



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

920 WRIT PETITION NO. 6931 OF 2022

1. Ashok Education Society,
Shrirampur, Tq. Shrirampur,
Dist. Ahmednagar
Through its Secretary.

Age:-51 years, Occ. Service,

2. Gorakshnath Secondary School,
Khokar, Tq. Shrirampur,
Dist. Ahmednagar
Through its Headmaster

Age:-52 years, Occ. Service,

... Petitioners

VERSUS

1. Kiran s/o Kacheswar More,
Age:-34 years, Occ. Nil,
R/o Ram Sankul Society,
Ram Mandir Road, Bhagur,
Tq. & Dist. Nashik

2. The Education Officer, (Secondary)
Zilla Parishad, Ahmednagar

... Respondents

...

Mr. R. R. Karpe, Advocate for the Petitioner.

Mr. N. D. Raje, AGP for Respondents/State.

Mr. S. T. Shelke, Advocate for Respondent No.1.

...

CORAM : ROHIT W. JOSHI, J.

DATED : 24th JUNE 2025

JUDGEMENT :-

1. Respondent No.1 was appointed as a 'Shikshan Sevak' vide

appointment dated 06.10.2012 in a school run by petitioner no.1-Society. The appointment was as a 'Shikshan Sevak' for a period of three years commencing from 01.10.2012 till 09.10.2015. Although, it is stated in Clause-9 of the appointment order that the appointment is on temporary basis. It needs to be noted that the appointment is made on the post of 'Shikshan Sevak' which is an appointment akin to appointment on probation for a period of three years. It is also stated that the appointment of respondent no.1 was subject to approval by the Education Officer, Secondary. The Education Officer, Secondary has rejected the proposal for approval on 26.08.2014 on the ground that at the relevant time recruitment in Schools was banned. The services of respondent no.1 according to the petitioners were discontinued immediately after 26.08.2014 i.e. date on which the Education Officer refused to grant approval to the appointment of respondent no.1. Respondent no.1 filed appeal before the School Tribunal contending that his services were terminated by otherwise termination from 02.12.2017. He contends that he was not allowed to sign muster roll from 02.12.2017 and onwards.

2. In this backdrop, respondent no.1 filed appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of

Service) Regulation Act, 1977 before the learned Presiding Officer, School Tribunal, Solapur. On being served with the notice issued by the Tribunal the petitioners appeared and filed their written statement. Apart from this, an application was filed raising issue of limitation contending that the services of respondent no.1 were discontinued in August 2014, in view of rejection of his approval.

3. The learned School Tribunal has allowed the appeal setting aside the otherwise termination w.e.f. 02.12.2017 and directing reinstatement of respondent no.1 in service as 'Assistant Teacher' with continuity and full backwages. The petitioners have assailed this order dated 10.03.2022 passed by the learned School Tribunal in the present petition.

4. The contention of Mr.Karpe, the learned Counsel for the petitioners is that the appointment of respondent no.1 was purely on temporary basis and that it was subject to grant of approval by the Education Officer. He further contends that the appointment is not made by following procedure prescribed as contemplated under Section 5(2) of the Act. Lastly he submits that the appeal was clearly barred by limitation and that the learned Tribunal has not dealt with the aspect of limitation in a proper perspective.

5. The learned counsel for the respondents contends that the order passed by the Education Officer, rejecting approval was not served on the petitioner. He further contends that even the intimation dated 08.12.2014 is not served on him as is rightly observed by the learned trial Court. He submits that the appointment was made after following the prescribed procedure.

6. As regards the nature of appointment it is clear on perusal of the appointment order that the appointment of respondent no.1 was made as 'Shikshan Sevak' for a period of three years. Since the appointment is not on the post of 'Assistant Teacher' but as 'Shikshan Sevak', it is referred to as the temporary appointment. The appointment is infact akin to an appointment on a probation and once the period of three years service as 'Shikshan Sevak' is completed respondent no.1 was entitled to work on the post of 'Assistant Teacher'. It is not the case of the petitioners that the appointment was against any leave vacancy or casual vacancy.

7. It is also apparent from resolution dated 13.09.2012 passed by the managing committee of petitioner no.1 that appointment of respondent no.1 was on a clear vacancy which was reserved for

candidates belonging to scheduled caste. The contention that the appointment is not against a clear vacancy is therefore liable to be rejected.

8. As regards the approval, the rejection is only on the ground that at the relevant time there was ban on recruitment in schools. This cannot be a valid ground for rejection and merely because of the proposal for approval is rejected on that ground it cannot be stated that the appointment of the petitioner is not by following the prescribed procedure.

9. It is also well settled that rejection of approval itself is not sufficient to hold that the appointment is not legal. However findings on the point of procedure followed while making the appointment are also not recorded after properly considering rival contentions and adverting to material on record.

10. The last contention raised by the learned Counsel for the petitioner is that the appeal was barred by limitation. The learned Counsel for the petitioner has drawn attention to the muster roll of the school in which signatures of respondent no.1 appeared till 08.12.2014. The appeal is filed on 15.12.2017. The learned Tribunal

has observed that the petitioners have failed to establish that the communication dated 08.12.2014 which according to the petitioners is an intimation of termination of service to respondent no.1 was served on him is not proved by the petitioners. Merely on this ground, it is held that the appeal is filed within the limitation.

11. However, perusal of the judgment does not indicate that the learned Tribunal has referred to any material which will demonstrate that respondent no.1 continued in employment till 01.12.2017 as contended by him. The finding by the learned Tribunal in this regard is clearly unsustainable. It was necessary for the appellant to establish that the cause of action for filing appeal arose within a period of 30 days from the date of filing of appeal. Merely by recording finding that letter dated 08.12.2014 was not served on the appellant, the Tribunal could not have held that the appeal was filed within limitation.

12. In view of the aforesaid, the present petition needs to be partly allowed in the following terms :-

- (i) The judgment and order dated 10.03.2022 passed by the learned presiding officer, School Tribunal, Solapur is quashed and set aside.

(ii) The matter is remitted back to the learned Tribunal to decide the issue of limitation and legality of appointment afresh after affording opportunity of hearing to both the parties.

(iii) The parties shall appear before the Tribunal on 15.07.2025. Parties to note that separate notice will not be issued by the learned Tribunal.

(iv) The learned Tribunal is directed to decide the appeal on merits on or before 30.11.2025.

13. Writ petition is disposed of accordingly.

[ROHIT W. JOSHI, J.]