Officers of the State of Maharashtra. So much so, the State Government has taken cognizance of the recalcitrant action of the education officers and has issued a Government Resolution dated 28 February 2024, taking cognizance of the said fact and issuing instruction to the Education Officers to take necessary steps to avoid action under contempt jurisdiction. Yet we find that the orders of this Court are being breached.

13. As regards the merits of the impugned order, it is on record that Petitioner No.1 has sent as many as eight communications to the Education Officer before proceeding to issue the advertisement and thereupon appointment of the Petitioner. Nowhere in the reply affidavit or the impugned order, it is stated that the Petitioner is ineligible to hold the post. In fact, the Division Bench, in the order

dated 27 September 2022, has observed that the procedure under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 was followed. In light thereof, the Petitioners are entitled to succeed, as no other ground is taken in the present impugned order dated 9 January 2023.

14. In these circumstances, the impugned order dated 9 January 2023, is quashed and set aside. Respondent No.3/Education Officer is accordingly directed to approve the Petitioner's proposal dated 15 December 2016 and also grant all consequential benefits and orders.

15. Having held the Education Officer – Smt. Sunanda Wakhare is guilty of contempt, a question would arise regarding the punishment to be imposed. Considering the age of the contemnor, we refrain from imposing the punishment of imprisonment. However, considering the gross conduct of the contemnor, according to us, suitable action needs to be taken as a deterrent. Accordingly, we direct that the contemnor Smt. Sunanda Wakhare to deposit an amount of Rs.1,00,000/- (Rupees One Lac Only) in the Registry of this Court by 10 June 2024. Considering the harassment meted out to the Petitioner, we permit the Petitioner to withdraw an amount of Rs.50,000/- and the remaining Rs.50,000/- shall be transferred to the Maharashtra State Legal Services Authority.

16. A copy of this order be sent to the Secretary, Education Department to make necessary note with respect the service record.

17. Writ petition is disposed of in the above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)