

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7913 OF 2024

Subhash Durgappa Nimbalkar ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

Mr. Satish Raut a/w Mr. Aarya V. Ambulkar for the Petitioner.
Mr. S. B. Kalel A.G.P for the Respondents-State.

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 of the parties.
2. The Petition challenges the Order dated 26th April, 2023 issued by the Respondent No.3 - the Education Officer (Secondary), Zilla Parishad, Solapur, refusing to grant approval to the Petitioner's appointment to the post of Assistant Teacher in unaided post.
3. The Petitioner possesses the qualification of B.A. B. P Ed and is duly qualified for appointment to the post of Assistant Teacher. On 14th May 2021, one post of Assistant Teacher in unaided division became

vacant in the year 2021-2022. By letter dated 14th May, 2021, the Respondent No. 4 informed Respondent No. 3 about the creation of vacancy and sought permission for issuance of advertisement. There was no response from Respondent No. 3. The Respondent No. 4-Management therefore issued an advertisement in daily news paper 'Navsandes' inviting application from eligible candidates for the post of Assistant Teacher. The Petitioner being duly qualified applied in response to the said advertisement and was selected after following due procedure and came to be appointed by appointment order dated 30th June, 2021 with effect from 1st July, 2021. On 21st December, 2022 the Respondent No. 5 submitted a proposal to the Respondent No. 3 seeking approval to the Petitioner's appointment in unaided division which came to be rejected by the impugned order.

4. Mr. Raut, learned Advocate appearing for the Petitioner submits that the approval was rejected on two grounds firstly that the recruitment was required to be made through the Pavitra Portal as per the Government Resolution dated 23rd June, 2017 and 20th June, 2018 and secondly that the backlog of reserved category candidate were not filled. He submits that in so far as the Pavitra Portal reason is concerned the issue has been settled by the Division Bench of this Court (*Aurangabad Bench*) by its decision dated 23rd April 2025 *Kalyansing Indrasing Rajput*

Vs. The State of Maharashtra, Through its Principal Secretary (Writ Petition No. 10205 of 2024). He submits that as the Pavitra Portal itself was not functional at the time when the Petitioner came to be appointed, the said ground could not form the basis for rejecting the Petitioner's proposal. He submits that the other reason of the backlog of the reserved category candidate not being filled was also under consideration of learned Single Judge of this Court in the case of *The President, Sudhagad Education Society, Dist. Raigad vs. The Dy. Director of Education* in Writ Petition No. 4635 of 2009 (Principal Seat at Bombay) dated 16th July, 2009. Drawing support from the said decision he submits that the learned Single Judge had held that there was no justification to refuse to grant approval for the reason that the backlog of reserved category candidate was not filled and the consistent view taken was not to refuse the grant of approval only on the said ground.

5. Mr. Kalel, learned A.G.P would support the impugned Order and would submit that as the requirement of law were not satisfied in the appointment of Petitioner, the Petitioner's proposal has been rightly rejected. He has taken this Court in detail through the impugned order and would submit that even if the Pavitra Portal ground was not available for rejection of the approval there is no justification for appointing candidate from the open category despite the backlog of reserved

category candidate not being filled by the Management.

6. The rejection of the Petitioner's approval on the ground that recruitment process was not done through the Pavitra Portal is set to rest by the decision of the Co-ordinate Bench in the case of *Kalyansing Indrasing Rajput Vs. The State of Maharashtra (supra)*. There is factual finding arrived at by the Co-ordinate Court that the Pavitra Portal was not functioning till June-2024 and even thereafter. In the present case the appointment of the Petitioner was with effect from 1st July, 2021 i.e. during the period which the Pavitra Portal was non-functional and the said ground was therefore not available to the Education Officer to reject the proposal.

7. As far as the second ground of backlog of reserved candidate not having been filled, learned Counsel for the Petitioner has rightly relied on the decision of the Single Judge of this Court in the case of *The President, Sudhagad Education Society, Dist. Raigad vs. The Dy. Director of Education (supra)*. In the said decision the issue which fell for consideration was whether the Deputy Director of Education had erred in refusing to grant approval to teachers appointed from open category merely on the ground that the backlog of reserved category candidate has not been filled by the Management. The learned Single Judge considered the previous decisions of this Court which has taken a consistent view

and directed the Deputy Director of Education not to refuse to grant approval only on the ground that the backlog of reserved category candidates was not filled in. In view of settled judicial pronouncements, there was no justification for the Education Officer to refuse to grant approval to the teacher on the ground that the backlog of reserved category candidate had not been filled. We are inclined to adopt the same view as in the case of *The President, Sudhagad Education Society, Dist. Raigad vs. The Dy. Director of Education (supra)*.

8. In light of the above discussion, we allow the Writ Petition in terms of prayer clause (a) and (b), which reads as under :

“(a) Call for relevant record and papers from the office of the Respondent No. 3 and after going through the same quash and set aside the impugned communication/letter dated 26.04.2023, issued by the Respondent No. 3 and for that purposes issue appropriate writ and/or order.

(b) Direct the Respondent No. 3 to grant approval to the Petitioner’s appointment to the post of Assistant Teacher in unaided postin Respondent No. 5 School with effect from his appointment dated 01.07.2021, along with all consequential benefits including salary and for that purposes issue appropriate writ and/or order.”

9. Rule is made absolute in the above terms.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]

Digitally
signed by
TALLE
SHUBHAM
ASHOKRAO
Date:
2025.09.18
19:00:38
+0530