



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.13307 OF 2025

Sahebrao Damodhar Ghule

VERSUS

The State Of Maharashtra Through The Principal Secretary
And Others

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Advocate for Petitioner : Mr. Onkar Joshi h/f S.V. Natu
AGP for Respondents: Mr. R.S. Wani

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**CORAM : SMT. VIBHA KANKANWADI &
HITEN S. VENEGAVKAR, JJ.**

Dated : November 26, 2025

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FINAL ORDER :- (Per Hiten S. Venegavkar, J.)

1. The present Petition is filed under Article 226 of the Constitution of India seeking quashing and setting aside of the communication dated 14th March, 2019 issued by Respondent No.2–Education Officer (Secondary), Zilla Parishad, Ahmednagar, as well as quashing and setting aside the approval order dated 2nd July, 2024 to the extent that it restricts the petitioner’s approval as Full-Time Librarian from 13th April 2023 instead of granting approval from his actual date of promotion, namely 1st June 2018.

2. The facts of the case, as emerging from the record, indicate that the petitioner was initially appointed as a 'Part-Time Library Assistant' in the institution of Respondent No.4 by Respondent No.3-Management with effect from 21st July 1998. This appointment was duly approved by Respondent No.2 on 25th June, 1999. The petitioner continued in service as a Part-Time Librarian after completion of probation and worked uninterruptedly until the year 2018. A sanctioned post of Full-Time Librarian became vacant in the Institution of Respondent No.4 due to retirement of the incumbent on 31st May, 2018. Upon this vacancy arising, Respondent No.3 issued a promotion/appointment order promoting the petitioner as Full-Time Librarian with effect from 1st June, 2018, and the petitioner assumed charge accordingly. On 18th August, 2018, Respondent No.3 forwarded a proposal to Respondent No.2 seeking approval of the petitioner's promotion, specifically recording that the petitioner had been serving since 21st July 1998 and that his promotion was against a duly sanctioned and vacant post. The petitioner further relies on staff-sanction orders issued by Respondent No.2 for the years 2017-18 and 2018-19, which show that one post of Full-Time Librarian and one post of Part-Time Librarian were sanctioned for

Respondent No.4, thereby supporting the position that his promotion was squarely against the sanctioned full-time post. Despite these facts, Respondent No.2 did not grant approval and, instead relied upon the Government Resolution dated 1st September 2018, which pertained to the upgradation of Part-Time Librarians to Full-Time Librarians, keeping the petitioner's approval pending on that basis. The petitioner, however, through his clarification dated 24th April 2019, categorically stated that his case concerned a promotion against a vacant sanctioned post and not an upgradation under the said Government Resolution. A subsequent Government Resolution dated 13th April 2023 provided a scheme for a one-time conversion of eligible Part-Time Librarians into Full-Time Librarians, treating the 'part-time cadre' as a dying cadre, but the petitioner asserts that his promotion was made much prior to this policy change and remained unaffected by it. After prolonged correspondence, Respondent No.2 ultimately issued an approval order dated 2nd July 2024, granting approval to the petitioner only from 13th April 2023, thereby denying him approval for the period from 1st June, 2018 to 12th April 2023. The petitioner challenges this as arbitrary, discriminatory, and contrary to statutory rules governing service conditions.

3. Learned counsel for the petitioner submits that the petitioner was duly promoted on 1st June, 2018 to an existing and sanctioned full-time post and that such appointment is governed by the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “MEPS”). It is argued that the Government Resolutions dated 1st September, 2018 and 13th April, 2023 along with later amendments, are subordinate legislation concerning only upgradation exercises and cannot be retrospectively applied to promotions already made. Reliance is placed on the judgment of this Court in **Santosh Arvind Jangam v. State of Maharashtra** (WP 12208 of 2022 Aurangabad Bench), where it was held that retrospective denial of approval by applying later Government Resolutions is impermissible in cases where the appointment or promotion predates such resolutions. Learned counsel further relies on the judgment of the Supreme Court in **Federation of Indian Mineral Industries v. Union of India** reported in (2017) 16 SCC 186, which lays down the principle that subordinate legislation is ordinarily prospective and cannot destroy accrued rights unless explicitly authorized by the parent statute. It is further argued that the relevant Government Resolution applicable to the petitioner’s case was the resolution dated 3rd August, 2006,

which governed promotions to librarian posts, remained in force at the relevant time, and has never been withdrawn. The petitioner therefore submits that Respondent No.2 erred in restricting approval from 13th April 2023, thereby unlawfully denying nearly five years of service benefits.

4. On the other hand, learned A.G.P appearing for the State submits that the process of up-gradation of Part-Time Librarians commenced only after the Government Resolution dated 1st September, 2018 and that the petitioner therefore could not have been upgraded before that date. It is submitted that the M.E.P.S. Rules do not provide for promotion of Part-Time Librarians to Full-Time posts and that the petitioner's case falls within the purview of upgradation rather than promotion. Consequently, it is argued that the petitioner could be granted benefits only from 13th April 2023, being the date of the applicable Government Resolution governing such upgradation. It is further pointed out that the Government Resolution dated 13th April, 2023 was amended on 7th November, 2023 to clarify that upgradation would operate only prospectively.

5. Having considered the rival submissions and the material on record, it is evident that the petitioner was promoted against a sanctioned and vacant full-time post. The staff-sanction orders confirm the existence of such a post and the proposal for approval was forwarded on 18th August 2018, prior to issuance of the Government Resolution dated 1st September, 2018. This clearly establishes that petitioner's case involves promotion, not upgradation. The Government Resolutions of 2018 and 2023 relate to conversion of part-time posts into full-time posts based on student strength and other administrative considerations and do not govern promotions to already sanctioned vacancies. The petitioner's promotion undeniably predates these resolutions, and applying the resolutions retrospectively to his case would be contrary to well-settled legal principles governing subordinate legislation. The Supreme Court has consistently held that delegated legislation is ordinarily prospective unless expressly made retrospective by the parent statute. There is no such statutory authority in the present matter. Furthermore, the Government Resolution dated 3rd August, 2006, which governed promotions and the process of upgradation when applicable, remained operative at the relevant time and was the appropriate

instrument for considering the petitioner's proposal. There is no material to indicate that this resolution was withdrawn or superseded.

6. Respondent No.2 has not disputed that the petitioner assumed duties on 1st June, 2018, that his proposal for approval was submitted in August, 2018 and that, a sanctioned vacancy existed. In these circumstances, restricting approval to the period commencing on 13th April 2023 amounts to an arbitrary truncation of the petitioner's legitimate service benefits and is contrary to the principles laid down by this Court in ***Santosh Arvind Jangam***. The delay of nearly six years in granting appropriate approval further underscores the unjust nature of the decision.

7. In the totality of these circumstances, this Court is satisfied that the petitioner's case is governed by the rules relating to promotion and not by the upgradation schemes set out in the Government Resolutions of 2018 and 2023. The approval granted from 13th April, 2023 is therefore arbitrary and contrary to the statutory framework. Respondent No.2 ought to have processed and approved the petitioner's promotion in accordance with the Government Resolution

dated 3rd August, 2006, which was in force at the time of the petitioner's promotion and forwarding of the approval proposal.

8. Accordingly, approval order dated 2nd July, 2024 is set aside to the limited extent that it restricts the petitioner's approval as 'Full-Time Librarian' from 13th April, 2023. Respondent No.2 is directed to reconsider the petitioner's proposal dated 18th August, 2018 and grant approval to his appointment as 'Full-Time Librarian' with effect from 1st June, 2018 in accordance with the Government Resolution dated 3rd August, 2006 and applicable statutory provisions. The exercise of granting fresh approval shall be completed within a period of **six** (6) weeks from today. The petition is **partly allowed** in the above terms. There shall be no order as to costs.

(HITEN S. VENEGAVKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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