

XXVII, rule 4, of the Code of
Civil Procedure, 1908]

2. The Education Officer, [Secondary]
Zilla Parishad, Kolhapur.

3. The Deputy Director of Education
Kolhapur, At- Kolhapur.

....Respondent

Mr. Rahul S. Kadam for the Petitioner.

Ms. Nisha Mehra AGP for the State.

Mr. Aditya Raktade a/w Mr. Dnyanesh Patil for Interveners.

**CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ.**

**RESERVED ON: 28th JANUARY, 2025
PRONOUNCED ON: 24th FEBRUARY, 2025**

JUDGMENT (PER ASHWIN D. BHOBE, J.)

1. **Rule.** Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The decision dated 28.10.2022 passed by the
Respondent No.2, rejecting the Proposal No.257 dated 21.09.2022
submitted by the Petitioner Nos.1 and 2, seeking approval to the

appointment of the Petitioner No.3 on the post of Junior Clerk in the Petitioner No.2 High School, is assailed in the present petition.

3. **Factual Matrix:-**

a) Petitioner No.2 (High School) is managed and run by the Petitioner No.1(Institution). A post of Junior Clerk is earmarked in the 'Sanch Manyata' pertaining to the Petitioner No.2, from the year 2012 till 2021. Mr. Dattatraya Shripat Patil was working on the said post.

b) Upon the superannuation of said Dattatraya Shripat Patil, on 31.07.2022, the Petitioner Nos.1 and 2 applied to the Respondent No.2, inquiring availability of any surplus non-teaching staff and if not to accord permission to initiate the process of recruitment to fill up the said post, by issuing advertisement. Draft of the proposed advertisement was appended to the said application dated 15.07.2022.

c) As no response was received from the Respondent No.2, the Petitioner Nos.1 and 2 published advertisement in the newspaper "क्रांतीसिंह" [मंगळवार ता. ०२ ऑगस्ट २०२२ डाक आवृत्ती ता. ०३/०८/२०२२] notifying the vacancy of 'Junior Clerk' in the Petitioner No.2 School. Candidates fulfilling the eligibility

criteria of 12th (HSC) and computer knowledge, were called for interview scheduled on 10.08.2022, along with documents.

d) Four candidates including the Petitioner No.3 participated in the said selection process.

e) Petitioner No.3 has passed Secondary School Certificate Examination in the month of March 2008 and completed Maharashtra State Certificate in Information Technology (MS-CIT).

f) In the interviews held on 10.08.2022, Petitioner No.3 was found eligible, fulfilling the required qualifications and consequently was selected.

g) Appointment order dated 11.08.2022, was issued to the Petitioner No.3. Petitioner No.3 joined the Petitioner No.2 w.e.f. 17.08.2022.

h) On 21.09.2022, Petitioner Nos.1 and 2 submitted Proposal No. 257 seeking approval to the appointment of Petitioner No.3 as a 'Junior Clerk' in the Petitioner No.2 School. Required documents were appended to the said proposal dated 21.09.2022.

i) By order 28.10.2022, Respondent No.2 rejected the

said proposal dated 21.09.2022 (“Impugned order”). Ground of rejection essentially is that the recruitment process commenced by the Petitioner No.1 was without prior permission of the Government and before allotment of post by the Competent Authority as per revised staffing pattern and criteria fixed by the Government Resolution dated 28.01.2019. Impugned order makes a reference to the Government Resolutions dated 10.06.2010, 12.02.2015, 23.10.2013.

4. Petitioners are before this Court seeking the following substantial relief:-

“[A] That this Hon’ble Court under its Civil Appellate Writ Jurisdiction under Article 226 and 227 of the Constitution of India 1950, be pleased to call for the record and proceedings of the Order dated 28th October, 2022 passed by Respondent No. 2 Education Officer [Secondary] Zilla Parishad, Kolhapur and thus after going through the said order, said order being illegal and bad in law, same may be quashed and set aside and thus further proposal No. 257 dated 21st September 2022 submitted by Petitioner No. 1 and 2 for the approval of the post of Petitioner No. 3 of the post of ‘Junior Clerk’ may be approved and thus further directions may be given to the Respondent No. 2 Education Officer that all benefits which the present Petitioner is entitled after the approval and since date of appointment may be given to her.

[B] That further directions under Article 226 of the Constitution of India 1950 to Respondents that after the grant of approval, necessary 'Shalarth ID' to be issued to the present Petitioner as a consequence."

5. Respondents have opposed the petition. Respondent No.2 has filed reply dated 11.07.2023. Respondent No.2 contends that for granting individual approval to the appointment of member of non-teaching staff in Secondary School, the Respondent No.2 is required to be satisfied that the appointments have not been made through backdoor and that such appointments are to the post which are duly sanctioned. Respondents further contend that the recruitment process initiated for appointment by the Petitioner Nos. 1 and 2 was without prior permission of the Government and before allotment of post by Competent Authority as per revised staffing pattern and criteria sanctioned by the Government vide Government Resolution dated 28.01.2019. Reliance is placed on various other Government Resolutions to oppose the petition.

Submissions:-

6. Mr. Rahul Kadam, learned Advocate for the Petitioners submits that the 'Sanch Manyata' concerning the Petitioner No.2 School from the year 2012 till 2021 showed a clear vacant post of

‘Junior Clerk’. He submits that the Petitioner Nos.1 and 2 prior to initiating the selection process for the said post, had applied to the Respondent No.2 inquiring availability of any surplus non-teaching staff and if no surplus staff was available, to grant permission to publish the advertisement. He submits that despite the request made by the Petitioner Nos.1 and 2, the Respondent No.2 chose not to reply. It was only thereafter that the Petitioner Nos.1 and 2 commenced the selection process by advertisement and holding an interview in which the Petitioner No.3 was selected. Proposal dated 21.09.2022 complete in all regard and supported by the required documents were submitted to the Respondent No.2 for approval. He submits appointment of the Petitioner No.3 is on a clear and sanctioned post. According to him, the reliance placed by the Respondent No.2 on the Government Resolutions in the Impugned order are not applicable and that the Impugned order rejected the proposal on grounds which are untenable. He, therefore, prays that the petition be allowed.

7. Per contra Ms.Nisha Mehra, learned AGP for the State, submits that the Respondent No.2 upon due application of mind, has passed the Impugned order. She supports the Impugned order and

prays for dismissal of the petition.

8. The question for determination is whether the Petitioners are entitled to grant of approval for the appointment of the Petitioner No.3 as a 'Junior Clerk' in the Petitioner No.2 School?

Analysis:-

9. Burden of paying salary in respect of employment in aided private schools in the State of Maharashtra is borne by the State Exchequer, thus, such employment would be in realm of public employment. This Court, time and again has held that the recruitment/selection/appointment in such private aided schools has to be necessarily in conformity with the fundamental rights enshrined under Article 16 of the Constitution of India.

To maintain transparency in such employment, the employer initiating recruitment process, is required to notify availability of post, which would include issuance of advertisement in local newspapers having wide circulation, which is also the need to prevent arbitrariness and to ensure that meritorious candidates alone are appointed.

10. Selection process in the instant case commenced by

issuance of the advertisement (Exhibit-F). Perusal of the advertisement would indicate the following:-

- a) The advertisement is issued in a newspaper named “क्रांतीसिंह”, which is a relatively less circulated newspaper.
- b) The date mentioned in the advertisement (document at Exhibit-A) is "मंगळवार ता. ०२ ऑगस्ट २०२२ डाक आवृत्ती ता. ०३/०८/२०२२".
- c) The publication apparently is dated 03.08.2022. The interview was scheduled on 10.08.2022 i.e. within 7 days of the publication.

11. The Petitioners have not produced any material or data on record to indicate the nature of circulation of the said newspaper “क्रांतीसिंह”. The document at Exhibit-A refers to the said newspaper as “डाक आवृत्ती ता. ०३/०८/२०२२”.

In common parlance “डाक आवृत्ती” i.e. Dak Edition, is a edition known as “yesterday's news with today's date on it. In other words such newspaper is considered “a day behind” in terms of news reporting.

12. Further, the nature of the said publication is not known,

the period between the publication and the date scheduled for the interviews also being short, is sufficient to hold that the said advertisement was issued as an eyewash. This Court in the case of *Aher Sanjay Bajirao Vs. State of Maharashtra and Ors.* (Writ Petition No.8828 of 2024), has dealt with the importance of an advertisement and the purpose of publication of such advertisement in local dailies having wide circulation. The said act of the Petitioner Nos. 1 and 2 would amount to lapse and an irregularity.

13. In normal course, having found irregularities in the selection process, petition at the instance of the management and the School i.e. Petitioner Nos. 1 and 2, respectively would not be entertained.

14. However, in the instant case, the candidate is also before this Court as Petitioner No.3. For the following facts referred to herein below, indulgence in the matter qua the Petitioner No.3 would be warranted:

a) Para-4 of the Petition makes a reference to the ‘Sanch Manyata’ in respect of the Petitioner No. 2 from the year 2012 till the year 2021 showed a clear post of ‘Junior Clerk’. The

said document is produced on record as Exh. D. Mr. Dattatray Shripat Patil was occupying the said post, who retired upon attaining the age of superannuation on 31.7.2022. The said factual position is not contested by the Respondent No.2.

b) The advertisement pertains to a vacancy of the Junior Clerk (1 No.). Qualifications as published are HSC (12th standard) and knowledge of computer.

Qualifications for a junior Clerk as prescribed in Schedule B (IV) is at least matriculation or Secondary School Certificate Examination or any other qualifications declared by the Government as equivalent thereto.

The Petitioner No. 3 has passed the Secondary School Certificate Examination in March, 2008. She has also passed the examination and has been awarded the Maharashtra State Certificate in Information Technology(MS-CIT). Thus, Petitioner No. 3 fulfills the qualifications notified for the said post.

(c) Records placed before us indicate that the interviews were held on the scheduled date i.e. 10.8.2022. Total four candidates were interviewed by a Committee of Examiners. In the said interview, Petitioner No. 3 secured highest marks.

(d) Selection of the Petitioner No.3 was approved by the Management Petitioner No.1 vide Resolution dated 11.8.2022. Petitioner No. 3 was issued appointment letter dated 11.8.2022 by the Petitioner No.1.

15. The Respondent No.2 while rejecting the proposal has relied on the Government Resolutions 10.06.2010, Government Resolution dated 12.02.2015, Government Resolution dated 23.10.2013 and Government Resolution dated 28.01.2019.

16. For the limited purpose of testing the contentions of the Respondents, in the context of the ban on recruitment on non-teaching staff, we have perused the Government Resolutions forming a part of the petition:-

a) Government Resolution dated 10.06.2010, imposed a ban on recruitment of non-teaching staff. Period of the said ban was effective from 05.06.2010 up to 04.06.2011.

b) Ban imposed vide Government Resolution dated 10.06.2010 was extended by a further period of one year vide Government Resolution dated 16.07.2011. Period would thus

extend up to 04.06.2012.

c) Government Resolution dated 12.02.2015, directs maintaining *status quo* in respect of Master Plan (Akrutibandh) of non-teaching staff approved by Government Resolution dated 23.10.2013 till the receipt of the report of the Committee appointed for modifying the Master Plan.

d) Government Resolution dated 28.01.2019 introduces new norms for staffing pattern of non-teaching posts.

e) Appointment of the Petitioner No.3 was on the post sanctioned and shown in the Sanch Manyata, a post was earlier occupied by Mr. Dattatraya Patil, which became vacant on account of his superannuation. In such circumstances the reliance placed by the Respondents on the Government Resolutions, are misplaced.

17. Employment opportunities are a scarce commodity in our country. Therefore, considering the facts narrated herein above in the context of Petitioner No.3, who having gone through the rigmarole and having been appointed to the post of 'Junior Clerk', the Petitioner No.3 in our view should not be made to suffer on

account of the irregularities of the Petitioner Nos.1 and 2. In any case, the Petitioner No. 3 had no role in the manner/ conduct of the selection process.

18. In the facts and circumstances of the present case, we find that the lapse is committed by the Petitioner Nos.1 and 2. We could have taken a strict view considering that the participation of the candidates in the selection process was curtailed because of the advertisement having been published in a practically unknown newspaper, and that too in the Dak edition. However, the selected employee cannot be blamed for such tricks played by the management, which needs to be penalized. We are, therefore, condoning the conduct of the Management, only because the employee is not at fault, by imposing cost on the Petitioner Nos.1 Management. Petitioner Nos. 1 is hereby saddled with costs of Rs.1,00,000/- (Rupees One Lakh Only). Petitioner Nos. 1 is directed to deposit an amount of Rs.1,00,000/- in this Court, within 30 days.

19. Upon such deposit, the Registry of this Court shall transmit the said amount in four equal portions i.e. Rs.25,000/- each to the following institutions/organizations.

a) Central Police Welfare Fund

Account No.: 914010029005759

Bank : Axis Bank Limited

Branch : Wroli, Mumbai (M.H.), Mumbai-400025

IFSC Code : UTIB0000060

**b) High Court Employees Medical Welfare Fund at
Mumbai**

Account No.: 000120110001337

Bank : Bank of India

Branch : Mumbai Main

IFSC Code : BKID0000001

c) National Association for the Blind

Account No.: 3740000100008551

Bank : Punjab National Bank

Branch: : Worli Seaface

IFSC Code : PUNB0374000

d) Bar Council of Maharashtra and Goa

Account No.:10996711937

Bank : State Bank of India

Branch : Mumbai Main

IFSC Code : SBIN0000300

20. We caution the Petitioner No.1, that it shall not recover the said amount from the Petitioner No.3.

21. For the reasons set out herein above, **this Writ Petition is allowed.** The Impugned order 28.10.2022 passed by the Respondent No.2 is quashed and set aside. The Respondent No.2 is hereby directed to grant approval to the appointment of the Petitioner No.3 as Junior Clerk w.e.f. 11.08.2022 and issue a formal order to that effect within 30 days from today.

22. The Respondent No.2 is hereby directed to enter the name of the Petitioner No.3 in the Shalarth system and issue Shalarth Identity to the Petitioner No.3, by strictly complying with the law.

23. The Petitioner Nos.1 is directed to deposit the amount of Rs.1,00,000/- within 30 days from today, failing which the Respondent No.2 to take steps to recover the said amount from Petitioner No.1 as arrears of land revenue.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)