

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

WRIT PETITION NO. 4582 OF 2022

Satywan Laxman Kale.

] **...Petitioner.**

Versus

- | | | |
|----|---------------------------------------|---------------------------------|
| 1] | The State of Maharashtra |] |
| | Through the Secretary, |] |
| | School Education and Sports |] |
| | Department. |] |
| 2] | The Commissioner of Education, |] |
| | School Education Department, |] |
| | Maharashtra State. |] |
| 3] | The Director of Educational |] |
| | (Secondary and Higher Secondary), |] |
| | Maharashtra State. |] |
| 4] | The Deputy Director of Education, |] |
| | Kolhapur Region, Kolhapur |] |
| 5] | The Education Officer (Secondary), |] |
| | Zilla Parishad, Sindhudurg. |] |
| 6] | Vaibhavawadi Taluka Shikshan Sanstha. |] |
| 7] | Arjun Ravrane Vidyalaya, |] |
| | Vaibhavwadi, Sindhudurg. |] <u>...Respondents.</u> |

Mr. Prashant Bhavake for the Petitioner.

Ms. T. J. Kapre, AGP for the Respondent-State.

Mr. Utkarsh Desai for the Respondent No. 6 and 7.

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

Date : November 27, 2025.

*[This is the **Corrected Judgment** as per speaking to the minutes order dated 11-12-2025]*

Oral Judgment (Per Ajit B. Kadethankar, J.) :

Subject Matter : By the present petition, Petitioner assails the order dated 21st August 2018 passed by the Education Officer (Secondary), Zilla Parishad, Sindhudurg, whereby the proposal for grant of approval to Petitioner's appointment on the post of Peon has been turned down.

1. ***Rule.*** Rule made returnable forthwith. Considering the prayers made in the petition, writ petition is heard finally by consent of the parties. For the sake of convenience, the parties are referred to their factual status.

2. **Facts in brief :**

2.1 The Petitioner possesses a Certificate of Higher Secondary School Examination (HSC Certificate/XIIth Examination passed) and belongs to "Nomadic Tribe-C" category (hereinafter referred as 'NT-C' for the sake of convenience). The Respondent No.7 is a school run by Respondent No.6 – Educational Institution. Rest of the Respondents are the government authorities/authorities of Zilla Parishad, Sindhudurg.

2.2 Consequent to the superannuation of one Mr. V. L. Nevrekar, who happened to be a Peon in the Respondent No.7- school, a vacancy to the post of Peon falling in NT-C category arose on 28th July 2011.

2.3 Respondent No.6 therefore approached the Respondent No.5 to ascertain if any suitable surplus candidate for appointment to the subject matter post was available. Petitioner contends that no such information of suitable surplus candidate for the post of Peon from NT-C category was available with the Respondent No. 5.

2.4 It is pertinent to note that vide Government Resolution dated 13th April 2011, the General Administration Department, Government of Maharashtra resolved to implement a special drive to fill up the backlog of backward class from 14th April 2011.

2.5 On 11th July 2011, the school management–Respondent No.6 published an advertisement in daily newspaper “Lokmat” inviting applications from the suitable candidates to fill up the subject matter post of peon from NT-C category. Copy of the said advertisement is annexed to the petition paper-book at page No. 36.

2.6 Pursuant to the aforesaid advertisement, Petitioner approached the school management for recruitment. In the recruitment process, the school management found the Petitioner fit to be appointed on the subject matter post and as such vide its resolution dated 28th July 2011, the School Committee resolved to appoint Petitioner on the subject matter post. On 30th July 2011, the School Management (the Respondent No.6) appointed Petitioner as peon with effect from 1st August 2011.

2.7 Mr. Prashant Bhavake, learned Counsel for the Petitioner submits that appointment of Petitioner on the subject matter post was clearly after due process and hence school management submitted a proposal to the Respondent No.5- Education Officer for approval to the Petitioner's appointment on 17th November 2011.

2.8 Mr. Bhavake would further submit that since there was no response from the concerned authorities, i.e, the Respondent No.5, the school management re-submitted the proposal to Respondent No.5 on 23rd August 2013.

2.9 Still there was no response from Respondent No.5 on the proposal. This constrained the Petitioner to lodge Writ Petition No. 4993 of 2016 in this Court. Upon hearing parties, this Court vide order dated 26th April 2016 partly allowed the writ petition and directed the Respondent No. 5 to decide the proposal within a period of six weeks.

2.10 The School Management, pursuant to the order passed by this Court, on 14th May 2018, re-submitted the earlier proposal to the Respondent No. 5/ Education officer. However, for the reasons recorded in his order dated 21st August 2018, the Respondent No.5 turned down the proposal submitted by the School Management for approval to the Petitioner's appointment.

2.11 On this background, Petitioner is in second round of litigation before this Court by filing present petition.

3. Petitioner's Arguments:

3.1 Mr. Prashant Bhavake, learned Counsel for the Petitioner submits that reasons recorded by the Education Officer (Secondary) Sindhudurg, i.e., the Respondent No.5 are absolutely misconceived and without considering the facts applicable to the Petitioner's case. He would submit that Respondent No.5 even did not call upon the School Management or the Petitioner to explain the deficiencies recorded by Respondent No. 5 in rejection order dated 21st August 2018.

3.2 Mr. Bhavake, learned Counsel would further submit that the Petitioner was appointed on the subject matter post after following due process and without violation of any Government policy / legal provision. He would submit that Petitioner cannot be said to have been appointed by a back-door entry.

3.3 As such, Mr. Bhavake learned Counsel would pray to allow the writ petition and direct the Respondent No. 5 to approve the proposal submitted by the School Management for approval to Petitioner's appointment.

Respondent's Arguments:

4.1 Mr. Desai, learned Counsel for the Respondent Nos. 6 and 7 submitted that since the proposal for approval to the Petitioner's

appointment was submitted by school and school management itself, they supported the case of Petitioner. He would further add that the School Management has followed the due process while appointing the Petitioner. He would submit that even if the Education Officer had called upon the School Management to explain any query, the things could have been definitely worked out earlier, there is no illegality in Petitioner's appointment.

4.2 Ms. Kapre, learned Asst. Govt. Pleader would however argue in support of the impugned rejection order dated 21st August 2018. She would submit that Respondent No.5 has considered the prevailing State policy, record and only thereafter has passed the impugned order. Learned AGP would pray for the dismissal of petition.

4.3 Ms. Kapre further submits that Respondent No.5 has filed an affidavit-in-reply to support the rejection of Petitioner's approval proposal. It is submitted that as per Government Resolution dated 16th July 2011, there was ban on the recruitment of non-teaching staff.

4. Discussion and Consideration :

5.1 We have heard at length the learned Counsel for the Petitioner, learned Counsel for the School Management and learned AGP for the Respondent-State. With the able assistance of both of them, we have gone through every Annexure to the petition to examine the case of Petitioner.

5.2 It is pertinent to note that all the sequence of facts and documents attached to the paper-book are admitted by both the parties. The controversy is as regards the objections taken by the Respondent No.5 to the grant of approval to the proposal of Petitioner's appointment and his reliance on certain Government Resolutions.

5.3 In order to arrive at right conclusion, now we deal with each objection/ground recorded by the Respondent No. 5 invalidating the proposal for grant of approval to Petitioner's appointment.

5.4 As regards the First ground that "School Management has not taken prior permission before recruiting the Petitioner on the subject matter post", Ms. Kapre, learned AGP submitted that such ground is with reference to the Government Resolution dated 6th February 2012.

5.4.1 Ms. Kapre, learned AGP would submit that it was the duty of school management to approach the Respondent No.5 and to secure prior permission for recruitment as per clause (A)(i) and (A)(ii) of Government Resolution dated 6th February 2012.

On perusal of the Government Resolution dated 6th February 2012, it appears that before recruitment in a private school under the provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the school management

has to verify whether any suitable candidate from the surplus employee is available from the record maintained by Respondent Nos.4 and 5. The said Government Resolution at Clause 3 also stipulates that only if such suitable candidate is not available, permission would be granted to the school management for undertaking recruitment.

5.4.2 Ms. Kapre, learned Asst.Govt.Pleader places reliance on the Government Resolution dated 6th February 2012 and submits that the Respondent No.5 is justified in recording such objection.

5.4.3 It is pertinent to note that said Government Resolution is issued on 6th February 2012 while the Petitioner's appointment is dated 30th July 2011. The recruitment process that was conducted by school management is obviously prior to 30th July 2011. As such, riders imposed by the Respondent Authorities are post Petitioner's recruitment. We have no doubt in our mind to record that Government Resolution dated 6th February 2012 and riders imposed therein are not applicable to the Petitioner's case for lack of its retrospective effect.

Hence, we turn down the 1st objection raised by Respondent No. 5.

5.5 The Second ground recorded by Respondent No.5 to reject the approval proposal is "advertisement was not published in 2 daily newspapers as per Government Resolution dated 6th February 2012".

5.5.1 We have already recorded that stipulations/riders first time introduced by the Government Resolution dated 6th February 2012 would not be applicable retrospectively to Petitioner's appointment and to the recruitment process that was conducted for the Petitioner's appointment dated 30th July 2011.

5.5.2 A profitable reference can be made to the law laid down by this Court in the case of ***Dilip Mohan Desai v. State of Maharashtra [2021(1) Bom C.R. 685]***. This Court has at paragraph Nos. 15 to 18 observed as under :

"15. Mr. Thorat has also relied on G.R. dated 23rd October, 2013 regarding staffing pattern. However, clause 4 of the said G.R. specifically mentions that the guidelines which were existing with respect to non-teaching staff as per G.R. dated 25th November, 2005 will not apply after 23rd October, 2013. Mr. Thorat has also relied on G. R. dated 12th February, 2015. The said G.R. very clearly stipulates that status quo to be maintained with respect to appointment and new posts and vacant posts should not be filled in any circumstances. It is thus clear that *status quo* was directed to be maintained from 12th February, 2015 directing that no new posts or vacant posts should be filled in. By no stretch of imagination it could be said that the post of the peon occupied by the Petitioner since 5th April, 2007 was either vacant or new post as contemplated under G.R. dated 12th February, 2015.

16. Mr. Thorat has also relied on G.R. dated 28th January, 2019. In fact, the said G.R. states that all the decisions of the State of Maharashtra regarding staffing pattern taken earlier are cancelled and the staffing pattern is to be implemented as set out in the said G.R. In so far as staffing pattern of class-IV

employees are concerned, it is specifically mentioned that new separate G.R. will be issued. In the affidavit in reply it is specifically stated that Government has not decided the staffing pattern, recruitment pattern about the post of peon. Be that as it may, all these Government Resolutions which are subsequent to the appointment of Petitioner will not apply to the Petitioner's case and therefore, it can not be said that approval granted to his appointment as peon by orders dated 21st January, 2019 and 25th February, 2019 issued by Respondent No. 2-Education Officer (Secondary) are illegal.

17. Mr. Patil rightly relied on the judgment of this Court in the matter of *Suman Shriram Kakad (supra)*. In the said case also the question was whether the Government Resolution dated 5th August, 2010 would apply with retrospective effect. This Court has held 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. It is further held that unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective. As a logical corollary of general rule, retrospective operation is not taken to be intended unless that intention was manifested by express words or necessary implication. Another principle flowing from presumption against retrospectivity is that one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed.

18. In the present case, not only that the Government Resolutions on which Mr. Thorat has heavily relied are subsequent to the appointment of Petitioner but, in fact, the said Government Resolutions clearly contemplates/specifies that either they are applicable from the date of Government Resolution or the date specifically mentioned therein."

5.5.3 We have also taken note that besides the inapplicability of Government Resolution dated 6th February 2012 to the Petitioner's case, Respondent No.6 has even published an advertisement in daily "Lokmat" inviting applications from the suitable candidates to fill up the subject matter post. We appreciate that adequate transparency has been maintained by the Respondent No.6-Management while conducting the subject matter recruitment process.

As such, we decline to agree with 2nd objection raised by the R.No.5.

5.6 Last two objections in the impugned rejection order dated 21st August 2018 are that new staffing pattern was not approved from Government level till July 2018 nor approval was made since 2014-15. We are unable to comprehend the logic applied by the Respondent No. 5 as regards these two objections.

5.6.1 It is because, as rightly pointed out by Mr. Bhavake, learned Counsel for the Petitioner that, the Petitioner's appointment was on the post which floored vacant due to superannuation of an earlier Peon namely, Mr. Nevrekar. Obviously, the subject matter post was already a sanctioned post in the year 2011 i.e. when the Petitioner was appointed.

If that is so, the last two objections recorded by the Respondent No. 5 to reject the Petitioner's approval, we find unsustainable.

6. On our specific query, learned Asst.Govt.Pleader Ms. Kapre would fairly submit that except these 4 grounds, there is no other reason either to doubt Petitioner's appointment or to reject the approval proposal.

7. We accept the argument of Mr. Bhavake that Petitioner's appointment was a part of special drive launched by the Government of Maharashtra to clear the backlog of backward class vide Government Resolution dated 13th April 2011.

8. We are, therefore of the considered opinion that Respondent No.5 has erred in applying the provisions of Government Resolution dated 6th February 2012, which came into existence much after the Petitioner was appointed on the subject matter post. We are also satisfied with Petitioner's argument that, the Petitioner was appointed on an already existing sanctioned post which became vacant due to superannuation of an employee. That, the absence of new staffing pattern or staff approval, that too, for subsequent period would not invalidate the Petitioner's appointment, as illegal or contrary to the government policy.

9. Thus, we have dealt with each of the ground recorded by the Respondent No. 5 to turn down proposal for approval to Petitioner's appointment, in the light of Petitioner's explanation and the documents on record. Hence and for the reasons recorded above,

we find that Petitioner has made out a successful case to seek indulgence of this Court for the directions recorded below :

- (i) Writ Petition is allowed in terms of prayer clause (b), which reads thus :

“b] By suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 21-8-2018 passed by Respondent No.5-Education Officer [Exhibit-L] thereby rejecting to grant proposal submitted by Respondent No.6 and 7 seeking individual approval to the appointment of the Petitioner in the post of Peon at the Respondent No. 7- Secondary School and accordingly be pleased to further direct the Respondent No.5-Education Officer to grant individual approval to the appointment of the Petitioner in the post of Peon at the Respondent No.7-Secondary School w.e.f. 1-8-2011 under Shikshan Sevak scheme and also grant approval as permanent/regular Peon w.e.f. 1-8-2014 within the period of two weeks or within any other period which this Hon'ble Court deems fit and accordingly release salary/honorarium payable to Petitioner with its all arrears within 8 weeks from the date of granting approval or within any other period which this Hon'ble Court deems fit and proper”

- (ii) The Respondent Nos. 6 and 7 shall re-submit the proposal to the Respondent No. 5 for approval to the Petitioner's appointment dated 30th July 2011 on the post of Peon (**NT-C category**) together with copy of this Order, within a period of two weeks from today.

Upon receipt of such proposal, the Respondent No.5 is directed to accord approval to the said proposal within a period of four weeks therefrom.

- (iii) Upon grant of approval to the appointment of Petitioner, the Respondent No.4 shall include the name of Petitioner in Shalarth Pranali and shall award Shalarth Id to the Petitioner within a period of four weeks from the date of receipt of a copy of approval order.
- (iv) The Respondent Nos. 4 and 5 shall release the monetary benefits consequent to grant of Shalarth ID to Petitioner, as are applicable, and if any, within a period of eight weeks thereafter.
- (v) Rule is made absolute in above terms.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]