

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3237 OF 2019

Tanangi Kenchappa Gurubala Age 43

Residing at Jath Tal. Jath Dist. Sangli

.....Petitioner

Vs.

1. State of Maharashtra through the
Principal Secretary, Ministry of School
Education and Sports Having Office
at- Mantralaya Annexe Madam Cama Marg,
Hutatma Rajguru Chowk, Mumbai-400032.

2. Director of Education, Maharashtra
Central Building Camp, Near Sassoon
Hospital, Pune- 411001.

3. Deputy Director of Education Kolhapur
Region Having Office at – Hatti Mahal,
Ganji Gali, Somawar Peth, Kolhapur, 416002.

4. Maratha Mandir Through its
Principal Secretary Having Office
at-Maratha Mandir Marg, Mumbai Central,
Mumbai- 400008.

5. Sri Ramrao Vidya Mandir Highschool
& Junior College, Jath Through its Head
Master Having Office at – SRVM Highschool,
Jath, Near Panchayat Samiti, Jath-416404
Dist-Sangli, Maharashtra.

.....Respondents

Ms. Devyani Kulkarni for the Petitioner.

Mr. V. M. Mali, AGP for the State.

Mr. Mayuresh Nagle for the Respondent Nos. 4 and 5.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

DATE : 30th JANUARY, 2025

ORAL JUDGMENT (Per Ravindra V. Ghuge, J)

1. This matter was specifically listed on today's board by an order passed by the earlier bench, on 15th January 2025.

2. **Rule.** Rule made returnable forthwith and heard finally by the consent of the parties.

3. The Petitioner has put forth prayer clauses (a), (b) and (c), as under:

“(a) That this Honourable Court be pleased to issue a writ of certiorari and /or any other order or direction in the nature of certiorari quashing and setting aside the impugned letter /decision dated 19.09.2016 which has been marked and annexed hereto as Exhibit G.

(b) That this Honourable Court be pleased to issue a writ of mandamus and/or any other order or direction in the nature of mandamus directing the Respondent No. 3 to regularise the services of the Petitioner as Assistant Teacher w.e.f. 01.01.2015 and grant approval to the services of the Petitioner as a Full Assistant Teacher w.e.f. 01.01.2015 and grant approval to the services of the Petitioner as a Full Time Assistant Teacher w.e.f. 01.01.2015.

(c) That this Honourable Court be pleased to issue a writ of mandamus and/or any other order or direction in the nature of mandamus directing the Respondents No.3 or the Respondent No.1 to pay the Petitioner his salary as a Full Time Assistant Teacher from 01.11.2012 onwards.”

4. The dates and sequence of events are as under:

a) The Petitioner was appointed as a part time Teacher on 1st September, 2001.

b) On 7th September, 2001, he received approval for his appointment as a part time Assistant Teacher.

c) On 31st October, 2012, the post of a full time Assistant Teacher fell vacant since an earlier Assistant Teacher in Physics, Mr. Shivaji Vithoba Khot, superannuated on 31st October, 2012. The Petitioner claims that he was handling the

workload of full time Teacher.

d) On 14th March, 2014, an Assistant Teacher in Physics, namely Mr. Ankush Kundlik Garande, passed away. Therefore, one more full time post of Assistant Teacher fell vacant from 15th March 2014.

e) The Management published an advertisement on 6th May, 2014 in the Sangli edition of Dainik Pudhari, inviting applications for filling in various teaching category posts and Laboratory Assistant, along with the details of the reservation. The Petitioner is concerned with the Physics subject.

f) Two posts in the Physics subject, one post in Chemistry and one post in Geography, were said to be available on full time basis.

g) The reservation mentioned in the advertisement was Scheduled Castes, Schedule Tribe and Open Category respectively.

h) Thus, two posts for Physics were for the Reserved Category. One post each in the subjects of Mathematics, English, Marathi and Geography, were also advertised on clock hour basis. One post of Assistant Teacher in Physics in the unaided category, was also advertised.

- i) Surprisingly, the advertisement was published prior to the Deputy Director of Education Kolhapur Division, could respond to the permission sought by the Management.
- j) The Management had published the advertisement on 6th May 2014.
- k) On 7th June, 2014, the Deputy Director of Education informed the Management that only one post of Physics can be filled in, as it was a sanctioned post.
- l) The Petitioner was called for the interview on 22nd December, 2014.
- m) The Petitioner was appointed as a full time teacher in Physics pursuant to the advertisement w.e.f. 1st January, 2015.
- n) On 25th January, 2016, the Deputy Director Education responded to the proposal of the Management seeking approval, by stating that no Open Category post was available in Physics.
- o) On 19th September, 2016, the Deputy Director of Education relied upon the Roaster until 31st December, 2015, and informed the Management that as the Petitioner belong to the Open Category, approval for his appointment to the post of Assistant Teacher Physics, which was reserved for the

backward category, cannot be granted.

5. The Petitioner is supported in his submissions by the Management. Relying upon the dates and sequences of events recorded above, the learned Advocate for the Management has vehemently canvassed that the appointment of the Petitioner cannot be faulted. He deserved to be granted approval and he is entitled for salary to the extent of the grants as are available.

6. The learned AGP relies upon the Affidavit-in-reply dated 20th July, 2021 of the Assistant Director of Education Kolhapur and submits that initially, vide Government Resolution dated 2nd May, 2012 the Government had imposed a ban on recruitment. The vacancy at issue occurred with effect from 1st November, 2012 after Mr. Shivaji Vithoba Khot superannuated on 31st October, 2012. The vacancy could not have been filled in by appointing a candidate from the Open Category considering the backlog roster.

7. In paragraph No. 5 of the reply, it is asserted that as per the Roster maintained and verified by the Assistant Commissioner (Backward Class Cell) Konkan Region, Navi Mumbai, all the 94

teaching posts earmarked for Open Category, were duly filled in by the Management and no vacancy for Open Category was available as on 1st January, 2015 when the Petitioner was appointed. He belongs to the Open Category.

8. He further submits that the part time engagement of the Petitioner from 2001, is of no consequence. He had applied pursuant to the advertisement dated 6th May, 2014 and had subjected himself to the selection process. He was selected in view of his interview and was appointed as a full time teacher on 1st January, 2015. When the Roster for the Reserved Categories had to be honoured, and the backlog should have been cleared, the appointment of the Petitioner cannot be approved since he belongs to the Open Category.

9. He further submits that merely because the Petitioner was working on a part time basis, does not entitle him to appointment on full time basis, as if his employment on part time basis could make him auto entitled to the full time post. If the Management did not get any candidate from the Backward Category, the said post should have been re-advertised. The Government Resolution is that after five years of such advertisement, the post would then get transferred to the next

Reserved Category. The Management has unilaterally appointed the Petitioner knowing well that he belong to the Open Category.

10. We find that the submissions of the learned AGP cannot be faulted. He is justified in contending that the reservation roster has to be honoured and if there is a backlog, the same had to be cleared by appointing candidates from the Reserved Categories. He further points out that the Management has indulged in a serious illegality by advertising several posts on 6th May, 2014, when the order was passed by the Deputy Director Education on 17th June, 2014, permitting only 1 post to be filled in.

11. He submits that since the advertisement was contrary to the communication of the authority dated 17th June, 2014 the Management should have withdrawn the advertisement and after correcting the advertisement in terms of the directions of the Deputy Director of Education, a fresh advertisement should have been published. His further serious grievance is that the interviews were held by the Management on 22nd December, 2014 which is after seven months and 15 days post publication of the advertisement. He, therefore, canvased that the Management has blatantly ignored the directions of the Deputy Director of Education and has defiantly

proceeded to hold the interviews and also appoint a candidate from the Open Category.

12. The learned Advocate for the Management has strenuously attempted to indicate that the Management had no ill intention or oblique motives. Since the Management required teachers and imparting education was being hindered on account of the short fall in the teachers, it has bonafide carried out the selection process. He further relies upon the Roaster and submits that there is no backlog and no fault can be found with the Management.

13. Having considered the submissions of the learned Advocates and the learned AGP and having taken into account all attending circumstances, we find that the Petitioner cannot be faulted. Neither laches nor oblique motives can be attributed to the Petitioner. We do we find that the Petitioner was responsible in any manner in orchestrating his appointment. He responded to the advertisement dated 6th May, 2014 keeping in view that he was already working in the same establishment/ institution as a part time teacher from 1st September, 2001. He was called for the interview on 22nd December, 2014. He participated in the selection process, in which seven candidates had participated. He was found to be the

best amongst all and was appointed on full time basis, notwithstanding the fact that the Management could not have done so, since it would amount to an illegality.

14. The Petitioner is right in contending that he is not at fault. And he has no reason to have knowledge about the exchange of correspondence between the Management and the Education Officer. Having participated in the interviews and having been assessed to be the best, he was appointed by the Management.

15. Considering the above, we do not find that we could find any fault with the Petitioner employee. Apparently, the sequence of events and the correspondence would indicate that the Management has acted highhandedly. The Assistant Director of Education has brought it to our notice in the Affidavit-in-Reply that 94 teaching posts meant for the Open Category were duly filled in by the Management, leaving no vacancy for the Open Category.

16. In the above backdrop, we are required to apply our mind to a possible repercussion that would follow, if this petition was to be dismissed on the ground that the Management had illegally appointed the Petitioner. The Petitioner would lose his job

after 10 years as a full time Assistant Teacher since, we are informed on specific instructions taken by the learned Advocate for the Management and the learned AGP that, the Petitioner is working on day to day basis ever since his selection and appointment. This would unsettle the Petitioner who will be thrown out of employment. Having worked on part time basis from 2001 to 1st January, 2015, this employment is his only hope. At this age, he would be rendered to starvation and his family would be severely impacted. When he is in his early 50s, at this age, he is not likely to get any employment.

17. We find that the aforesaid situation, is not irreversible. Though the Management needs to be penalized for the illegal act, if the Petitioner has to continue in employment, we need to ensure that the backlog will have to be cleared by the Management and no selections would be permitted without following the due procedure laid down in law and by clearing the backlog. Any post, which would be available in future, could be converted into a Reserved Category post and the backlog could be cleared.

18. In view of the above, **this Writ Petition is allowed.** The impugned order dated 19th September, 2016 is quashed and set

aside.

19. As a one time measure, we direct the regularization of the Petitioner as an Assistant Teacher w.e.f. 1st January, 2015. The Respondent No.3 shall grant an approval to his appointment w. e. f. the said date. The Management would forward the proposal for allotment of the Shalarth I. D. within three weeks from today and the concerned Authority would clear the said proposal and grant Shalarth I. D. so as to enable the Petitioner to earn his monthly salary from the salary grants, since no other person was working on his post.

20. On the quantum of the arrears, the Petitioner has prayed for arrears from 1st January, 2015. However, the petition has been filed on 6th September, 2018. Had the Petitioner approached this Court earlier, provided the Management had moved faster, he would have been entitled for the regular pay scale long ago. Hence, to balance the equities and to grant commensurate benefits to the Petitioner without causing any undue financial burden on the State, we deem it appropriate to direct that the arrears of salary as per the pay scale available to the Petitioner on grant of approval, would be payable from 6th September, 2018 which is the date of the filing of

the Petition. The Management shall forward the bills for such arrears within 21 days, to the Education Officer who shall clear the said bills within 21 days thereafter. The arrears would be deposited in the account of the Petitioner through the Shalarth I. D. online process.

21. As we have salvaged the situation in the light of the above facts, we direct that henceforth the selections in relation to the present Management would be by following the due procedure laid down in law (Pavitra Portal), as the case may be, and the entire backlog should be first cleared.

22. We need to penalize the Management for the above discussed conduct. The learned Advocate for the Management has prayed for leniency and he submits that, henceforth, the Management would not commit such a mistake. A smaller amount may be imposed on the Management, as costs.

23. The Management has 10 grant in aid schools in Maharashtra, one MBA college, one CBSC School and one School on no grant basis. However, we accede to the request of the learned Advocate for the Management to impose appropriate costs and we direct that the Management shall deposit an amount of Rs.1,00,000/-

in this Court, on or before 15th February, 2025. On the request of the Petitioner, that he be granted 50% of the cost, and the remaining 50% would be donated for a public cause, we grant liberty to the Petitioner to withdraw Rs.50,000/- without conditions, under identification of the learned Advocate, for the Petitioner.

24. We direct the Registry to transfer the remaining amount of Rs.50,000/-, to the following institutions/ Organizations. The names and account details are as follows:

a) The High Court Employees Medical Welfare Fund at Mumbai- Rs.10,000/-.

Account No. : 000120110001337

Bank : Bank of India

Branch : Mumbai Main

IFSC Code : BKID0000001

b) The National Association for the Blind- Rs.10,000/-.

Account No.: 3740000100008551

Bank : Punjab National Bank

Branch : Worli Seaface

IFSC Code : PUNB0374000

**c) Poor Box Charity Fund, K.E.M. Hospital,
Mumbai-Rs.10,000/-.**

Account No: 99350100000877

Bank : Bank of Baroda

Branch : Parel, Mumbai

IFSC Code : BARB0BBPARE (5th Letter is Zero)

d) Bar Council of Maharashtra and Goa-Rs.20,000/-.

Account No : 10996711937

Bank : State Bank of India

Branch : Mumbai Main

IFSC Code : SBIN0000300

25. We direct the Management/Trust to deposit the said amount from its institution's account and would not exert pressure on the Petitioner to contribute for making the said payment.

26. Rule is made absolute in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)