



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13501 OF 2025

Ashwinkumar s/o Vyankat Pawar

.. Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Latur.
4. Dr. Ambedkar Balvikas Shikshan Sanstha,
Ruibhar, Tq. And Dist. Osmanabad,
Through its President/Secretary.
5. Jaiprakash Secondary and Higher Secondary
School, Ruibhar, Tq. And Dist. Osmanabad,
Through its Headmaster.

.. Respondents

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Mr. Ankush Nagargoje, Advocate for the petitioner.

Mr. S. B. Pulkundwar, AGP for respondent Nos.1 to 3/State.

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

DATE : 23 DECEMBER 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. The petitioner challenges the impugned order dated 07.07.2025 passed by respondent No.3/Education Officer (Secondary), Zilla Parishad, Dharashiv. He seeks declaration that his appointment on 19.07.2021 is legal and valid and he prays for grant of consequential reliefs.

2. The petitioner has contended that respondent No.4 is a registered Educational Institution running secondary school. Respondent No.5 is a recognized school to whom permission is granted and it is receiving 100% grant-in-aid. One senior-most employee Shri Rajabhau Namdeo Shinde from the institution stood retired from service on account of superannuation on 31.03.2019. He was working on open category seat. In view of the vacancy, the institution after adopting proper procedure appointed the petitioner. Respondent No.4 institution had given letter dated 23.02.2021 and 22.03.2021 to respondent No.3 to send surplus teachers of the particular subject for absorption. It was also stated that if such surplus teacher is not sent, then permission should be granted to fill up the post to the institution. There was no response from respondent No.3 and, therefore, after permission, advertisement in the daily newspaper, was given on 11.07.2021 for filling up of the post. The

petitioner is having requisite qualification of B.A., B.PEd. as well as MS-CIT. He was appointed with effect from 19.07.2021 for a period of three years as Shikshan Sevak. After he joined his duties, approval was sent for according sanction to his post. By order dated 01.02.2022, the said approval was rejected on three grounds i.e. (a) the appointment is not through Pavitra Portal, (b) procedure for appointment given under Government Resolution dated 20.06.2018 has not been followed and, (c) there was ban on the recruitment by order dated 04.05.2020. On the basis of said rejection, respondent Nos.4 and 5 terminated the services of petitioner on 02.02.2022 without following any due procedure as contemplated under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The petitioner challenged the said action by filing appeal before learned School Tribunal. The said order came to be set aside by the Tribunal by order dated 13.07.2022. Directions were given to the Education Officer to consider the proposal for grant of individual approval after submission of fresh proposal. The petitioner was allowed to join the services. Respondent No.5 had prepared the Time Table allotting the workload for 9th and 10th standard in favour of the petitioner. A fresh proposal was sent to respondent No.3 for grant of approval, however, the said proposal

was not decided for about three years. Thereafter, all of a sudden, it came to be rejected almost on the similar grounds. Hence, the present petition.

3. Learned Government Pleader has filed affidavit of Mr. Dattatraya Shivaji Landge, Deputy Education Officer (Secondary), Zilla Parishad, Dharashiv, wherein it is stated that the appointment of the petitioner has not been done through Pavitra Portal. Respondent No.4 had terminated the services of the petitioner. The petitioner's appeal before the Tribunal has been partly allowed. He submits that after the decision of the School Tribunal, the proposal has been again scrutinized and many defects were found. When there are defects and it could be the power of the State to decide such proposals on their own merits, the order rejecting the proposal is justified.

4. Heard learned Advocate Mr. Ankush Nagargoje for the petitioner and learned AGP Mr. S. B. Pulkundwar for respondent Nos.1 to 3. Both the learned Advocates have taken us through the entire documents.

5. Here, the important fact to be noted is that though the petitioner is before this Court, yet he had already approached learned School Tribunal, wherein the legality and validity of his appointment order has been tested. It has been held that his appointment has been legally and

procedurally correct. Education Officer (Secondary) is respondent No.3 herein as well as respondent No.3 before the School Tribunal. He never appeared in the matter and has not given the written statement to say that the appointment of the petitioner itself was wrong. Now, the decision which has been given by the School Tribunal, thereby setting aside the termination order dated 02.02.2022 of the petitioner has been set aside. He has been directed to be reinstated. Even the rejection order of individual approval passed by respondent No.3 was also set aside and respondent No.3 has been directed to reconsider the proposal.

6. Interesting point to be noted is that as per the impugned order dated 07.07.2025, there are so many defects in the approval. The approval was almost same and it was rejected. Now, at least after the decision by the School Tribunal, it was not expected from respondent No.3 to object the appointment of the petitioner. Perusal of the judgment of the learned Tribunal would show that it was the undisputed fact that the petitioner is a qualified person for the appointment as Shikshan Sevak. The earlier approval was rejected on the ground that the appellant was not having qualification of TET and the selection of post of Physical Education Teacher through Pavitra Portal was not there. Now, again the same defects or reasons have been stated. There is no statement in the impugned order as well as in the affidavit that Pavitra Portal was in

operation on the date of appointment of the present petitioner. When there is a categorical statement and office copy of the communication dated 22.03.2021 thereby seeking teachers for the subjects for absorption was given, it was not replied at all by respondent No.3. Why it was not replied has not been explained in the affidavit-in-reply. When there is no response, then after waiting for requisite time, the institution would be justified in giving advertisement and going ahead with the recruitment. Respondent No.3 cannot now take objection on that count.

7. We are very much surprised to note that the present order has been passed as if the Education Officer is the higher authority to the School Tribunal. When there is a finding, holding the appointment of the petitioner as valid, thereafter the Education Officer ought not to have touched the said point while scrutinizing the application for approval. We deprecate such practice on the part of the Education Officers. When a competent court has already come to the conclusion holding the appointment as legal, the Education Officer cannot go again into the same point. This rather amounts to contempt of the superior authority. At the cost of repetition, we are stating that on the basis of our observations while dealing with many cases the Education Officers are made party before the School Tribunal, but they prefer not to appear, though served. Most of the cases are decided *ex parte* against them and,

thereafter, they would come out with contrary decision that has been taken by the School Tribunal. We hope that the Principal Secretary, Education Department would look into such matters and issue some guidelines. Once in a matter when you are party, you are not appearing and allowing the decisions to go against him *ex parte*, then on your administrative side, you cannot take a decision contrary to the decision that has been taken on the judicial side.

8. For the aforesaid reasons, the writ petition is allowed.

9. The impugned order dated 07.07.2025 passed by respondent No.3 is hereby quashed and set aside.

10. It is held that the appointment of the petitioner since 19.07.2021 is legal and valid.

11. We direct respondent No.3 to grant approval to the appointment of the petitioner with effect from 19.07.2021 to 18.07.2024 as Shikshan Sevak and thereafter, from 19.07.2024 as Assistant Teacher in respondent No.5 School. Such order to be passed within a period of four weeks from today.

12. After such order is passed, respondent Nos.4 and 5 to give proposal for inclusion of the name of the petitioner in Shalarth I.D. within a period

of one month thereafter and after such proposal is given, respondent No.3 to forward the same within a period of 15 days thereafter to respondent No.2.

13. Respondent No.2 thereafter to take further procedure and pass necessary orders within a period of one month from the receipt of such proposal forwarded by respondent No.3.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm