

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

WRIT PETITION NO. 8508 OF 2022

Rakesh Ashok Chavan.

...Petitioner.

Versus

The State of Maharashtra and Others.

...Respondents.

*Mr. Chetan Patil, Ms. Siddheshwari R. Chavan and Mr. Prathamesh P. Magadum
for the Petitioner.*

A. A. Naik, AGP for the Respondent-State.

**Coram : M. S. Karnik &
Sharmila U. Deshmukh, JJ.**

Date : October 7, 2025.

Oral Order (Per M. S. Karnik, J.):

1. Heard learned Counsel for the Petitioner. Learned AGP opposed the petition.

2. This Court on 19th July 2022 passed the following order:

1. The approval is granted to the appointment of the Petitioner since 16 July 2012. However, the Petitioner is being paid honorarium only from the date of the approval order.

2. It is observed that the Education Officer refers to the undertaking given by the Management and the Petitioner.

3. It is submitted by the learned counsel for the Petitioner that under the directions of the Education Officer the Petitioner and the Management have to give undertaking. If that is so, then we would like to know from the Education Officer under what authority, he has asked the Management and the Petitioner to give such an undertaking.

4. Issue notice to the Respondents, returnable on 10 August 2022. Humdast allowed.

5. The learned AGP waives service for Respondent Nos.1,2 and 3.

6. The learned AGP shall take instructions from the Education Officer in that regard."

3. Some of the facts are relevant, which need to be set out. In the year 2012, a vacancy of teaching post arose in the Respondent No.5 School and an advertisement was issued by the Respondent No.4-management. The Petitioner was appointed to the post of Shikshan Sevak on 9th July 2012. The Respondent Nos.4 and 5 time and again submitted proposal seeking approval to the appointment of petitioner. The Respondent No.3 on 18th January 2019 passed order granting approval to the appointment of Petitioner from the date of his appointment, i.e., 16th July 2012. However, in the said order it is stated that undertaking has been given by the Respondent No.4 that although approval is granted from the date of appointment of Petitioner, the grant-in-aid would be released so as to pay salary of Petitioner from the date of granting approval and the responsibility for making payment to the Petitioner for the period prior to the date of order granting approval would be on the Respondent Nos.4 and 5.

4. On completion of 3 years from the date of his appointment, the Respondent No. 4 and 5 appointed the Petitioner to the post of Assistant Teacher on regular pay scale with effect from 16th July 2015.

The proposal seeking approval to the said appointment of Petitioner on the said post was decided and the Respondent No. 3 vide order dated 7th December 2019 granted approval to the aforesaid appointment of Petitioner.

5. The Petitioner is aggrieved by that part of the impugned order wherein the grant-in-aid was directed to be released only from the date of order granting approval and responsibility of payment of salary prior to the date of order of approval would be on the Respondent No. 4 and 5.

6. Learned AGP invited attention of this Court to the affidavit-in-reply filed on behalf of the Respondent No.2, affirmed by the Deputy Director of Education, Kolhapur Division, Kolhapur. The sum and substance of the affidavit is that Petitioner had given an undertaking to the management that he would not claim any arrears of salary from the management. In turn, the management had submitted a voluntary written undertaking to the Respondent No.3 that the responsibility of salary of petitioner from the initial date of appointment to the date of approval would be on the management.

7. Learned AGP submitted that reading of Rule 3(2)(9) and (10) of the Secondary School Code indicates that the primary responsibility of the salary is on the respective management. It is, therefore, submitted that considering the primary responsibility to pay salary of Petitioner

being on management, the approval was granted on these terms. It is, therefore, submission of learned AGP that the Petitioner is now not justified in claiming the benefit of grant-in-aid and salary for this period having obtained approval on the basis of representation which he made in the form of undertaking given by him to the management and the management's undertaking to the Respondent No.3.

8. Having heard learned Counsel for the Petitioner, we do not find any provision whereby the approval order can be issued depriving the teacher the benefits of grant-in-aid on the basis of such an undertaking. If at all the Respondent-management submitted a delayed proposal, appropriate orders regarding grant of approval from a particular date could have been issued factoring in such delay. However, the approval having been granted from a particular date, i.e., in the present case from 16th July 2012, the entitlement of management to release of salary grant for such approved post would relate back to 16th July 2012. The Petitioner should not be prejudiced in such manner. Undoubtedly, the primary responsibility to pay the salary of employee is on the management. However, in the absence of any provision to the contrary, if the approval is granted to the appointment of Petitioner from 16th July 2012, the responsibility of salary grant rests on the State Government in view of the provisions of grant in aid code. It would be unfair to deprive the Petitioner of the

salary benefits for the period for which he has worked in approved post and the post to which salary grants are admissible. Therefore, we have no hesitation in allowing this petition in terms of prayer clauses (a) and (b), which read thus :

“(a) That this Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of writ thereby quashing and setting aside part of the order dated 18th January 2019 (Exh. G hereto) whereby respondent no.3 has held that grant in aid would be released for payment of salary to the petitioner only from the date of order granting approval and responsibility for paying payment of monthly honorarium/salary to the petitioner from the date of his appointment till the date of granting approval would be on respondent nos.4 and 5 herein.

(b) That this Hon'ble Court may be pleased to issue an appropriate writ, order or direction in the nature of writ thereby directing respondent nos.1, 2 and 3 herein to release the grant in aid so as to pay the monthly honorarium/salary to the petitioner from 16th July 2012 to 15th July 2015 and further release the grant in aid for payment of monthly salary to the petitioner with effect from 16th July 2015 with all consequential benefits.”

9. Writ petition is allowed in above terms.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]