

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

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 11591 OF 2025

(District-Ratnagiri)

- | | | |
|--|---|------------------------------|
| 1) Shivaji s/o Sukdev Lawate |] | |
| Age: 51 years, Occupation: Service as |] | |
| Assistant Teacher presently working with |] | |
| Shriman Chandulal Sheth High School, |] | |
| Khed, Tal. Khed, District Ratnagiri. |] | <u>...Petitioner.</u> |

Versus

- | | | |
|---|---|-------------------------------|
| 1) The State of Maharashtra |] | |
| Through its Principal Secretary, |] | |
| Department of school Education |] | |
| Mantralaya, Mumbai 400032. |] | |
| 2) The Director of Education, Secondary and |] | |
| Higher Secondary Maharashtra State |] | |
| Central Building, Pune. |] | |
| 3) The Deputy Director of Education, |] | |
| Kolhapur Division, Kolhapur. Dist. |] | |
| Kolhapur |] | |
| 4) The Education Officer (Secondary), Zilla |] | |
| Parishad, Ratnagiri, Ratnagiri. |] | |
| 5) Sahjiwan Shikshan Sanstha Khed, Tq. |] | |
| Khed, Dist. Ratnagiri, Through its |] | |
| President / Secretary |] | |
| 6) Shriman Chandulal Sheth High School & |] | |
| Junior College, Khed, Tal. Khed, District |] | |
| Ratnagiri Through its Head Master |] | <u>...Respondents.</u> |

Mr. Arvind G. Ambetkar for Petitioner.

Mr. A. P. Vanarase, A.G.P., for Respondent-State.

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

Date : December 11, 2025.

JUDGMENT (PER : AJIT B. KADETHANKAR, J.)

(1) Heard Mr. Arvind G. Ambetkar, learned Counsel for the Petitioner, Mr. A. P. Vanarase, learned Assistant Government Pleader for the Respondent-State. Considering the nature of litigation, we deem it appropriate to hear the parties finally and dispose of the Writ Petition.

(2) Rule. Rule made returnable forthwith. With the able assistance of the learned Counsel for the respective parties we have gone through the annexures and of the Petition and the case laws relied upon by the parties. For the sake of convenience, we refer the parties as to their factual status.

(3) SUBJECT MATTER:

(3.1) The Petitioner challenges the payment of honorarium for the period of three years during which he served as a Shikshan Sevak, despite he having been promoted to the post of Shikshan Sevak (Assistant Teacher) on a regular pay scale.

(3.2) Petitioner's grievance is that the Education Officer (Secondary), Zilla Parishad, Ratnagiri, has relied upon Clause 8 of the Government Resolution dated 10th June 2005, whereby Petitioner is held entitled for honorarium for the initial three years of promotional appointment. The Petitioner, therefore, seeks a correction in the approval order by directing the Education Officer to hold him entitled to the regular pay scale applicable to the post of Assistant Teacher.

(4) FACTS IN BRIEF:

(4.1) The Petitioner was initially appointed on 18th September 1995 on the post of Laboratory Assistant. Thereafter, on 8th June 1998, the Petitioner was appointed on a 25% reservation basis to a clear and vacant post of Laboratory Assistant after following the due process of law. These facts are not disputed by the respondent side.

(4.2) It is not in dispute that the Petitioner was 'appointed in', and 'continues to work with' Respondent No. 6-School, which is a 100% aided institution which is run by Respondent No. 5-Management.

(4.3) The Petitioner, who was appointed on a non teaching post in the respondent school, acquired necessary requisite qualification to be appointed as Assistant Teacher (Shikshan Sevak) and was accordingly appointed on such post by following due procedure of law.

(4.4) Its not in dispute that a non-teaching employee in a school can be promoted to a teaching post in the school run by the same institution. The Petitioner was thus promoted to the post of Shikshan Sevak (Assistant Teacher) and his appointment was also approved by the Education Officer. However while granting approval to Petitioner's appointment, the Education Officer directed that the Petitioner shall be paid Honorarium for the initial three years from the date of such promotional appointment.

(4.5) This has given cause of action to the petitioner to file the present Writ Petition.

(5) Petitioner's Argument:-

(5.1) Mr. Arvind G. Ambetkar, learned Counsel for the Petitioner, submits that the Petitioner completed his graduation in Science (B.Sc.) in January 2000 and subsequently obtained his Bachelor's degree in Physical Education (B.P.Ed.) in March/April 2003 from Shivaji University, Kolhapur.

(5.2) Vide Government Resolution dated 27th April 2000, the Government of Maharashtra introduced the "Shikshan Sevak" Scheme. A supplementary Government Resolution dated 10th June 2005 was thereafter issued, revising the Scheme as applicable to private aided secondary and higher secondary schools and junior colleges, among others.

(5.3) Pursuant to the Shikshan Sevak Scheme (supra), the School Management appointed the Petitioner to a clear and vacant post of Shikshan Sevak in the Respondent School with effect from 2nd January 2010. The Petitioner joined duties with effect from 25th June 2010.

(5.4) On 29th June 2010, the Education Officer issued approval to the Petitioner's appointment as Shikshan Sevak. However, by referring to Clause 8 of the Government Resolution dated 10th June 2005, it was stated that the Petitioner would only be entitled to an honorarium of ₹4,000/- per month for the three years.

(5.5) Upon completion of the Petitioner's probation period, the Education Officer granted approval on 24th July 2013, thereby extending to the Petitioner the regular pay scale with effect from 25th June 2013.

(5.6) The grievance of the Petitioner is that he ought to have been granted the regular pay scale on the post of Shikshan Sevak with effect from his promotion dated 25th June 2010.

(5.7) Mr. Ambetkar, learned Counsel for the Petitioner, invited the Court's attention to the letters dated 16th December 2024 and 31st January 2025, forwarded by the School Headmaster to the Education Officer. These letters, placed at page Nos. 42 and 44 of the writ petition paper-book, reveal that the Headmaster requested the Education Officer to treat the Petitioner's promotion as that of an

Assistant Teacher, rather than as a Shikshan Sevak.

(5.8) The sum and substance of the Petitioner's submissions, supported by the aforesaid letters is that the Petitioner ought to have been granted the regular pay scale applicable to the post of Assistant Teacher, instead of being paid honorarium applicable to a newly appointed Shikshan Sevak.

(6) Respondent's Argument: -

(6.1) Mr. A. P. Vanarase, learned Assistant Government Pleader, places reliance on page No. 47 of the writ petition compilation, which contains a letter dated 7th March 2025 (page 47 of the writ petition paper-book) issued by the Education Officer to the School Headmaster. The said letter indicates that the concerned authority, i.e., the Education Officer, has relied upon Clause 8 of the Government Resolution dated 10th June 2005.

(6.2) Mr. Vanarase, learned AGP, therefore justifies the communication dated 7th March 2025 issued by the Education Officer. For the sake of convenience, Clause 8 of the Government Resolution dated 10th June 2005 is reproduced hereinbelow:

"८). शिक्षकेतर कर्मचाऱ्याने माध्यमिक शिक्षकांसाठी वा कनिष्ठ महाविद्यालयीन शिक्षकांसाठी आवश्यक ती शैक्षणिक अर्हता प्राप्त केली आणि जर त्या संवर्गाचे पद माध्यमिक शाळेत वा उच्च माध्यमिक शाळेत / कनिष्ठ महाविद्यालयात उपलब्ध असेल तर, अशा प्रकरणी सदरहू शिक्षकेतर कर्मचाऱ्यास शिक्षणसेवक म्हणूनच नियुक्ती द्यावी लागेल व त्यांना शिक्षणसेवकांचेच मानधन आणि इतर सर्व अटी व शर्ती लागू होतील. मात्र अशा शिक्षकेतर कर्मचाऱ्याची पूर्वीची सेवा ही सेवानिवृत्ती वेतनासाठी ग्राम धरता येईल."

(6.3) Needless to mention, the School Management supports Petitioner's claim.

(7) CONSIDERATIONS AND OBSERVATIONS:

(7.1) It is pertinent to note that although Clause 8 of the Government Resolution dated 10th June 2005 is titled as relating to 'appointment', its contents clearly indicate that it operates as a promotional avenue for members of the non-teaching staff.

(7.2) It is not in dispute that the placement of non-teaching staff of aided private schools on teaching posts, subject to the availability of a clear vacancy and the possession of requisite qualifications is permissible. In such circumstances, if an employee who is already drawing a regular pay scale on a non-teaching post is placed on a teaching post, i.e., as a Shikshan Sevak, on a mere honorarium, such an employee would undoubtedly suffer pecuniary loss and his interest would be jeopardized. This would result in a drastic reduction from a regular pay scale to a fixed honorarium.

(7.3) Hence, Clause 8 of the Government Resolution dated 10th June 2005 is required to be construed as treating such placement, as contemplated therein, to be a 'promotion' and not a fresh appointment. Profitable reference may be made to the judgment and order of this Court in ***Usha Baliram Masal vs. Hind Seva Mandal*** [Writ Petition No. 3167 of 2019].

The relevant portion of the said judgment is reproduced below.

"1. The petitioner seeks directions against the respondents to consider the claim of the petitioner for appointment on vacant post of 'Shikshan Sevak'.

2. According to the learned counsel for the petitioner, as per Government Resolution dated 10.06.2005 the petitioner is eligible to be appointed as 'Shikshan Sevak'. The petitioner is already working as 'Peon'. The petitioner has acquired the qualification of B.A., B.P.Ed. and is qualified to be appointed as 'Shikshan Sevak' and the post is also available with respondent no. 4.

3. Mr. Dixit, learned counsel for respondent no. 1 submits that the management would consider the claim of the petitioner on its own merits. The management will have to consider seniority and cases of other employees also.

4. The learned Assistant Government Pleader submits that it is for the management to appoint the petitioner. The Government Resolution dated 10.06.2005 authorises the management to take steps in that regard.

5. The petitioner is seeking benefit of Government Resolution dated 10.06.2005, though the statute does not prescribe promotional channel from non-teaching to teaching staff, however, the State through its School Education and Sports Department, Mantralaya, Mumbai has issued Government Resolution dated 10.06.2005. Clause 8 of the said Government Resolution reads thus-

"८). शिक्षकेतर कर्मचाऱ्याने माध्यमिक शिक्षकांसाठी वा कनिष्ठ महाविद्यालयीन शिक्षकांसाठी आवश्यक ती शैक्षणिक अर्हता प्राप्त केली आणि जर त्या संवर्गाचे पद माध्यमिक शाळेत वा उच्च माध्यमिक शाळेत / कनिष्ठ महाविद्यालयात उपलब्ध असेल तर, अशा प्रकरणी सदरहू शिक्षकेतर कर्मचाऱ्यास शिक्षणसेवक म्हणूनच नियुक्ती द्यावी लागेल व त्यांना शिक्षणसेवकांचेच मानधन आणि इतर सर्व अटी व शर्ती लागू होतील. मात्र अशा शिक्षकेतर कर्मचाऱ्याची पूर्वीची सेवा ही सेवानिवृत्ती वेतनासाठी ग्राम धरता येईल."

Reading the said clause, it is manifest that a non-teaching employee after acquiring the qualification can be appointed

as 'Shikshan Sevak' in the secondary school or the junior college and his earlier services shall be counted for the purpose of pension. The only rider is that he is to be appointed as 'Shikshan Sevak' and he would be paid honorarium as applicable to 'Shikshan Sevak'.

6. The Clause 8 read as it is, is in the nature of providing a promotional avenue to an employee of non-teaching staff. The Clause 8 clarifies that earlier services shall be counted for the purpose of pensionary benefits. It would not be a case of an appointment afresh but promoting a person from the non-teaching staff though as 'Shikshan Sevak'.

7. We are not called upon to comment upon the legality of the said clause as the same is not assailed before us. As the clause is relied by all the respective parties, we are passing orders on the basis of the same.

8. The management may consider the claim of the petitioner for appointment as 'Shikshan Sevak', as per Clause 8 of the said Government Resolution dated 10.06.2005 on its own merits, expeditiously and preferably within a period of two (2) months. The Education Officer shall consider the proposal in tune with Clause 8 of the said Government Resolution dated 10.06.2005. The same shall not be rejected on the ground of availability of surplus candidates."

(7.4) Except for the reliance placed by the Education Officer on Clause 8 of the Government Resolution dated 10th June 2005, we find no logic in the order or the approach of the Respondent authorities in withholding the regular pay scale of the Petitioner, for the probation period of three years.

(7.5) This is primarily for the reason that the placement of the Petitioner on the post of Shikshan Sevak (Assistant Teacher) is by way of promotion and not a fresh appointment. Indeed, it would amount to

gross discrimination if, under the given circumstances the Petitioner is not granted the regular pay scale applicable to the post of Shikshan Sevak (Assistant Teacher) even for the initial three years, commencing from the date of his promotion to the subject post.

(7.6) While considering a case of a Peon who was promoted to the post of Shikshan Sevak under circumstances similar to the present case, this Court (Nagpur Bench) in ***Shri Suhas s/o Rangraoji More vs. State of Maharashtra and Others*** (Writ Petition No. 7706 of 2022) observed as follows:

“16. In this regard, it needs to be noted that the petitioner was appointed as a Peon on a regular permanent post. His promotion as Shikshan Sevak deprives him of the pay scale as well as other service benefits that he enjoyed in the post of lower grade. Evidently, such promotion does not enhance his prospect but severally prejudices his interest in every way. This anomaly can only be obliterated by treating the promotional post as that of the Assistant Teacher and by granting regular pay scale and other service benefits enjoyed by Assistant Teacher, albeit, the promotional post is termed as Shikshan Sevak.

21. Under the circumstances, it is held that (i) Clause 8 of G.R. dated 10.06.2005, which stipulates promotion of non teaching staff as Shikshan Sevak on payment of honorarium is arbitrary and discriminatory. (ii) The petitioner is entitled to be appointed as Assistant Teacher with the prescribed pay scale at par with pay scale of other similarly placed promotees. (iii) Respondent No.5 Management to modify the appointment order dated 29.10.2021 to the extent of appointing/promoting the petitioner as Assistant Teacher instead of Shikshan Sevak. (iv) Respondent No.5-Management, is directed to submit the proposal to respondent No.4 for approval of appointment/promotion of the petitioner as Assistant Teacher with pay scale of Assistant Teacher within four weeks from the date of the order. (v)

Respondent No.4 to consider the same as expeditiously as possible in any event within four weeks from the date of the receipt of the proposal. Rule is made absolute in above terms."

(7.7) For the reasons stated above, we have no doubt that the placement of the Petitioner from the post of Laboratory Assistant to that of Shikshan Sevak constitutes a promotion and not a fresh appointment.

(7.8) Consequently, the Petitioner must be held entitled to the regular pay scale applicable to the subject matter post, instead of the honorarium. The reliance placed by the Education Officer on Clause 8 of the Government Resolution dated 10th June 2005 is, therefore misplaced. The Education Officer is directed to rectify the approval order dated 29th June 2010 and to hold the Petitioner entitled to the regular pay scale that was then applicable to an Assistant Teacher, instead of the honorarium."

(8) In view of this, we pass following order.

::ORDER::

(a) Writ Petition stands allowed.

(b) The Education Officer shall release grant-in-aid for the Petitioner's regular salary as Assistant Teacher with effect from 25th June 2010 to 24th June 2013, within sixteen weeks from the date of receipt of this order. Any amount already paid as honorarium shall be adjusted against the salary due.

(c) The necessary corrections shall be carried out in the approval order and the other record. The letter dated 7th March 2025 is hereby quashed and set aside.

(d) Rule made absolute in above terms.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

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