



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

**905 WRIT PETITION NO. 9721 OF 2018**

Manjusha D/o Ranjit More  
Age : 28 years, Occu : Service as  
Assistant Teacher, R/o. Lokhandi Sawargaon,  
Tq. Ambajogai, Dist. Beed.

**....Petitioner**

**Versus**

1. The State of Maharashtra  
Through its Secretary,  
School Education Department,  
Mantralaya, Mumbai.
2. The Deputy Director of Education,  
Latur Division, Latur.
3. The Education Officer (Secondary),  
Zilla Parishad, Latur.
4. Eklavya Magas Seva Samiti,  
Mankhed, Tq. Renapur, Dist. Latur  
Through its President / Secretary
5. Secondary and Higher Secondary School,  
Bhandarwadi-Patharwadi, Tq. Renapur,  
Dist. Latur, Through its Head Master.

**...Respondents**

...

Mr. V. S. Panpatte - Advocate for the Petitioner  
Mr. A.A.A. Khan - AGP for Respondent Nos. 1 to 3  
Mr. Irfan D. Maniyar – Advocate for Respondent Nos. 4 and 5

...

**CORAM : R. G. AVACHAT  
AND  
NEERAJ P DHOTE, JJ.**

**DATED : 31<sup>ST</sup> JULY, 2025**

**ORAL ORDER [*Per* Neeraj P. Dhote, J.] : -**

1. Heard all the sides finally at the stage of admission.
2. The Petitioner has approached this Court by way of the present Writ Petition under Article 226 of the Constitution of India, challenging the rejection of her proposal by Respondent No. 3 – Education Officer to grant approval to her post as Assistant Teacher. The Petitioner was appointed by Respondent No. 4 – Management as an Assistant Teacher on the establishment of Respondent No. 5 – School on 01.07.2012. The proposal was sent for approval to the Education Officer, which came to be turned down by the impugned order dated 20.01.2017.
3. According to the learned Advocate for the Petitioner, the only reason cited in the impugned order is that, there was Ban on filling up the post of *Shikshan Sevaks* by virtue of Government Resolution dated 02.05.2012, and it was necessary to fill up the vacant post by way of surplus teachers who were available across the State of Maharashtra. He submits that, Respondent No. 4 – Management had forwarded the pension case of one of the retired employees by name, Madde Bajrang Nivrutti, who was working on the establishment of Respondent No. 4 – Management, and retired on 30.06.2012 and therefore the Respondent No. 3 – Education Officer was in the know of vacancy. He submits

that, when Respondent No. 3 Education Officer was aware of the vacancy of one post of *Shikshan Sevak* / Assistant Teacher with Respondent No. 4, they should have forwarded the names of surplus teachers. He further submits that, Respondent No. 4 – Management had issued communications dated 05.03.2012 and 16.03.2012 to the Respondent No. 3 / Education Officer for permission to fill up the post, which fell vacant due to the retirement of the said teacher, from the open category, and also sought permission to issue an advertisement to carry out the recruitment process and there was no response to the said communications. He further submits that Respondent No. 4 – Management advertised the post in a local newspaper, and seven applicants had responded to the same and since the Petitioner was found meritorious, she came to be appointed. He submits that, this Court had an occasion to consider an identical factual situation in Writ Petition No.11077 of 2019, which came to be disposed of by Judgment dated 26.02.2024, setting aside the impugned order therein and directing the Education Office to grant approval to the appointment of the Petitioner therein as *Shikshan Sevak* and thereafter as Assistant Teacher. He submits that, by setting aside the impugned order, the said Writ Petition was allowed.

4. The Writ Petition is vehemently opposed by the learned AGP appearing for Respondent Nos. 1 to 3. He submits that the

impugned order is self-speaking and was rightly passed by Respondent No. 2. He invites our attention to paragraph no. 5 of the Affidavit-in-Reply filed by Respondent No. 2, which reads as under : -

*“5. I say and submit that, the management has not updated the roster point while appointing the present petitioner. I say and submit that, the management had got verified the roster point from the B.C. Cell, Aurangabad on 12.3.2015. I say and submit that, according to the said verification made by the B.C. Cell, there are backlog of two posts from Scheduled Tribe Category and from Special Backward Class. That, there is no vacant post available from Open category in the said school. I say and submit that, the management has also not obtained N.O.C. from the office of this deponent prior to fill-up the post of present petitioner nor the entry of submission of proposal of present petitioner was found in the Office Inward Register dt.31.8.2012 for grant of approval.”*

4.1. He submits that he has received the communication from the office of Respondent No. 2 - Dy. Director that the Inward Register of the relevant period i.e. from 01.01.2012 to 31.07.2012 was not found in the office of Respondent No. 2. He further submits that, since there was a ban to fill up the post of *Shikshan Sevaks* / Assistant Teachers, the impugned order has been rightly passed and, therefore, the Petition be dismissed.

5. The learned Advocate for Respondent Nos. 4 and 5 submits that the Management has complied with due procedure before

appointing the Petitioner on the establishment of Respondent No. 5 – School.

6. We have perused the papers on record.

7. Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 provides for the mechanism to fill up vacant posts in private schools. Sub-section (1), along with the proviso, reads as under : -

***5. Certain obligations of Management of private schools.***

*(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by 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.]*

8. The impugned order shows that, on the basis of Government Resolution dated 02.05.2012, which imposed Ban on filling in the posts of *Shikshan Sevaks* / Assistant Teachers except by way of surplus teachers, the proposal was rejected. The copies of communications dated 05.03.2012 and 16.03.2012, which were

submitted by Respondent No. 4 – Management to the office of Respondent No. 3 - Education Officer, were prior to the issuance of said Government Resolution. Therefore, rejection on that ground will not sustain. Though it is brought to our notice that the Office Inward Register for the relevant period was not available in the office of Respondent No. 3 - Education Officer, the aforesaid two communications clearly show that Respondent No. 4 - Management had sought permission from Respondent No. 3 / Education Officer to fill up the said vacant post. It is, thus, clear that Respondent No. 4 – Management had sought prior permission to fill up the said vacant post which was for open competition candidate. The papers on record also go to show that Respondent No. 4 – Management had issued the advertisement in the *Daily Rajsatta* newspaper pursuant to Rule 9, sub-rule 2 of the MEPS (Conditions of Service) Rules, 1981. The papers on record also go to show that in all seven candidates had undergone the process of interview and the Petitioner was one of them. This goes to show that Respondent No. 4 – Management had appointed the Petitioner by following due procedure.

9. We have perused the said Judgment relied upon by the learned Advocate for the Petitioner. In the said case, the proposal for approval to the appointment as Shikshan Sevak of the Petitioner therein was refused on the similar ground i.e. the ban by virtue of Government

Resolution dated 02.05.2012. In the said Judgment, the Court found that due procedure was followed before appointing the Petitioner therein and, in result, had quashed the order refusing the proposal. The relevant paragraphs of the said Judgment read as under : -

- “6. An affidavit of Umesh Kisanrao Raut, who was the In-charge Deputy Education Officer (Primary) has been filed on behalf of respondent No.2, wherein he has also reiterated the facts but he has submitted that after the order was passed by this Court in the earlier Writ Petition bearing No.3710 of 2017 filed by the present petitioner himself, the proposal was submitted by the institution on 11<sup>th</sup> July 2018 and thereafter the impugned order has been passed. It was found that the appointment of the petitioner was not legal as there was ban on the recruitment in view of the Government Resolution dated 2<sup>nd</sup> May 2012. Though the Government has relaxed the said ban in respect of the appointments in reserved category, so also in respect of the teachers teaching the special subjects like Mathematics, Science and English, the case of the petitioner does not fall within the said category. The petitioner is from the open category and his appointment is for teaching all the subjects and therefore, approval to his appointment cannot be granted.*
- 7. We have considered all the documents carefully. Though there is an application by respondent No.4 institution to the Education Officer on 24<sup>th</sup> September 2012 seeking permission to fill up the post, details of the said post are not stated in the said application. No doubt, it is stated that a post is going to become vacant since 16<sup>th</sup> October 2012, which should be allowed to be filled up and therefore, latitude is required to be given to the said letter by inferring that it is in respect of the post held by the petitioner. The petitioner has not produced on record the staff sanction order for the academic year 2012-2013. It has been produced for the academic year 2014-2015 on-wards. It is to be noted that in the present case, respondent Nos.3 and 4 have not filed affidavit in reply and have not produced on record the documents which they had forwarded along with the proposal. The petitioner is not the natural*

*custodian or supposed to be possessing those documents and therefore, it is not expected that he should produce each and every document. The copy of the entire bunch of the documents which was received by respondent No.2 has not been produced by the petitioner and the rejection of the proposal for approval is not on the ground that there was no post available. Rejection is on the basis of ban on the recruitment as per Government Resolution dated 2<sup>nd</sup> May 2012, especially Condition No.1.8, which reads thus:-*

*“(1.8) अतिरिक्त ठरलेले शिक्षक 100% समायोजित झाल्याशिवाय खाजगी किंवा स्थानिक स्वराज्य संस्थांच्या शाळांमध्ये नविन शिक्षक व शिक्षकेतर कर्मचा-यांची भरती करू नये.”*

8. *It is to be noted that when the proposal was sent for the first time in respect of the petitioner's appointment on 30<sup>th</sup> October 2012, the Education Officer, by his letter dated 5<sup>th</sup> March 2013, had returned the said proposal to respondent No.4 institution. It was not rejected. Respondent Nos. 1 and 2 have not come with the case that when it was communicated by letter dated 24<sup>th</sup> September 2012 to the Education Officer that a post is going to become vacant, then the Education Officer has taken the steps to supply the surplus teacher. The contention of the petitioner that till 17<sup>th</sup> September 2016 and then after 22<sup>nd</sup> August 2017 there was no attempt by the Education Officer to send the surplus teacher on the post held by the petitioner. Education institution is not supposed to keep the posts of teachers vacant for long time. Ultimately the teachers would be required to teach the students and with the scarcity of the teachers, it would be difficult for the institution to manage the school and it would be burden for the other teachers to conduct the classes. The Government is also duty bound to give sanction to the requisite posts as per the policy and it would be the equal duty of the appropriate authorities to decide the applications submitted by the educational institutions for filling up the posts. The concerned officers are not supposed to sit over the files for months or years together.”*

10. From the above, it is clear that, in a similar factual situation, this Court had set aside a similar impugned order. The affidavit-in-reply of Respondent No. 2 give different grounds, which is clear from paragraph no. 5, quoted above. In this view of the matter, the impugned order is liable to be quashed and set aside. Hence, we proceed to pass the following order : -

**ORDER**

- [i] The Writ Petition is hereby allowed.
- [ii] The impugned order dated 20.01.2017 passed by Respondent No.2, rejecting the approval for the appointment of the Petitioner as *Shikshan Sevak*, is hereby quashed and set aside.
- [iii] The Petitioner is entitled for the grant of approval to her appointment initially as *Shikshan Sevak* and thereafter as Assistant Teacher, as per the rules, within a period of one [1] month from today. Respondent No. 2 is directed to grant approval to such appointment of the Petitioner.
- [iv] The arrears of salary of the Petitioner be paid to her within a period of six months from today and the regular salary be paid to her as and when it becomes due.

**[NEERAJ P. DHOTE]**  
**JUDGE**

**[R. G. AVACHAT]**  
**JUDGE**