



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

WRIT PETITION NO. 9409 OF 2022

Archana Subhash Mahajan
Age: 41 years, Occup.: Service,
R/o. Gopal Nagal, Satan Road, Pimpalner,
Tq. Sakri, Dist. Dhule.

.....PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32
2. The President,
Vidhayak Samiti, Pimpalner,
Tq. Sakri & Dist. Dhule,
C/o: Kai. N.S.P. Patil, Madhyamik Va
Ucchamadhyamik, Vidyalay, Pimpalner,
Tq. Sakri, Dist. Dhule
3. The Secretary,
School Committee, Kai. N.S.P. Patil,
Madhyamik Va Ucchamadhyamik,
Vidyalay, Pimpalner,
Tq. Sakri, Dist. Dhule
4. The Head Master,
Kai. N.S.P. Patil, madhyamik Va
Ucchamadhyamik, Vidyalay, Pimpalner,
Tq. Sakri, Dist. Dhule
5. The Education Officer (Secondary)
Zilla Parishad Dhule.
6. Sanjay Madhavrao Nerkar,
The Secretary School Committee,
Kai. N.S.P. Patil, Madhyamik Va
Ucchamadhyamik, Vidyalay, Pimpalner,
Tq. Sakri, Dist. Dhule

7. Mahendra Ramrao Gangurde,
Member, School Committee
Kai. N.S.P. Patil, Madhyamik Va
Ucchamadhyamik, Vidyalay, Pimpalner,
Tq. Sakri, Dist. Dhule
8. Shyam Barku Shirsath,
Member, School Committee,
Kai. N.S.P. Patil, Madhyamik Va
Ucchamadhyamik, Vidyalay, Pimpalner,
Tq. Sakri, Dist. Dhule
9. Subhash Damodhar Jagtap,
Member, School Committee,
Kai. N.S.P. Patil, Madhyamik Va
Ucchamadhyamik, Vidyalay, Pimpalner,
Tq. Sakri, Dist. Dhule

.....RESPONDENTS

Mr. S. R. Sapkal, Advocate for the Petitioner

Ms. Kalpalata Patil Bharaswadkar, Addl.GP for Respondents-
State

Mr. A. V. Hon, Advocate for Respondent no.2

CORAM : ROHIT W. JOSHI, J.

DATED : 01ST JULY, 2025

ORAL JUDGMENT :-

. The present petitioner was appointed on the post of Assistant Teacher with NSP Patil Secondary and Higher Secondary High School, Pimpalner, which is a school run by respondent no.2/Society.

2. The petitioner claims that she was appointed as

Shikshan Sevak vide appointment order dated 23.01.2012, and thereafter, vide appointment order dated 24.01.2015, she was appointed on the post of Assistant Teacher upon completion of three years of service as Shikshan Sevak. The petitioner contends that the appointment as Shikshan Sevak was duly approved by the Education Officer (Secondary) vide order dated 09.03.2012. It is the case of the petitioner that vide letter dated 20.09.2012, the Education Officer had directed the Superintendent of Pay Unit to stop payment of salary to the petitioner and one another teacher appointed in the said school and in view of the same, the respondent/management terminated services of the petitioner vide termination order dated 30.01.2013.

3. The petitioner challenged this order dated 30.01.2013 by filing appeal before the learned School Tribunal being Appeal No.07 of 2013.

4. The respondent/management entered appearance in the matter and filed written statement supporting the appeal filed by the petitioner, however, the Education Officer filed reply in the matter denying grant of approval to the appointment of

the appellant. The respondent no.5 who represents the other faction of the management also opposed the appeal. It will be pertinent to mention that there were two factions in the management, one supporting the appellant and other opposing the claim of the appellant.

5. For adjudication of the present petition, it is not necessary to go into the *inter se* dispute between the management. The Education Officer has contended in the reply that the appointment of the petitioner/appellant was not approved. Separate affidavit is filed stating that the approval order dated 09.03.2012 is a forged document.

6. Learned School Tribunal has held that the grant of approval does not mean that the appointment is legal and likewise, rejection of approval by itself does not mean that the approval is illegal. However, the learned School Tribunal has referred to proviso to Section 5(1) of the MEPS Act and has held that before making appointment of any Teacher through direct recruitment, it is necessary for the management to ascertain from the office of Education Officer as to whether any eligible surplus teacher is available for being absorbed

against the available vacancy. In the case at hand, the management has not ascertained from the office of Education Officer as to whether any Teacher was available for absorption. In view of the said provision, recruitment process can be initiated only if suitable candidate is not available for absorption on the list of surplus teachers maintained by the Education Officer. The provision casts an obligation on the management to appoint such surplus candidate to fill up vacancy if such surplus candidate is available.

7. In that view of the matter, the learned School had held that the appointment is made in the breach of the statutory mandate of proviso to Section 5(1) of the MEPS Act and as such, the appointment is not legal.

8. Apart from this, perusal of the advertisement filed on record by the petitioner will demonstrate that it is published in a newspaper named 'The Murder'. The newspaper is a innocuous newspaper. None has ever heard about any such newspaper. It appears that the advertisement was not issued with a view to invite maximum participation from eligible candidates, but merely to create eye-wash that the due

procedure prescribed for filling up vacancy was being followed.

9. Having regard to the reasons recorded by the learned School Tribunal as also having regard to the documents placed on record by the petitioner, particularly the advertisement, this Court is of the view that no fault can be found with the finding recorded by the learned School Tribunal that the appointment of the petitioner was not made by following the prescribed procedure.

10. In that view of the matter no fault can be found with the judgment and order dismissing appeal filed by the petitioner. The Writ Petition is therefore **dismissed**. The petitioner is however, at liberty to take appropriate steps for recovery of her salary from the individuals who were a part of decision making process in appointing her in service.

11. The Writ Petition is **disposed** of accordingly.

12. Civil Application, if any, stands disposed of.

(ROHIT W. JOSHI, J.)