

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1513 OF 2021

Gangaram Shreeram Desai & Anr.

...Petitioners

Versus

The State Of Maharashtra & Anr.

...Respondents

Mr. Bakul Bhosale, for the Petitioners.

Mr. V. M. Mali, AGP for the Respondent - State.

**WITH
WRIT PETITION NO.4463 OF 2021**

Abhishesh Mahadev Dalvi & Anr.

...Petitioners

Versus

The State Of Maharashtra & Anr.

...Respondents

Mr. Bakul Bhosale, for the Petitioners.

Ms. Pooja Joshi- Deshpande, AGP for the Respondent – State.

**CORAM : NITIN W. SAMBRE &
ASHWIN D. BHOBE, JJ.**

DATE : 22nd JANUARY, 2025

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1. Heard learned counsel for the parties.

2 Since the issues involved in both these Petitions are identical, both these Petitions are being disposed of by the common order. For the said purpose, facts in Writ Petition No.1513 of 2021 are taken into account.

3. In the Respondent No.3 school, the Petitioners came to be appointed as a Peon on 20th July, 2014 for a period of three years i.e. from 20th July, 2014 to 19th July, 2017.

4. Pursuant to the aforesaid appointment, a proposal for approval was forwarded by the employer i.e. Respondent No.3 school which was rejected vide impugned order dated 9th August, 2017 passed by the Respondent No.2.

5. While questioning the impugned order, counsel for the Petitioners would invite our attention to the advertisement issued in a newspaper produced at Exh.B, wherein the post of Peon along with the other vacancies was advertised. It is claimed that the advertisement was issued in daily "Prahar" in the edition of 30th May, 2013 and the appointment order was issued on 20th July, 2014. According to the counsel for the Petitioners, the ban imposed on the recruitment will not be operational in the facts and circumstances of the present case, as the recruitment was of the non-teaching post, whereas the GR dated 2nd May, 2012 puts an embargo on the recruitment for the new teaching post. Learned counsel would invite our attention to another GR holding the field, wherein ban was imposed on the recruitment of non-teaching post in an aided school.

6. As such, learned counsel by drawing support from the division bench judgment of this Court in the matter of ***Munoli Rajashri Karabasappa Vs. State of Maharashtra & Ors.*** decided on ***10th July***,

2017 in Writ Petition No.8587 of 2016 and Khushal S/o Sadashiv Medhe & Anr. Vs. State of Maharashtra & Ors. decided on **4th April, 2024 in Writ Petition No.11085 of 2017**, urge that the issue is squarely covered. Learned counsel for the Petitioners submits that this Court in the case ***Munoli Rajashri Karabasappa (supra)*** had observed that vide GR dated 2nd May, 2012, the State had imposed the ban on recruitment of Assistant Teacher, which ban was subsequently relaxed vide GR dated 4th September, 2013. Apart from above, another judgment is relied upon in the matter of ***Writ Petition No.10201 of 2022 decided on 2nd January, 2025 Kini Shikshan Prasarak Mandal Vs. State of Maharashtra & Ors.***

7. Learned AGP based on the impugned order would urge that the order is sustainable as right to claim approval is not a statutory right. It is further claimed that it is for the management to satisfy shortfall which the management has failed to. That being so, the order impugned is sustainable.

8. We have considered the rival submissions.

9. The fact about the post against which the Petitioners were appointed was advertised in the daily “Prahar” in edition on 30th May, 2013, can be inferred from the document at Exh.B. Said fact is not disputed by the Respondents. Similarly, appointment order dated 20th July, 2014 and the proposal submitted pursuant to the appointment of the Petitioners for grant of approval was also a fact which was rejected vide impugned order communicated on 9th August, 2017.

10. The impugned communication is based on two reasons (a) that the advertisement was not issued; and (b) GR dated 2nd May, 2012 puts an embargo on the right of the Respondent management to fill in the post.

11. As far as the first issue is concerned, it is already established that the post was duly advertised and the Petitioners competed on the basis of the said advertisement and that being so, the said reason cannot be said to be sustainable for rejecting the prayer for grant of approval. As regards the second issue i.e. ban being imposed on the recruitment pursuant to the GR dated 2nd May, 2012 is concerned, the aforesaid issues are covered by the aforesaid judgments.

12. That being so, the order impugned thereby rejecting the approval is hereby quashed and set aside.

13. We direct the Respondent – Education Officer to grant approval within a period of four weeks from the date of production of this order.

14. Both these Petitions stand allowed in above terms.

[ASHWIN D. BHOBE, J.]

[NITIN W. SAMBRE, J.]

Corrected pursuant to speaking to minutes of order dated 28.01.2025.