



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3018 OF 2022

Balaji s/o Shivram Kadam ... **PETITIONER**

VERSUS

The State of Maharashtra & ors. ... **RESPONDENTS**

.....
Mr. V.D. Gunale, Advocate for petitioner
Mrs. K.B. Patil Bharaswadkar, A.G.P. for State
.....

**CORAM : R.G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.**

DATE : 29th SEPTEMBER, 2025

ORDER :

The petitioner was serving as a Junior Clerk. He has been promoted as a Senior Clerk with the very management. The respondent Education Officer refused to grant approval to the promotion on the ground of there being surplus staff available and the same has not been accommodated.

2. The learned A.G.P. reiterates the averments made in the affidavits-in-reply. We do not propose to advert thereto

since the statutory provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (the Act for short) excludes the application thereof to the case of a promotion. To be specific, we reproduce the Section and provisions thereto below :

“5.(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy :

Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.

(2) Every person appointed to fill a permanent vacancy except Assistant Teacher (Probationary) shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed :

Provided that, every person appointed as Assistant Teacher (Probationary)] shall be on probation for a period of three years.

(2A) Subject to the provisions of sub-sections (3) and (4), Assistant Teacher (Probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice or salary or honorarium of one month in lieu of notice.

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under the proviso to sub-section (1).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person."

3. Close reading of the aforesaid provisions would indicate that the mandate of Section 5 of the Act and the relevant rules thereunder has no application to a case of filling up a post by promotion. In the case in hand, the petitioner was

promoted from the post of Junior Clerk to Senior Clerk and, therefore, he does not get covered by the dragnet of Section 5 of the Act. The order impugned herein is, therefore, liable to be set aside.

4. In the result, the Writ Petition is allowed in terms of prayer clauses (C) and (D). The impugned order dated 14/2/2022, issued by the respondent No.2 is hereby set aside. The respondent No.2 Education Officer is directed to grant approval to the promotion of the petitioner from the post of Junior Clerk to the post of Senior Clerk as per the promotion order dated 1/4/2021 and in pursuance of the proposal submitted by the respondent no.4 school, dated 7/5/2021 and release his salary grants including arrears.

(ABASAHEB D. SHINDE, J.)

(R.G. AVACHAT, J.)

FMPathan/-