

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8780 OF 2021**

Vaishali Laxman Kharat, Age:
42 years, Presently residing at
Plot No.50, Koyana Sanmitra
Housing Society, Golibar Maidan,
Vilaspur, Satara 415002

.... Petitioner.

Versus

1. The State of Maharashtra,
Department of School Education
and Sports, Mantralaya, Mumbai -32.
2. The Director of Education,
Pune.
3. The Deputy Director of Education
(Kolhapur Division), Kolhapur.
4. Rayat Shikshan Sanstha Through
its Chairman/Secretary, Satara.

....Respondents

...

Mr. Saurabh Pakale, a/w Mr. Nilesh Desai for the Petitioner.

Mr. Milind Deshmukh a/w Shailesh Chavan a/w Onkar Wable for
the Respondent No.4

Mr. K. S. Thorat, 'B' Panel Council for the State/Respondent Nos. 1
to 3.

...

**CORAM: BHARATI DANGRE &
ASHWIN D. BHOBE, JJ.
DATED : 15th JANUARY, 2025**

JUDGMENT (PER ASHWIN D. BHOBE J.)

1. Rule. By consent of the counsel, Rule is made returnable forthwith.

2. Petitioner has assailed the order dated 15.06.2021 passed by the Respondent No.3 rejecting the Petitioner's proposal for appointment to a full time post in the aided Schools managed by Respondent No.4 institution.

3 .Factual Matrix:-

a) Petitioner was appointed on a sanctioned post i.e. part time Shikshan Sevak since 2009, which appointment was continued since then from time to time by way of multiple orders.

b) Department of School Education issued Government Resolutions dated 31.01.2001 and the Respondent State issued Government Resolution dated 10.06.2005 specifying the criteria for upgradation of part time teachers to full time teachers, subject to applications being made in prescribed manner.

c) Petitioner being eligible for upgradation as full time teachers applied in terms of the said policy of the

Respondent State.

d) Petitioner approached this Court by filing Writ Petition (st.) No.3579 of 2020 seeking a direction to the Respondent Authorities for facilitating Petitioner's absorption in accordance with the above referred State policy. This Court by order dated 29.10.2020 disposed of Writ Petition (st.) No.3579 of 2020 by recording that the Petitioner is eligible under the said policy for absorption, and directions was issued to the Respondent State to consider the case of the Petitioner in terms of the said policy.

e) The Respondent No.3 by the Impugned order dated 15.06.2021 has rejected the Petitioner's claim for full time post by recording that the Court had directed the Respondent No.2 to decide on the eligibility of the Petitioner for the purpose of absorption and on such premise, by referring to the Government Resolution dated 06.02.2012 the Petitioner's proposal for appointment to a full time post was rejected.

4. Respondent Nos. 1 to 3 have filed their reply dated 11.03.2022 opposing the petition.

5. Mr. Saurabh Pakale, learned Advocate for the Petitioner

submits that the Petitioner being appointed as a part time Shikshan Sevak in the Education Institution of the Respondent No.4 and such appointment having the approval of the Respondent No.3 is not in dispute. He further submits that the eligibility of the Petitioner to be considered for upgradation as a full time teacher in terms of the Government Resolution dated 31.01.2001 issued by the Education and the Sports Department and Government Resolution dated 10.06.2005 is also not in dispute. Mr. Pakale points out order dated 29.10.2020 passed by this Court in Writ Petition (st.) No.3579 of 2020 to contend that the Petitioner's eligibility for upgradation as a full time teacher is already concluded. He submits that Petitioner's appointment being of the year 2009, the Respondent No.3 was required to issue necessary directions/instructions of facilitating absorption of the Petitioner in accordance with the policy of the Respondent State. Further he submits that reliance placed by the Respondent No.3 on the Government Resolution dated 06.02.2012 is totally misplaced and at any rate the said Government Resolution is not applicable to the case of the Petitioner. He, therefore, prays that the Petition be allowed.

6. Mr. K. S. Thorat, Learned 'B' Panel Advocate for the State and Mr. Milind Deshmukh for the Respondent No.4 have relied on

the Impugned order to contend that the Respondent No.3 has rightly rejected the proposal of the Petitioner. They rely on Government Resolution dated 06.02.2012 to support their contentions.

Analysis:-

7. The question that falls for determination is whether the Impugned order rejecting the Petitioner's proposal for appointment to a full time post, by relying on the Government Resolution dated 06.02.2012 is justified.

8. In the earlier round of litigation, i.e. Writ Petition (st.) No.3579 of 2020, filed by the Petitioner, this Court in paragraph No.2 of the order dated 29.10.2020 had made the following observations:-

“2. It is not in dispute that the Petitioners were duly appointed as part time Shikshan Sevaks in the concerned educational institutions and their appointments were approved by Respondent No.2 Deputy Director of Education. It is also not in dispute that in accordance with circular issued by the Education Department on 31 January 2001, and G. R. issued by the Respondent State on 10 June 2005, the Petitioners are eligible to be considered for upgradation as full time teachers on proper applications submitted in that behalf to the education authorities. In a number of similarly placed cases (Writ Petition No.482 of 2002 and others), a Division Bench of this Court, by its order dated 10 July 2019, whilst disposing of the petitions of concerned teachers, granted liberty to the Petitioners to make representations and directed the education authorities (Education Officer of Deputy Director of Education, as the case may be) to issue appropriate instructions/directions for facilitating their absorption in accordance with the State policy

in a time bound manner. Learned AGP does not dispute that the facts of this case are no different from the facts of those cases.”

9. On the basis of the above said conclusion this Court had disposed off the petition giving liberty to the Petitioners to file appropriate applications/representations for absorption as a full time teacher in accordance with the State policy, with consequent direction to the Respondent No.3 to dispose off the said applications/representations.

10. Thus, the eligibility of the Petitioner to be absorbed as a full time teacher in accordance with the State policy, was not disputed by the Respondent State in the said petition and at any rate this Court had held the Petitioner to be eligible. The Respondent No.3 on the spacious plea as recorded in the Impugned order could not have gone into the issue of Petitioner's eligibility. The Respondent No.3 has exceeded his jurisdiction by doing so.

11. The Respondent No.3 was expected to consider the applications/representation filed by the Petitioner in the context of the said policy and to issue appropriate directions to the Respondent No.4 Institution to absorb the Petitioner as a full time Shikshan Sevak/Assistant Teacher. The order dated 29.10.2020 passed in Writ Petition (st.) no.3579 of 2020 was unambiguous in the context of the directions contained therein.

12. The Respondent No.3 has thereafter, proceeded to consider the case of the Petitioner in terms of the Government Resolution dated 06.02.2012. The said exercise undertaken by the Respondent No.3 discloses non-application of mind. Undisputably, the appointment of the Petitioner as a part time Shikshan Sevak is of the year 2009 but the Respondent No.3 in the Impugned order has applied the Government Resolution dated 06.02.2012, with retrospective effect, which is definitely erroneous. Even otherwise perusal of the Government Resolution dated 06.02.2012 would indicate that the same is not applicable to the case of the Petitioner.

13. This Court in the case of ***Suman Shriram Kakad v/s State of Maharashtra & Anr.***¹, while dealing with a question whether the Government Resolution dated 05.08.2010 would apply retrospectively, held that the said Government Resolution had prospective effect and it does not affect. Paragraph No.15 of the judgment reads as follows:

“15. It is necessary to note that it is a cardinal principle of construction of statute that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to effect existing rights, it is deemed to be prospective. As a logical corollary of general rule, that retrospective operation is not taken to be intended unless that intention was manifested by express

¹ 2011(supp.) Bom.C.R. 943

words or necessary implication. Another principle flowing from presumption against retrospectively is that one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed” .

14. For the reasons recorded herein above, the petition is partly allowed. Impugned order dated 15.06.2021 passed by the Respondent No.3 is quashed and set aside. Consequently, the Respondent No.3 is directed to grant approval to the absorption of the Petitioner to a full time teacher in any of the aided school managed and run by the Respondent No.4 with all consequential benefits of pay scale and seniority. Respondent No.3 to issue a specific order to that effect directing the Respondent No.4 to absorb the Petitioner. Such exercise be completed within a period of four weeks from today.

15. The Writ Petition is disposed off as no orders to cost.

(ASHWIN D. BHOBE, J.)

(BHARATI DANGRE, J.)