

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10981 OF 2024

Pankaj Prakash Chikurdekar ...Petitioner
Versus
The State of Maharashtra and Ors. ...Respondents

WITH
WRIT PETITION NO. 10983 OF 2024

Shri. Sourabh Sharad Desai ...Petitioner
Versus
The State of Maharashtra and Ors. ...Respondents

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Mr. Prashant Bhavake for the Petitioners.
Mr. V.M. Mali, AGP for Respondent Nos. 1 to 4/State in WP
10981/2024.
Mr. S.B. Kalel, AGP for Respondent Nos. 1 to 4/State in WP
10983/2024.
Mr. Utkarsh Desai for Respondent Nos. 6 and 7 in both petitions.

**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.
DATE : 6 AUGUST 2024**

P.C. :

. Heard learned counsel for the Petitioners, learned AGP for Respondent Nos 1 to 5 and learned counsel for the Respondent Nos. 6 and 7/Management which is common in both petitions. The learned counsel for the Management states that it is supporting the Petitioners.

2. The Petitioner in Writ Petition No. 10981 of 2024 is challenging the order dated 29 November 2023 passed by Respondent No.5/ Education Officer (Secondary) Zilla Parishad, Kolhapur by which approval to his appointment as 'Junior Clerk' is rejected.

3. The Petitioner in Writ Petition No. 10983 of 2024 is challenging the order dated 29 November 2023 passed by Respondent No.5/ Education Officer (Secondary) Zilla Parishad, Kolhapur by which approval to his appointment as 'Laboratory Assistant' is rejected.

4. Learned counsel for the Petitioners pointed out that both the impugned orders are identically worded. Perusal of the impugned orders would show that the approvals are rejected for four reasons. First reason is based on not taking permission before filling the post and second reason is about not submitting copy of advertisement. We note that these reasons are factual in nature and since the Respondent/ Education Officer has given these reasons without any opportunity or show cause notice to the Petitioner employee or Respondent/ Education Institute, the factual inquiry cannot be undertaken first time in this Court.

5. The third reason is based on embargo upon new staffing pattern of non-teaching staff. It relies on Government Resolutions

(GRs) dated 28 January 2019 and 7 March 2019 and other GRs which were applicable for limited time. Learned counsel for the Petitioners has pointed out that by order dated 6 February 2024 passed in Writ Petition 5058 of 2021 along with Writ Petition No. 8007 of 2021, the challenge given to said GRs by the Associations of non teaching staffing including laboratory Assistants, has been finally disposed of and there is no embargo for considering the approvals on merits. Learned AGP has fairly accepted this position, but pointed out that the Petitioners' proposals have not been considered on merits so far as the applicable staffing pattern at the relevant time is concerned.

6. The fourth and last reason in impugned order is based on communication dated 5 May 2020 which was issued pursuant to GR dated 4 May 2020. It is admitted position before us that the said GR dated 4 May 2020 was issued due to Covid-19 Pandemic situation, which no longer exists and the ban thereunder is already lifted. In that view of the matter, the fourth reason in the impugned order does not survive and the same is set aside.

7. In light thereof, we dispose of this petition by directing that the impugned orders in both the petitions will be treated as notices to Respondent/ Education Institute about the objections/reasons stated therein except the reason of ban under the communication dated 5 May 2020. The proposals of the Petitioners are restored.

The Respondent/ Education Officer is directed to communicate to the Respondent Education Institute, if there are any other grounds/objections about the approvals being sought within a period of 3 weeks from today.

8. The Respondent Education Institute shall thereafter submit their explanation along with supporting GRs/case laws etc. if relied upon.

9. The Respondent Education Officer shall thereafter within a period of 8 weeks, subject to other time bound directions, will decide the Petitioners' proposals in accordance with law, by reasoned order keeping in mind the directions issued by this Court in Part II Clause A(i) to (iii) of the Judgment of *Nitin B. Tadge Vs. State of Maharashtra*¹

10. We have not expressed any opinion on the merits on the Petitioners' proposals and they shall be decided in accordance with law. If the Respondent Education Officer decides to grant approvals as sought, necessary consequential orders/ benefits will follow.

11. Writ Petitions are disposed of in the aforesaid terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)

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