

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3019 OF 2019

Sujata Viresh Desai	]	
Age adult, Occupation : service,	]	
R/at Minache, Taluka Hatkanagale,	]	
Dist. Kolhapur.	]	... Petitioner

Versus

1.	The State of Maharashtra	]	
	Through Department of Education,	]	
	Having office at Mantralaya,	]	
	Mumbai 400 032.	]	
2.	Education Officer (Secondary)	]	
	Zilla Parishad, Kolhapur.	]	
3.	Shri Balasaheb Mane Shikshan	]	
	Prasarak Mandal, Ambap,	]	
	Taluka Hatkanagale, Dist. Kolhapur.	]	
	Through its President / Secretary.	]	
4.	Smt. Indira Gandhi Madhyamik	]	
	Vidyalaya, Peth Vadgaon,	]	
	Taluka Hatkanagale, Dist. Kolhapur.	]	
	Through its Head Master.	]	... Respondents

Mr. Prathamesh P. Magadum i/b. Mr. Chetan G. Patil for the Petitioner.
Mr. V.M. Mali, A.G.P. for the Respondent-State.

Coram : M. S. Karnik &
Ajit B. Kadethankar, JJ.

Date : 14th November 2025.

ORAL JUDGMENT (Per : M. S. Karnik, J.)

1. The challenge in this Petition is to the order dated 8th March 2018 passed by the Respondent No. 2 - Education Officer (Secondary), Zilla Parishad, Kolhapur, refusing to grant individual approval to the appointment of the Petitioner as Shikshan Sevak.

2. The facts of the case in brief are that :

The Respondent No.3-Management addressed a letter dated 12th May 2015 to the Respondent No.2-Education Officer seeking information in respect of any surplus teacher available for absorption. No communication was received from the Respondent No.2. In such an eventuality, the Respondent No.3-Management was left with no other alternative than to issue an advertisement in daily newspaper inviting applications for the post of Shikshan Sevak on 22nd May 2015.

3. Learned A.G.P. opposed the Petition and supported the impugned order by contending that there was a ban for the purpose of appointment and that without verifying whether there are surplus teachers, the Respondent No.3-Management proceeded to appoint the Petitioner.

4. Heard learned counsel. In the present case, we find that it is only after seeking information about the availability of surplus teachers, the advertisement came to be issued. Pursuant to the letter dated 12th May 2015 issued by the Respondent No.3 - Management to the Respondent No.2 – Education Officer seeking availability of surplus teachers, there was no response from the Respondent No.2 - Education Officer.

5. The Respondent No.3-Management therefore by order dated 12th June 2015 appointed the Petitioner, who was qualified as M.A.BEd., in the Respondent No.4-school as a Shikshan Sevak with effect from 15th June 2015. The proposal dated 24th July 2015 seeking approval to the appointment of the Petitioner on the said post was forwarded. No decision on the proposal was taken by the Respondent No.2.

6. The Respondent No.3-Management was orally informed that a fresh proposal seeking approval to the appointment of the Petitioner should be send. A fresh proposal dated 28th December 2017 seeking approval to the appointment of the Petitioner was submitted. The Respondent No.2 disposed of the proposal on 8th March 2018 holding that there is a ban for appointment of Shikshan Sevak as per Government Resolution (G.R.) dated 2nd May 2012 and that as per G.R. dated 6th February 2012 and 20th June 2014 permission was not taken prior to issuance of advertisement and absorption of all surplus teachers is not

complied as per letter dated 16th January 2017 of the Commissioner of Education, approval cannot be granted to the appointment of the Petitioner.

7. We have also perused the Affidavit-in-Reply dated 22nd March 2022 filed by the Deputy Education Officer (Secondary), Zilla Parishad, Kolhapur, justifying the impugned order. The purpose of the ban is to ensure that whenever there is vacant sanctioned post, the same should be filled by surplus teachers firstly.

8. However, in the present case, it is seen that the Management had infact informed the Respondent No.2 seeking information in respect of surplus teachers available for absorption. There was no response received from the Respondent No.2 and therefore the Respondent No.3 - Management was left with no other alternative but to issue an advertisement in the daily newspaper inviting applications for appointment to the post of Shikshan Sevak. This was in the interest of the students. The Petitioner therefore applied. There is no dispute that the Petitioner possess the essential qualifications for appointment as Shikshan Sevak. In this view of the matter, in our opinion, the impugned order calls for interference.

9. It is pertinent to note that this Petition was filed on 27th June 2018. During the pendency of the Petition, the Respondent No.3-Management

had submitted another proposal on 28th December 2021 on the oral directions of the Education Officer. To the Affidavit-in-Reply filed by the Respondent No.2, is annexed the copy of the order dated 8th February 2022, rejecting the proposal.

10. We find that such a proposal is rejected during the pendency of the present Petition. The deficiencies which are mentioned in the said order dated 8th February 2022 were not communicated to the Management before rejecting the proposal. An opportunity ought to have been given to Management to cure the deficiencies. Moreover these deficiencies was not the the reason for rejecting the proposal impugned in this Petition. In such view of the matter, if at all the Education Officer wanted to consider the proposal a fresh, the same ought to have been done after seeking leave of this Court and in any case, an opportunity should have been given to the Petitioner as well as the Respondent No.3-Management to cure the deficiencies mentioned in such proposal before rejecting the proposal. This has not been done. No doubt the order dated 8th February 2022 is not challenged in this Petition. However, the order dated 8th February 2022 is in the teeth of the order impugned in this Petition and hence we proceed to quash the order.

11. The impugned order dated 8th March 2018 and the order dated 8th February 2022 are therefore quashed and set-aside. Writ Petition is

allowed in terms of prayer clause (A).

12. The Deputy Director of Education to issue Shalarth I.D. to the Petitioner expeditiously.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

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