

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

WRIT PETITION NO. 17258 OF 2024

1. Mrs.Poonam Ketan Vishe
[Ms. Poonam Suresh Patil],
Aged 37 Yrs, Occ. Service,
R/o. 264, Padma Kunj,
Ganesh Nagar, Murbad,
Dist. Thane.
 2. Murbad Taluka Shiksha Sanstha,
Murbad, Tal. Murbad,
Dist.Thane, Through its President,
Secretary
- ... Petitioners

versus

1. The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai- 400 032.
 2. The Deputy Director of Education,
Mumbai Region, Mumbai.
 3. The Education Officer (Secondary)
Zilla Parishad, Thane
- ... Respondents

AND

WRIT PETITION NO. 17259 OF 2024

1. Mahendra Sudhakar Bedre,
Aged 32 Yrs, Occ. Service,
R/at Tondalikar Nagar,
Murbad, Dist. Thane.
 2. Murbad Taluka Shiksha Sanstha,
Murbad, Tal. Murbad,
Dist.Thane, Through its President,
Secretary
- ... Petitioners

versus

1. The State of Maharashtra,
Through the Secretary,
School Education Department,
Mantralaya, Mumbai- 400 032.
2. The Deputy Director of Education,
Mumbai Region, Mumbai.
3. The Education Officer (Secondary)
Zilla Parishad, Thane ... Respondents

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Mr.Narendra V. Bandiwadekar, Senior Advocate with Mr.Vinayak Kumbhar, Mr.Rajendra B. Khaire and Mr.Aniket S.Phapale i/b. Ms. Ashwini N. Bandiwadekar for the Petitioners in both the Petitions.

Mr.P.P.Kakade, Addl. GP with Ms.N.M.Mehra, AGP for the Respondent -State in WP No. 17258 of 2024.

Mr.P.P.Kakade, Addl.GP with Ms.Reena Salunkhe, AGP for the Respondent -State in WP No. 17259 of 2024.

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CORAM : RAVINDRA V. GHUGE

&

ASHWIN D. BHOBE, JJ.

DATE : 3RD DECEMBER, 2024

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

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

2. We have heard the learned Senior Advocate for the Petitioners and the learned Addl.GP on behalf of the Respondent -State.

3. The appointment of Petitioner No.1 was pursuant to an advertisement that was published in Daily Lokmat, Thane Edition dated 14th June, 2012. The Management sought approval to her appointment on the unaided establishment. The approval was granted, on 24th April, 2015. She came to be transferred to the aided establishment as a full time teacher, on 1st July, 2021. The Headmaster submitted a proposal for seeking approval on 5th March, 2022. Respondent No. 3 identified six deficiencies in the proposal vide order dated 5th May, 2022. The Headmaster is believed to have cured the deficiencies by submitting the relevant documents on 20th May, 2022. Respondent No.3 passed the impugned order dated 16th December, 2022 and refused to grant approval to the transfer.

4. Vide the impugned order, fifteen deficiencies have been pointed out. The grievance of the Petitioners is that earlier there were six deficiencies when the proposal was rejected on 5th May, 2022. After the deficiencies were cured, the proposal is once again rejected vide order dated 16th December, 2022 listing out fifteen deficiencies, out of

which one pertains to Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (wrongly quoted as 41-1 in the impugned order) having been stayed by a Circular dated 1st December, 2022. Within five days of passing of the impugned order, the said Circular was stayed by this Court at the Nagpur Bench, on 21st December, 2022 and which was subsequently quashed and set aside vide judgment dated 21st July, 2023 delivered in Writ Petition No. 8215 of 2022 (*Friends Social Circle, Akola and others vs. State of Maharashtra and others*).

5. The learned Senior Advocate for the Petitioners has further canvassed that Petitioner No.2 Management, was not heard when the impugned order was passed. He draws our attention to our earlier orders wherein we have cautioned the Education Officers and the various limbs of the Education Department, that if they raised queries or pointed out deficiencies in the proposals of the Management, they should be granting an opportunity to the Management to cure the deficiencies. What is being done by way of a common practice and which has assumed the character of a habit, is that the Education Officers lists out deficiencies and while pointing them out to the Management, the entire proposal is rejected, rather than calling upon the Management to cure the

deficiencies, which we have deprecated in many words in many orders. Insofar as the ground of a ban due to the Covid pandemic vide the Government Resolution dated 4th May, 2020, the same has been lifted by the Government by issuance of various GRs, subsequently.

6. In view of the above, **this Writ Petition is partly allowed.**

7. The impugned order dated 16th December, 2022 is quashed and set aside and the proposal of Petitioner No.2 Management, dated 5th March, 2022 is restored to the file of the Education Officer (Secondary). In order to avoid wastage of time, we direct that the impugned order, which is set aside, be treated as a notice to the Management pointing out the deficiencies.

8. We clarify that the grounds at Serial Nos. 13 and 15 of the impugned order, would not be available to the Education Officer for rejecting the proposal. The Management shall ensure that the deficiencies are cured within a period of 45 days from today. If required, the Management can tender its written submissions to the Education Officer, within the same period. The Education Officer shall deal with the proposal on its own merits by conducting a meticulous verification exercise, especially in the light of Rule 41A, and thereafter pass a reasoned order.

9. Needless to state, if surplus teachers are exhausted or are not available, the proposal transferring Petitioner No.1 from the unaided establishment to the partially aided or fully aided establishment would be considered as per the Rules. Let this exercise be completed within a period of 45 days from the date on which the Management communicates to the Education Officer that the deficiencies have been cured.

10. In order to prevent further litigation, we are making a mention of the fact that if approval is granted to the transfer of Petitioner No.1, to the partially or fully aided establishment, the Management shall tender the proposal for allocation of the Shalarth ID and further steps in accordance with the procedure laid down in law, shall be initiated by the concerned Officer, expeditiously.

11. With regard to Writ Petition No. 17259 of 2024, the impugned order dated 16th December, 2022 is practically identical. Petitioner No.2 is the same Management. As such, for the reasons set out in the foregoing paragraphs with reference to Writ Petition No. 17258 of 2024, the same timeline and the stages would also apply to this case. Consequentially, **this Writ Petition is partly allowed.** The impugned

order dated 16th December, 2022 is quashed and set aside and the same shall be treated as a notice to Petitioner No.2- Management.

12. Rule is made partly absolute in the above terms, in both the cases.

(ASHWIN D. BHOBE,J.)

(RAVINDRA V. GHUGE, J.)