



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

WRIT PETITION NO.11172 OF 2019

Baliram s/o Pandurang Salunke

Age : 42 years, Occu: Service as Shikshan Sevak,

R/o Sharda Nagar, Mukhed,

Tq. : Mukhed, Dist. Nanded

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary
School Education Department,
Mantralaya, Mumbai – 32.

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

3. Niti Niketan Education Society,
Through its Secretary,
Anil s/o vithalrao Kolhe
Age : 51 years, Occ : Social Worker,
R/o Jamb, Tq. Mukhed, Dist. Nanded

4. The Head Master,
Hutatma Madhav Vidyalaya, Mukhed,
Tq. Mukhed, Dist. : Nanded

...Respondents

...

Mr. V. S. Panpatte, Advocate for the petitioner.

Mr. P. K. Lahotiya, AGP for Respondent Nos. 1 & 2.

Mr. I. D. Maniyar, Advocate for Respondent Nos. 3 & 4.

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

**RESERVED ON : OCTOBER 15, 2025
PRONOUNCED ON : NOVEMBER 10, 2025**

JUDGEMENT (Per Abasaheb D. Shinde, J.) :

1. Rule. Rule made returnable forthwith. With the consent of parties

heard finally at the stage of admission.

2. The petitioner is challenging the order dated 27.08.2019 passed by Respondent No.2-Education Officer (Secondary) Zilla Parishad, Nanded by which the proposal submitted for grant of approval to the appointment of the petitioner as Shikshan Sevak has been turned down.

FACTUAL MATRIX :

3. The petitioner contends that Respondent No.3/Educational Institution is running Respondent No.4-School from 5th to 10th standard. It is further contended that on account of retirement of a permanent teacher, namely Smt. Shanta Narmada Karle, Respondent No.3 issued an advertisement on 27.02.2017 in a newspaper, namely, 'Daily Marathwada'. It is the contention of the petitioner that petitioner had participated pursuant to the said advertisement and ultimately after being found eligible and qualified the petitioner came to be appointed vide appointment order dated 04.03.2017 by Respondent No.3.

4. It is further contended that pursuant to the appointment of the petitioner, Respondent No.4-Head Master of the School submitted a proposal to Respondent No.2-Education Officer on 05.04.2017 for grant of approval to the appointment of petitioner as Shikshan Sevak for

initial period of three years. Respondent No.2-Education Officer however, by the impugned order dated 27.08.2019 turned down the proposal submitted by Respondent No.4-Head Master on the ground that, as per Government Resolution dated 02.05.2012 unless the teachers rendered surplus are absorbed, no recruitment could have been made as there was a ban on recruitment. Another ground on which the impugned order is passed is that, though Respondent No.4-Head Master has made an application to Respondent No.2-Education Officer seeking permission to advertise the post, however, Respondent No.2-Education Officer has not granted permission to the said advertisement. One more ground assigned in the impugned order is that the petitioner is teaching the subjects of Hindi and Geography and the case of the petitioner is not covered by Government Resolution dated 24.08.2018 as it covers only subjects of Maths, Science and English, thus proposal submitted by Respondent No.4-Head Master thereby seeking approval to the appointment of the petitioner cannot be considered.

5. Respondent No.2-Education Officer has filed an affidavit in reply *inter alia* contending that just one day before the retirement of earlier teacher, Respondent No.4-Head Master has advertised the post, Respondent No.4 has not taken permission for advertisement of the

post. As per the Government Resolution dated 24.08.2018 post of teachers can be recruited only for the subjects of English, Maths and Science, whereas the teaching subjects of the petitioner is Hindi and Geography. It is further contended that there are several teachers who have been declared surplus in Nanded District and those were directed to be absorbed. It is further contended that unless the surplus teachers are absorbed, no new recruitment to fill up the post in the School run by private management can be made. It is further contended that as the appointment of the petitioner is not in accordance with the provisions of Section 5(1) of The Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 therefore, Respondent No.2-Education Officer has rightly passed the impugned order. Last but not the least it has been further contended that there was a ban on fresh recruitment by Government Resolution dated 02.05.2012 and therefore the post on which the petitioner has been appointed is illegal and therefore Respondent No.2 prayed for dismissal of the Writ Petition. To the affidavit in reply filed by Respondent No.2, the petitioner has filed rejoinder by placing on record certain documents in support of his case and at the same time has also denied the contention raised in the affidavit in reply filed by Respondent No.2.

6. We have considered the submissions advanced by the learned Counsel for the petitioner as well as the learned AGP for the State and

Respondent No.2-Education Officer (Secondary) and the learned Counsel appearing for Respondent Nos.3 and 4-School Management.

SUBMISSIONS :

7. It is contended by the learned Counsel for the petitioner that there is no dispute that the petitioner is duly qualified for being appointed as Shikshan Sevak and his appointment is made after following the due procedure of law. Respondent No.3-Management have issued an advertisement on account of retirement of one permanent teacher namely, Shanta Narmada Karle and thus after being found eligible and duly qualified, the petitioner has been appointed vide appointment order dated 04.03.2017. It is further contended that in earlier round of litigation, as Respondent No.2 -Education Officer was not deciding the proposal submitted by Respondent No.3 for grant of approval to his appointment, the petitioner was required to approach this Court and this Court by an order dated 03.12.2018 in Writ Petition No.6651 of 2017 directed Respondent No.2-Education Officer to decide the proposal submitted by Respondent No.3 as expeditiously as possible. The learned Counsel for the petitioner also further contented that this Court while disposing of the said Writ Petition considering the apprehension expressed by the petitioner that surplus Teacher is likely to be sent on his post have directed that during the pendency of the

proposal for approval in respect of the petitioner, the position existing as of then be maintained.

8. The learned Counsel for the petitioner further contended that Respondent No.2-Education Officer while passing the impugned order has committed an error by rejecting the proposal for grant of approval to the appointment of the petitioner. The learned Counsel further submits that the post on which the petitioner has been appointed is a clear and vacant post and therefore the reasons assigned by Respondent No.2-Education Officer is unsustainable. To substantiate his contention that the reason assigned by Respondent No.2 in passing the impugned order is unsustainable, the learned Counsel for the petitioner in support of his contention has relied upon the following judgments :-

- i. ***Shailaja Ashokrao Walse Vs. State of Maharashtra & Ors.*** 1999(1) All MR 452
- ii. ***Jayshree Anil Kadam Vs. State of Maharashtra & Ors.*** (Writ Petition No.11311 of 2019)
- iii. ***Munoli Rajashri Karabasappa Vs. State of Maharashtra Through Secretary & Ors.*** (Writ Petition No.8587 of 2016)
- iv. ***Shubhangi Bhagwat Chate & Ors. Vs. State of Maharashtra & Ors.*** (Writ Petition No.837 of 2018)

9. It is further contended by the learned Counsel for the petitioner that the reliance sought to be placed on Government Resolution dated 02.05.2012 is not applicable. Before issuance of advertisement Respondent No.3-Management have sent a letter to Respondent No.2 seeking permission to issue an advertisement, however, the Respondent No.2 did not take any decision and as held in the judgements cited (*supra*), the management is not expected to wait for a considerable period for receiving the permission from the Education Officer, as the same may amount to loss and inconvenience to the students for want of a teacher. The learned Counsel for the petitioner therefore by relying on the judgements cited (*supra*) urged that the Writ Petition may be allowed and the impugned order be quashed and set aside.

10. On the other hand the learned AGP would submit that the appointment of the petitioner has been made pursuant to an advertisement for which no permission was granted by office of Respondent No.2-Education Officer. The learned AGP would further submit that though it was required to absorb surplus teachers, Respondent Nos.3 - Management instead of absorbing the said surplus teachers appointed the petitioner and therefore the appointment of the petitioner is illegal. The learned AGP would further submit that it was duty of Respondent No.3-Management to intimate Respondent No.2-

Education Officer about the vacancy so that Respondent No.2- Education Officer could have sent the surplus teachers for being absorbed in Respondent No.4-School and therefore the learned AGP submits that since the appointment of the petitioner is contrary to the provisions of law and the Government Resolution, Respondent No.2 has rightly passed the impugned order thereby refusing to grant approval to the appointment of the petitioner.

11. The learned Counsel for Respondent Nos.3 and 4-Management would submit that it is an admitted position that vacancy arose on account of retirement of one Smt.Shanta Narmada Karle and therefore the management in order to fill up the said vacancy have made an application on 02.01.2017 to Respondent No.2-Education Officer thereby requesting him to grant permission to advertise the post from open category. However, till the date of issuance of advertisement Respondent No.2-Education Officer did not take any decision on the said communication dated 02.01.2017 and therefore Respondent No.3-Management was left with no other alternative but to advertise the post and accordingly appointed the petitioner as a Shikshan Sevak for teaching the subjects of Hindi and Geography.

POINTS FOR CONSIDERATION :

12. After considering the submissions advanced and after going

through the record it appears that, it is a specific contention of the petitioner that the post on which the petitioner has been appointed fallen vacant on account of retirement of one Smt.Shanta Narmada Karle. It also appears from the record that on 02.01.2017 Respondent No.4-Head Master addressed a communication to Respondent No.2-Education Officer intimating that a post is likely to fall vacant on account of retirement of the earlier teacher and in order to protect the interest of the student it is necessary to grant permission to fill up the post. It also appears from the record that Respondent No.3 on 27.02.2017 issued an advertisement for filling up the post in the daily newspaper namely, 'Dainik Marathwada'. It also appears from the record that accordingly the petitioner came to be selected and Respondent No.3 issued an appointment order in favour of the petitioner on 04.03.2017. While the proposal for grant of approval was forwarded by Respondent No.4 to Respondent No.2, by an impugned order Respondent No.2 refused to grant approval to the appointment of the petitioner on the grounds mentioned in the impugned order.

13. After having perused the impugned order, as far as reliance placed on Government Resolution dated 02.05.2012 is concerned, the ban imposed is in respect of fresh recruitment and not on any vacancy arose because of retirement of a teacher. Even in an affidavit in reply

filed by Respondent No.2-Education Officer it is stated that the ban was on fresh recruitment and not in respect of the vacant post. In the present case, there is no denial in the affidavit in reply by Respondent No.2 that, the post on which the petitioner has been appointed is a fresh recruitment and not on account of vacancy arose because of retirement of the earlier teacher. The second ground mentioned in the impugned order is that there is no prior permission for issuance of advertisement, however, the record depicts that even before the earlier teacher was due for retirement, the Respondent No.3 appears to have sought permission by addressing communication dated 02.01.2017 to Respondent No.2-Education Officer. The authenticity of the said communication is neither denied in affidavit in reply nor the learned AGP has countered the contention about receipt of said communication.

14. It is also a matter of record that as far as said application dated 02.01.2017 is concerned, neither the same has been rejected nor any decision on it has been communicated by Respondent No.2-Education Officer to Respondent Nos.3 and 4 therefore, the ground mentioned in the impugned order that Respondent No.2 has not granted permission for advertisement is unsustainable. One more ground mentioned in the impugned order that the subjects which the petitioner is teaching are not covered in the Government Resolution dated 28.04.2018 has no

bearing for a simple reason that, the petitioner has been appointed on 04.03.2017, therefore the said Government Resolution cannot be given retrospective effect and therefore the said ground is devoid of any substance. Admittedly at no point of time the Respondent No.2-Education Officer called upon Respondent No.3-Management to intimate about the vacancy, or communicating to absorb the surplus teacher nor have sent the surplus teacher to be absorbed in Respondent No.4-School therefore it cannot be said that Respondent No.3 has flouted any direction of Respondent No.2 regarding absorption of surplus teacher.

CONCLUSION :

15. Recently, this Court in similar set of facts in the matters of *Sumedha Sushil Sawal and Ors. Vs. State of Maharashtra* reported in *2024 SCC Online Bom. 975*, *Vaishali Balkrushna Pawar Vs. State of Maharashtra* reported in *2025 SCC Online Bom 1502*, *Nitin Bhanudas Waghmare Vs. State of Maharashtra & Ors.* reported in *2023 3 MhLJ 556* has taken a view that once it is found that the management sought permission to fill up the post and the Education Officer do not communicate either granting or rejecting the said permission within reasonable time, the management cannot be faulted with. This Court

has also held that once it is found that the Education Officer failed to inform the Management about the number of surplus teachers waiting for appointments when the petitioner is appointed and the impugned order do not depict that the management was informed about availability of any surplus teacher, in that case it cannot be said that the management have committed any error in issuing an advertisement and filling up the posts.

16. The grounds raised in the affidavit in reply which do not find place in the impugned order cannot be considered for a simple reason that the Respondent No.2 cannot be allowed to supplement the reasons assigned in the impugned order by way of an affidavit in reply. The law in that regard is settled in view of judgment of the Hon'ble Apex Court in the case of *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioners*, reported in *1978(1) SCC 405*, wherein the Hon'ble Apex Court held that an order has to be judged on what is stated in the order and not on what is sought to be supplanted/improved by subsequent affidavit/s in support thereof.

17. Thus, we are not impressed with the contention raised by Respondent No.2 in affidavit in reply where Respondent No.2 is trying to supplement the reasons. In the light of consistent view taken by this Court (*supra*) and having adopted the said view, we hold that, the

order passed by the Education Officer of refusing to grant approval to the appointment of the petitioner is unsustainable, therefore we are inclined to allow the Writ Petition by passing following order :-

:: ORDER ::

- (i) Writ Petition stands allowed.
- (ii) Impugned order dated 27.08.2019 passed by Respondent No.2-Education Officer thereby refusing to grant approval to the appointment of the petitioner as a Shikshan Sevak is quashed and set aside.
- (iii) The Respondent No.2-Education Officer is directed to grant approval to the appointment of the Petitioner as a Shikshan Sevak from 04.03.2017 to 03.03.2020 by granting the consequential benefits pursuant to the same.

18. With these directions, Writ Petition stands disposed of.

[ABASAHEB D. SHINDE, J.]

[R. G. AVACHAT, J.]