

Nikita

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3434 OF 2025

Kiran Bhima Gaikwad

...Petitioner

versus

The State of Maharashtra and Ors.

...Respondents

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Mr. Chetan G. Patil a/w Mr. Siddheshwari Chavan a/w Mr. Prathamesh
Magdum i/b Mr. Mandar Bagkar for the Petitioner.

Mr. Pankaj Deokar, AGP for the State.

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**CORAM : M.S. KARNIK &
SHARMILA U. DESHMUKH, JJ.**

DATE : 18th SEPTEMBER, 2025.

P.C.:

1. **Rule.** Rule made returnable forthwith and taken up for final disposal with consent.
2. The petition impugns the order 25th July, 2024 issued by the Respondent No.2-Education Officer (Secondary) Zilla Parishad, Kolhapur refusing the proposal for appointment of the Petitioner to the post of Assistant Teacher.
3. The Petitioner possesses M.A. B.Ed qualification and belongs to OBC category. On 22nd October, 2018, an Assistant Teacher working on an unaided post was transferred to the aided post of Assistant Teacher

and hence one post of Assistant Teacher on unaided basis became vacant. On 29th October, 2018 and 1st July, 2019, the Respondent Nos. 3 and 4 communicated to the Respondent No.2 seeking information about the availability of the surplus teacher for absorption on the vacant post and in the event the surplus teacher is not available to grant permission for issuance of advertisement for inviting applications from eligible candidates to fill up the vacant post. There was no response to the said communication by the Respondent No.2. On 5th July, 2019, the Respondent Nos. 3 and 4 were constrained to initiate the appointment process and issued an advertisement in the daily newspaper. The Petitioner being duly qualified, applied in response to the said advertisement and came to be appointed to the post of Shikshan Sevak in Respondent No.4 School w.e.f. 1st August, 2019. On 17th August, 2019 Respondent Nos. 3 and 4 sent the proposal to Respondent No.2 for approval to the appointment of the Petitioner, which came to be rejected by the Impugned order.

4. Learned Counsel appearing for the Petitioner submits that the Respondent No.2 rejected the proposal on two grounds, firstly that no prior permission was taken for the advertisement and unless the surplus teachers are absorbed, no fresh appointment could be made and secondly, that the appointment of the Petitioner was not made through Pavitra Portal. He submits that the issue as regards the appointment not

being made through Pavitra Portal, is already laid to rest by the decision of the Co-ordinate Bench (Aurangabad Bench) of this Court in the case of **Kalyansing Indrasing Rajput Vs. The State of Maharashtra, Through its Principal Secretary** passed on 23rd April, 2025 in Writ Petition No.10205 of 2024. He submits that as the Pavitra Portal was non functional, the said ground was not available to the Respondent No.2 to reject the Petitioner's appointment. He would further submit that despite communications received by the Respondent No.2 seeking information about the surplus teacher and permission for issuance of advertisement in the event, no surplus teacher is available, the Respondent No.2 failed to respond to the said communication. He submits that it was in such factual scenario that the Respondent No.3 and 4 were constrained to issue advertisement for the purpose of filling the vacant post and has appointed the Petitioner after issuing the advertisement. He draws attention of this Court to the advertisement which has been published.

5. *Per contra*, Mr. Deokar, learned AGP would support the impugned order and would submit that there were deficiencies noted in the proposal as no prior permission was obtained before the issuance of advertisement. He submits that the advertisement was published in an unknown newspaper and not in the widely circulated newspaper. He would further submit that pursuant to the Government Resolution dated

23rd June, 2017, the education institutions were legally mandated to complete the recruitment process through Pavitra Portal and there could not be any private recruitment process.

6. The approval to the appointment of the Petitioner was rejected on two grounds firstly, the appointment was not made through Pavitra Portal and secondly, that no prior permission for issuance of advertisement was taken and surplus teachers were not absorbed. In so far as the first ground is concerned, the issue is no longer *res-integra* and has been settled by the Co-ordinate Bench of this Court in the case of **Kalyansing Indrasing Rajput** (supra). The factual finding which was arrived at, by the Co-ordinate Bench was that until June, 2024 and might be even thereafter, the Pavitra Portal was not functioning. The factual findings arrived at, by the Co-ordinate Bench is not shown to be erroneous from the material on record. Once it is held that the Pavitra Portal was not functioning till June, 2024, the appointment of the Petitioner having been made on 1st August, 2019 cannot be rejected on the said ground. Secondly, in so far as the aspect of prior permission for the advertisement not having been taken, we have before us the communications dated 29th October, 2018 and 1st July, 2019 by which the Respondent Nos. 3 and 4 informed the Respondent No.2 about the vacancy created in the Respondent No.4-School and had asked for surplus teacher available for absorption to be sent and also permission

for advertisement if surplus teacher is not available. It is by reason of inaction on the part of the Respondent No.2, that the Respondent Nos. 3 and 4 in the interest of the students were constrained to issue the advertisement. Having failed to respond to the communications by Respondent Nos. 3 and 4, it is no longer open for the Respondent No.2 to reject the approval on the ground of their own inaction. We do not find the Impugned order to be sustainable, in light of the material which has come on record.

7. Though, learned AGP would contend that the advertisement was published in an unknown newspaper and not in an widely circulated newspaper, the rejection is not on the said ground. It is well settled that the validity of the order is to be judged on the basis of the reasons set out therein and the said reasons cannot be supplemented by an affidavit.

8. In light of the discussion above, the Impugned order dated 25th July, 2024 is hereby quashed and set aside.

9. The **Writ Petition succeeds and is allowed** in terms of prayer clause (a) which reads as under:

“a. That this Hon’ble Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ, thereby quashing and setting aside the impugned Order dated 25-7-2024 passed by Respondent No.2 herein (being Exhibit H hereto) and further be pleased to direct Respondent no.2 herein to grant approval to the appointment of the petitioner on the post of Shikshan Sevak since the date of his appointment i.e. 01-08-2019 and further be pleased to grant approval on the post

order dated Assistant Teacher w.e.f. 02.08.2022.”

10. Rule is made absolute in the above terms.

[SHARMILA U. DESHMUKH, J.]

[M.S. KARNIK, J.]