

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5550 OF 2011

Shaikh Jamal Chand	]	
Age about 48 years, Occ. at	]	
Present Nil, residing at	]	
Bhagyodaya P.W.D. Society,	]	
E-8, Nai Jindagi Road,	]	
Solapur – 5.	]	Petitioner

versus

1.	The State of Maharashtra	]	
	Through its Secretary,	]	
	School Education & Sports	]	
	Department, Mantralaya,	]	
	Mumbai – 400 032.	]	
2.	The Dy. Director of Education	]	
	Pune Division, Pune.	]	
3.	The Education Officer (Secondary)	]	
	Zilla Parishad, Solapur,	]	
4.	Maharashtra Seva Sangh	]	
	Through its Secretary	]	
	Having its Registered office	]	
	at Mashal Vasti, Jaykumar	]	
	Nagar, Vijapur Road, Solapur	]	
5.	The Head Master,	]	
	Shree Nutan Prashala	]	
	Mashal Vasti, Jaykumar	]	
	Nagar, Vijapur Road, Solapur.	]	Respondents

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Mr. S.G. Kudle a/w Mr. Q.H. Kudle, for Petitioner.

Mr. V.M. Mali, A.G.P, for Respondent Nos.1 to 3 – State.

Mr. M.S. Topkar a/w Ms. Bhargavi Patil, for Respondent Nos.4 and 5.

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CORAM : M.S. KARNIK &
AJIT B. KADETHANKAR, JJ.

DATE : 24th DECEMBER, 2025.

JUDGMENT: [PER M.S. KARNIK, J.]:

1. By this petition preferred under Article 226 of the Constitution of India, a direction is sought to respondent Nos. 4 and 5 to pay arrears of salary due and payable to the petitioner up to the date of the petitioner attaining superannuation alongwith all the monetary benefits that have accrued from the last date of payment within a period of four weeks. It is prayed that the petitioner be absorbed in the Secondary School managed by respondent No.4 in view of the fact that the petitioner had rendered more than twenty years service in the Junior College, which was closed down from the academic year 2010-2011.

2. Brief facts of the present case are that the petitioner holds the qualification of M.A. (Sociology) and M.A (Political Science). The petitioner was appointed on 5th July, 1990 in Shree Nutan Prashala Junior College on Clock Hour Basis. At that time, the petitioner did not possess

B.Ed. Qualification as prescribed under Rules r/w Schedule B-III of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 (for short “MEPS Act”). The condition of qualification was relaxed by the Education Officer, granting approval to the petitioner’s appointment for one year.

3. Vide appointment letter dated 11th June, 1991, respondent No.1 was appointed as Full Time Teacher for Sociology subject with effect from 19th June, 1991. In the consecutive year i.e on 11th June, 1992, the petitioner, once again, came to be appointed for a period of two years i.e 1992-1993 and 1993-1994. However, the Deputy Director of Education, Pune granted approval for his appointment solely for one year i.e 1992-1993. Approval for his appointment in the year 1993-1994 was refused vide order dated 5th October, 1994 on the ground that the petitioner was untrained teacher. On the same ground, approval to the petitioner’s appointment for the year 1994-1995 was also refused vide letter dated 20th March, 1995.

4. Vide communication dated 23rd March, 1995, the petitioner informed the Deputy Director of Education of his willingness to work as a “Part Time Teacher”, given that he does not possess the requisite

qualification, upon which approval was granted to his appointment for the year 1994-1995 with effect from 13th June, 1995 as a Part Time Teacher.

5. On 24th August, 1995, the petitioner acquired the requisite qualification i.e Bachelor of Education (B.Ed.). However, the petitioner continued as Part Time Teacher for the year 1995-1996 and approval was granted to his appointment. Vide letter dated 29th November, 1997, the petitioner was appointed on clock hour basis, which, according to the petitioner, amounted to reduction in rank.

6. Consequently, the petitioner filed an appeal before the School Tribunal bearing Appeal No.70 of 1997, which came to be allowed by a judgment and order dated 8th September, 1999 directing the Management to restore the petitioner as a Full Time Teacher in the Junior College with all consequential benefits, thereby giving the petitioner benefit of deemed permanency under section 5 (2) of the MEPS Act.

7. Respondent No.4 challenged this judgment by filing a Writ Petition bearing No.5556 of 1999 before this Court. Vide judgment dated 21st March, 2009, the said petition came to be allowed. The

judgment and order dated 21st March, 2009 was challenged by the petitioner by filing a Letters Patent Appeal bearing No.178 of 2009. Vide judgment and order dated 31st July, 2009, the said judgment dated 21st March, 2009 was upheld and confirmed.

8. Further, the petitioner challenged the judgment and order dated 31st July, 2009 by filing a Special Leave Petition bearing No.18904 of 2000 before the Hon'ble Supreme Court. Vide order dated 1st December, 2000, the said Special Leave Petition was dismissed and judgment and order of this Court in Writ Petition No.5556 of 1999 was upheld.

9. Subsequently, respondent Nos.4 and 5 closed down the Junior College run by respondent No.4 from the academic year 2010-2011. Mr. Kudle, learned Counsel submitted that while the teachers who were working at the Junior College were absorbed in the Secondary Shool run by the Management, petitioner was excluded from consideration. The petitioner made a representation dated 28th October, 2010 to respondent Nos.2 and 3 to absorb him in the Secondary School.

10. Pursuant to the said representation, respondent No.2 informed respondent No.3 to look into the grievance raised by the petitioner by

holding an inquiry. Learned Counsel for the petitioner contends that despite repeated pleas to absorb the petitioner in the Secondary School, having received no response, a second representation dated 18th May, 2011 was submitted to the Deputy Director of Education, Pune Division and to the Director of Education, Maharashtra State, Pune. However, no further steps came to be taken by respondent No.3. The petitioner was expecting respondent No.3 to direct respondent Nos.4 and 5 to absorb him in the Secondary School. An inquiry was undertaken referring the matter to the Extension Officer (Education Department) vide letter dated 27th June, 2011. Since no further action was taken to absorb the petitioner in the Secondary School, the petitioner has approached this Court.

11. Learned Counsel for the petitioner submitted that while being granted permission to pursue and acquire B.Ed. Qualification, the petitioner claims to have been specifically assured by respondent No.4 that after the completion of his course, he will be absorbed on permanent basis in the Junior College in question. It is further submitted that the petitioner's post was reduced to his original position i.e from being appointed as permanent teacher to be shown to be a teacher on clock hour basis, even after completion of the requisite course to obtain B.Ed qualification. A request application was made by the petitioner to the

Deputy Director of Education, Pune Region, Pune and the Education Officer (Secondary), Zilla Parishad, Solapur, requesting that the petitioner be absorbed in the Secondary School, taking into consideration, the petitioner's service for twenty years. In response, the Deputy Director of Education, directed all concerned to hold an inquiry. Mr. Kudle urged that seventeen new teachers came to be appointed from the academic year 1995 to 2005, without considering the petitioner's request seeking absorption in the Secondary School. It is further submitted that the petitioner attained age of superannuation in November/December, 2019, from which date till the present day, he has not received salary and other monetary benefits. It is vehemently urged by Mr. Kudle that the petitioner is entitled to continuation of service from the date of his appointment up to date of attaining superannuation.

12. Learned A.G.P, appearing for respondent Nos.1 to 3 as well as learned Counsel for respondent Nos.4 and 5 filed affidavit-in-replies. In support of their submissions, our attention is invited to the affidavit-in-replies filed by the respondents. Further additional affidavit-in-reply dated 17th January, 2014 has been filed by the Head Mistress of the Secondary School to place on record further and additional facts pertaining to the period from 2010-2011 to 2015-2016.

13. We have heard learned Counsel for the petitioner and the learned Counsel for respondents. We have perused the petition, exhibits, pleadings and the materials on record.

14. We find that the petitioner was appointed as untrained teacher on Clock Hour Basis in Junior College and the said order of appointment for one year dated 5th July, 1990 was approved by the Deputy Director of Education vide an order dated 30th March, 1991 by relaxing the requisite qualification, which the petitioner did not possess at the relevant time. However, the petitioner continued to work beyond the tenure of one year. In the year 1995-1996, due to reduction in the strength of students enrolled in the Junior College, the number of divisions were reduced from four to three divisions. This led the respondents to appoint the petitioner as Part Time Teacher for the academic year 1995-1996, Since the petitioner had acquired the requisite academic qualification in the interregnum, the said appointment was approved by the Deputy Director of Education vide letter dated 29th September, 1995. From the affidavit-in-reply of respondent No.4, it is seen that in the year 1996-1997, due to further reduction of the strength of students in the Junior College, the petitioner came to be appointed as a teacher on Clock Hour Basis with effect from 9th June, 1997 alongwith other teachers. The petitioner

instituted Appeal bearing No.70 of 1997 before the School Tribunal challenging the reduction of his rank by the respondent, which came to be allowed by School Tribunal vide order dated 8th September, 1999, directing the respondents to allow the petitioner to commence duties as a Full Time Teacher and pay him salary with effect from 1st April, 1994. In the Writ Petition, challenging the order of the School Tribunal that was filed by the Institution, this Court stayed the order passed by the School Tribunal. This Court directed the respondents to deposit the petitioner's salary as Full Time Teacher from 1st April, 1994 to 8th September, 1999, after deducting the amount paid to the petitioner as teacher on Part-time or Clock Hour Basis, which the petitioner was permitted to withdraw after furnishing security.

15. An amount to the tune of Rs.3,42,007/- was thus deposited in the High Court which was withdrawn by the petitioner from the office of this Court. Vide order dated 21st March, 2009, this Court set aside the order dated 8th September, 1999 passed by the School Tribunal, confirming the appointment of the petitioner on Clock Hour Basis from 1996-1997. Even Letters Patent Appeal and subsequent challenge before the Supreme Court led to rejection of the petitioners claim. Thus, the order passed by this Court was confirmed.

16. Respondent No.5 then filed Civil Application No.110 of 2010 to recover amount withdrawn by the petitioner from the Office of this Court. Vide an order dated 17th September, 2010, this Court directed the petitioner to deposit the said amount of Rs.3,42,007/- with 6% simple interest from the date, the amount was withdrawn from the Office of the High Court till realisation, within a period of four weeks from the date of the order. The petitioner has not deposited the aid amount and, therefore, it is one of the submission of the learned Counsel for respondent Nos.4 and 5 that no equitable reliefs can be granted to the petitioner in this proceeding.

17. To this end, it is always open for respondent Nos.4 and 5 to seek appropriate remedies. This, however, cannot be a ground to deny relief to the petitioner if otherwise he is entitled to on merits.

18. It is pertinent to note that the petitioner's qualification is M.A in Sociology and Political Science, both of which subjects are not taught in the Secondary School. No doubt, respondent Nos.4 and 5 had given undertaking that the petitioner would be absorbed in the College after obtaining B.Ed qualification. So far as this undertaking is concerned, the same was subject to availability of vacant posts, continuation of College

and other norms. However, it is the case of respondent Nos.4 that there was no vacant post. Nothing is placed on record to indicate that despite existence of the vacant post, the petitioner has not been absorbed.

19. Respondent No.3 by letter dated 11th August, 2011 directed respondent No.5 to absorb the petitioner in the Secondary School. It is pertinent to note that strength of the students in the concerned Secondary has been declining, resulting in loss of teaching posts and the permanent teaching staff was rendered surplus, which made implementation of the directions issued by respondent No.3 impossible. Even during the period from 2010-2011 to 2015-2016, there has been no recruitment or appointment of any teaching or non teaching staff, given that the existing staff was being rendered surplus. We find substance in the submission of the learned Counsel for respondent Nos.4 and 5 that right to seek reabsorption vests only in permanent employees. The petitioner was never a permanent employee but was working on Clock Hour Basis. So far as status of the petitioner is concerned, challenge made by the petitioner right up to the Hon'ble Supreme Court failed as indicated earlier. In such circumstances, in the absence of there being any vacant post and more so, when permanent teaching staff being rendered surplus, we find substance in the submission of the learned Counsel for

respondent Nos.4 and 5 that implementation of the directions issued by respondent No.3 became impossible. We do sympathize with the petitioner. However, we do not find a legal basis for granting him relief. There is no merit in the petition. Consequently, the petition is dismissed. No costs.

[AJIT B. KADETHANKAR, J.]

[M.S. KARNIK, J.]