



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

WRIT PETITION NO. 351 OF 2022

Vikramaditya S/o Ram More,
Age : 33 Years, Occu. : Service,
R/o At Post Vijora, Tq. Washi,
District Osmanabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
3. Shri Lokmanya Shikshan Sanstha,
Vijora, Tq. Washi, Dist. Osmanabad,
Through its Administrator,
Shri Ram Dhere,
Age : Major, Occu. : Service,
(Inspector, Office of Assistant
Charity Commissioner, Osmanabad),
R/o C/o Office of Assistant
Charity Commissioner, Osmanabad.
4. Vidya Vikas Vidyalaya, Vijora,
Tq. Washi, District Osmanabad,
Through its Head Master.
5. Shri Gajana Susar,
Age : Major, Occu. : Service,
R/o C/o the office of Education Officer
(Secondary), Zilla Parishad,
Osmanabad, Dist. Osmanabad. .. Respondents

Shri S. S. Jadhavar, Advocate for the Petitioner.
Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 1 to 3 & 5.
Shri B. A. Dhengle, Advocate for the Respondent No. 4.

**WITH
CIVIL APPLICATION NO. 8115 OF 2024
IN
WRIT PETITION NO. 351 OF 2022**

Rajendra Bhanudas Khose and another .. Applicants
Versus
Vikramaditya Ram More and others .. Respondents

Shri Vikram S. Kadam, Advocate for the Applicants.
Shri S. S. Jadhavar, Advocate for the Respondent No. 1.
Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 2 to 4 and 6.
Shri B. A. Dhengle, Advocate for the Respondent No. 5.

**WITH
CIVIL APPLICATION NO. 8116 OF 2024
IN
WRIT PETITION NO. 351 OF 2022**

Anil Jagannath Khose .. Applicant
Versus
Vikramaditya Ram More and others .. Respondents

Shri R. C. Brahmanekar, Advocate h/f Shri N. L. Jadhav, Advocate for the Applicant.
Shri S. S. Jadhavar, Advocate for the Respondent No. 1.
Shri P. S. Patil, Addl.G.P. for the Respondent Nos. 2 to 4 and 6.
Shri B. A. Dhengle, Advocate for the Respondent No. 5.

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

CLOSED FOR THE JUDGMENT ON : 29.01.2025
JUDGMENT PRONOUNCED ON : 04.02.2025

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. With consent heard both sides finally at the admission stage.

2. The petitioner is aggrieved by order dated 24.11.2021 passed by the respondent No. 2/Education Officer (Secondary), Zilla Parishad, Osmanabad turning down the proposal of the petitioner seeking approval to his appointment. He is also seeking direction for granting approval to his appointment as Shikshan Sevak with effect from 01.01.2016 and as Assistant Teacher with effect from 01.01.2019.

3. The respondent No. 3/Educational institution runs the respondent No. 4 aided secondary school. Due to promotion to the post of head master a vacancy was created in the sanctioned posts admissible to the school. Hence the vacancy was notified to the respondent No. 2 and permission was solicited for recruiting the posts of Mathematics teacher vide letter dated 06.10.2015. An advertisement was published on 20.12.2015. The petitioner was qualified for the subject of Mathematics. He was appointed vide order dated 29.12.2015 and he joined service from 01.01.2016 as a Shikshan Sevak. His proposal seeking approval to his appointment was rejected on 17.02.2020. Being aggrieved Writ Petition No. 8016 of 2020 was filed. Impugned order was sought to be withdrawn and matter was relegated back for consideration afresh, vide order dated 29.09.2021.

4. In pursuance of the orders passed by the High Court, hearing was conducted by the respondent No. 2/Education Officer. By the impugned order, proposal was rejected on following grounds :

(a) There were disputes in the management, when

permission was sought for the recruitment. Deficiencies were notified, which were not removed. The permission was refused.

- (b) As per written submissions of Mr. P. L. Chavan, the then Head Master, the petitioner was not appointed from 01.01.2016 and he never joined the school.
- (c) For the academic year 2015-2016, eight posts were sanctioned and all were occupied. The petitioner was not appointed on vacant post.
- (d) The appointment was not made by the competent authority.

5. The learned counsel Mr. Jadhavar appearing for the petitioner submits that the grounds for rejection of the proposal are unsustainable and perverse. He would submit that the petitioner was not appointed against any reserved category, but he was appointed against vacancy of Maths teacher created due to promotion within the sanctioned strength. He would submit that there was sufficient compliance of Section 5(1) of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act (for the sake of brevity and convenience hereinafter referred as to the "M. E. P. S. Act"). No surplus teacher was ever referred to the school in question. The deficiencies notified vide letter dated 29.10.2015 are inconsequential. He further submits that there was no reason to entertain the submission of retired Head Master Mr. P. L.

Chavan. His statement was never served upon the petitioner.

6. It is further submitted that there is voluminous record indicating that petitioner has continuously rendered the services in the school. It is further submitted that appointment of subsequently appointed teacher Mr. Gawali is approved. He would further submit that the Education Officer vindictively rejected the proposal of the petitioner because in earlier round of litigation cost of Rs. 5,000/- was imposed upon him by the High Court. It is further submitted that the petitioner was not aware of any dispute in the management or the status of the recruiting authority.

7. The learned Additional Government Pleader Mr. Patil appearing for the respondent Nos. 1 to 3 and 5 opposes the submissions of the petitioner with the help of affidavit in reply. He supports the impugned order. It is submitted that no permission was granted for the recruitment and directly advertisement was issued. The petitioner's appointment was not made by following due procedure of law, it was back dated and back door entry. As the retired Head Master Mr. Chavan was having knowledge, he was called for the hearing. There was no vacancy when the petitioner was recruited. The allegations of unlawful demand made against the respondent No. 5 are refuted.

8. Learned counsel Mr. B. A. Dhengle appearing for the respondent No. 4 adopts the submissions of the petitioner. He affirms that the record produced before this Court by the petitioner indicating discharge of duties by petitioner is genuine

and reliable.

9. We permitted intervenors to address the Court. Learned counsel Mr. Vikram Kadam submits that the appointment was undertaken by the persons who had no authority in law. The disputes are pending before the Charity Commissioner. Administrator is looking after the affairs of the trust. Hence the appointment of the petitioner is *de-hors* the procedure.

10. Another intervenor being represented by Mr. R. C. Brahmarkar learned counsel supports the case of the petitioner.

11. We have considered rival submissions of the parties.

12. At the outset, it is necessary to mention that the petitioner has referred school record to show that he was all the while discharging the duties and there was vacancy of one assistant teacher after promoting Shri Dhengle. The contesting parties during the course of hearing did not raise objection to the record. The respondent No. 4 affirms that those are part of the school record. Even affidavit in reply of the respondent Nos. 1 and 2 is silent regarding the school record. We do not find that there is any hurdle in referring the school record while appreciating the submissions of the parties.

13. There is no dispute that in staff sanction for the academic year 2015-2016, one post of Head Master and seven posts of teachers were earmarked/sanctioned. The senior most teacher Mr. Dhengle Sahaji Sheshrao was promoted to the post of Head

Master and his appointment was approved on 09.02.2015. He was B. Sc. B. Ed. Obviously, vacancy was created for B. Sc. B. Ed. Teacher. Therefore, application dated 06.10.2015 was submitted none other than the then Head Master Mr. L. P. Chavan seeking permission for recruitment. After receiving the application, the deficiencies were notified by the Education Officer vide reply dated 29.10.2015. It was imperative for him to refer surplus teacher for accommodation in the respondent No. 4/school, if those were available. Pointing out the deficiencies was not contemplated. The Education Officer surprisingly did not notify that no vacancy available was for the recruitment.

14. The learned Addl. G. P. adverted our attention to the Government Resolution dated 06.02.2012 to buttress that a permission was contemplated for recruiting a post and management was expected to submit proposal seeking permission for advertisement. It's clause (03) is not in consonance with Sec. 5(1) of the M. E. P. S. Act. Neither Section 5, nor Rule 9 of the M. E. P. S. Act and Rules contemplate soliciting of any permission from the Education Department for advertisement of recruitment. What is expected from the education department is to notify the availability of surplus candidates on their role. Application submitted by the head master on 06.10.2015 was sufficient intimation of proposed recruitment against vacant post. Therefore, notifying deficiencies vide letter dated 29.10.2015 and refusing the permission for the advertisement are extraneous and without any foundation in law. This reason assigned in the impugned

order is unsustainable.

15. The joining report produced by the petitioner indicates that from 01.01.2016, he started discharging duties as a Shikshan Sevak. There is voluminous record produced by the petitioner to show that he was continuously discharging the duties. The record produced at Exhibit N of the paper book would enure to the benefit of the petitioner. We have already recorded that the record has not been disputed by the contesting parties. Following documents indicate that the petitioner is in service of the respondent No. 4.

- (i) Instructions issued to the students bearing acknowledgment of the petitioner.
- (ii) Attendance certificate of training programme.
- (iii) Minutes of the monthly meetings.
- (iv) Extracts of the evaluation statements of the students.
- (v) Daily lesson notes.

The above documents clearly falsify the plea raised by the then head master Mr. Chavan during the course of hearing before the education officer and consequential findings recorded in the impugned order.

16. For the year 2015-2016, total eight posts were sanctioned. Due to promotion of Mr. Dhengle Shahaji, which was approved on 09.02.2015, a vacancy was created. The said vacancy has been consistently reflected in further school record, which is at Exhibits P, Q. and R. The list of teaching staff for the year 2015-

2016, extract of muster and the pay bills show that one post was vacant. Therefore, the finding of the education officer that appointment of the petitioner was not against sanctioned post is perverse. Surprisingly, the education officer failed to disclose this material deficiency while notifying the deficiencies vide letter dated 29.10.2015. During the course of hearing, we made a specific query to learned Add. G. P., but no satisfactory explanation was tendered. Hence, we have no doubt to hold that the plea that sanctioned posts were not available is after thought.

17. It has come on record that there are disputes in the management. Rival groups have filed change reports, which are *subjudice*. Merely disputes in the management would not operate against the petitioner. He was appointed against vacant sanctioned post and by following due procedure of selection. We are fortified by the observations of the Coordinate Bench recorded in the matter of Navnath S/o Narsing Gore Vs. State of Maharashtra and others reported in 2021(6) Mh. L. J. 118, which is as follows :

32. From the pleadings as well as during the hearing it become evident that the dispute referred to in the order 20.01.2016 was in relation to management of the institution by rival claimants. Such dispute had no nexus or connection with the selection and appointment of the petitioner and the approval sought for. Just because there was a dispute as to control of management of the Institution that could not have been a ground to decline approval or to keep such approval in abeyance. Routine affairs of the institution including appointments and approvals thereto are to be considered de-hors such tussle as to management of the institution. That being the position impugned order dated 20.01.2016 cannot be sustained and is liable to be set aside and quashed.

18. Another facet of the matter is that, no fault can be attributed to the petitioner. When he was seeking employment, he could not be said to have knowledge of the disputes in the management or right of the authority which has undertaken the process of recruitment. As incumbent is always at the receiving end, his appointment cannot be faulted for the rival claims to the office or the irregularities committed by the management. The education officer lost sight of this aspect of the matter and arrived at totally erroneous conclusion.

19. We find that the conduct of the education officer who is impleaded by name as respondent No. 5 is objectionable. In earlier round of litigation, Coordinate Bench had imposed cost of Rs. 5,000/-. We have already recorded that grounds for rejecting the proposal are perverse and after thought. It was his duty to examine the school record and to ascertain as to the position of vacancy. He should have ascertained as to whether the petitioner is discharging the duties or not. His reliance on the statement of ex-head master Mr. Chavan is also vulnerable. We hold that vindictively the proposal of the petitioner has been rejected by him.

20. None of the reasons assigned in impugned order are sustainable. For the reasons assigned above, we pass following order :

O R D E R

(I) The order dated 17.02.2020 issued by the respondent No.

2/Education Officer (Secondary), Zilla Parishad, Osmanabad is quashed and set aside.

- (II) The respondent No. 2/Education Officer (Secondary), Zilla Parishad, Osmanabad shall forthwith grant approval to the appointment of the petitioner as Shikshan Sevak with effect from 01.01.2016 and consequentially as Assistant Teacher with effect from 01.01.2019.
- (III) The petitioner shall be entitled to all consequential benefits if not disbursed to him earlier.
- (IV) The respondent No. 5 is saddled with cost of Rs. 20,000/- (Rs. Twenty Thousands only). Said cost shall be deposited from his salary within a period of two (02) weeks from today.
- (V) Rule is made absolute in above terms.
- (VI) The civil applications for intervention stand disposed of.

[SHAILESH P. BRAHME, J.]

[S. G. MEHARE, J.]