

Shailaja

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3928 OF 2023

- | | | | |
|----|-----------------------------|---|--------------------|
| 1] | Nikhil Ashok Chavan |] | |
| | Aged 31 Yrs., Occ. Service, |] | |
| | R/o. Brahmanpuri, |] | |
| | Near Municipal School No.1, |] | |
| | Miraj, Dist. Sangli. |] | |
| 2] | The Hind Education Society, |] | |
| | Miraj, Dist. Sangli, |] | |
| | Through its President/ |] | |
| | Secretary. |] | Petitioners |

Versus

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|----|-------------------------------|---|--------------------|
| 1] | The State of Maharashtra, |] | |
| | Through the Secretary, |] | |
| | School Education Department, |] | |
| | Mantralaya, Mumbai – 400 032. |] | |
| 2] | The Education Officer, |] | |
| | [Secondary], Zilla Parishad, |] | |
| | Kolhapur. |] | |
| 3] | The Deputy Director of |] | |
| | Education, Kolhapur Region, |] | |
| | Kolhapur. |] | Respondents |

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Mr. Sagar Mane a/w Mr. Rushikesh Jagdale, for Petitioners.

Mr. V.M. Mali, A.G.P, for Respondent – State.

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**CORAM : M.S. KARNIK &
AJIT B. KADETHANKAR, JJ.**

DATE : 8th DECEMBER, 2025.

ORAL JUDGMENT: [PER M.S. KARNIK, J.]:

1. Heard Mr. Mane, learned Counsel for the petitioners and Mr. Mali, learned A.G.P, for respondents – State.
2. The learned A.G.P opposed the petition. Our attention is invited to affidavit-in-reply filed by Mr. Ravindranath Gopal Chougale, Deputy Education Officer (Secondary), Kolhapur Zilla Parishad, Kolhapur on behalf of respondent No.2 - The Education Officer (Secondary), Zilla Parishad, Kolhapur.
3. Briefly stated, facts of the present petition are that petitioner No.1 has passed 12th standard (Science). Petitioner No.2 – The Hind Education Society, Miraj (for short “Management”) appointed petitioner No.1 as “Laboratory Attendant” in place of Mr. Salauddhin Rasul Mulani, Laboratory Attendant who retired from service with effect from 31st May, 2008. An advertisement was issued in newspaper “Daily Agradoot” on 12th September, 2014. Selection process was conducted and petitioner No.1 was appointed as Laboratory Attendant with effect from 1st October, 2014. A proposal was submitted to the respondent No.2, but respondent No.2 declined to accept the proposal on the ground that there is ban on recruitment of non-teaching employees. On 8th October, 2022, the Headmaster submitted the proposal of petitioner No.1, which was accepted by

respondent No.2 on 11th October, 2022. Respondent No.2 rejected the said proposal by the impugned order dated 25th November, 2022 on the ground that there was a ban on the appointment of non-teaching employees in terms of the Government Resolution dated 10th June, 2010 and 12th February, 2015.

4. Learned A.G.P while opposing the petition submitted that several irregularities and non compliances with the Government orders and statutory provisions were noticed, which are detailed in paragraph 3 of the affidavit-in-reply filed on behalf of respondent No.2, which reads as under;

“3. I submit that the proposal for approval of appointment of Petitioner No. 1 as Laboratory Attendant was received from the Petitioner No. 2 Management. Upon careful examination and scrutiny of the said proposal and the documents submitted therewith, several irregularities and non-compliances with the Government Orders and statutory provisions were noticed, which are detailed hereinafter.

I. As per the Government Resolution dated 06/02/2012, prior permission of this office is required to be obtained before issuing advertisement for filling up any post. However, the Management has failed to produce any

evidence or details showing that such prior permission was obtained from this office before advertising the post. The Management was called upon to submit details regarding whether permission of this office was sought for advertisement of the post, but no satisfactory reply or documentary evidence has been furnished in this regard.

ii. The appointment of Petitioner No. 1 is dated 01/10/2014, whereas the proposal for approval was submitted to this office only on 12/10/2022, after a delay of approximately eight years. No satisfactory explanation has been provided by the Management regarding this inordinate and unexplained delay in submitting the proposal for approval. The Management was specifically called upon to explain the reasons for such delay, but no cogent explanation has been forthcoming.

iii. The appointment is stated to have been made on 01/10/2014. However, there is no evidence or documentary proof on record to show what correspondence, if any, was made by the Management with this office from the date of appointment (01/10/2014) till the date of submission of the proposal (12/10/2022) regarding approval or grant of recognition for the said appointment. The Management has failed to produce any evidence of follow-up

correspondence or communications with this office during this entire period.

iv. The attendance register of the candidate bearing the signature of Petitioner No. 1 from the date of appointment till date has not been attached or produced along with the proposal. This is a mandatory requirement to verify the actual joining and continuous service of the appointee.

v. The salary bill/payment slip of the employee appointed immediately prior to Petitioner No. 1 in the previous month has not been enclosed with the proposal. This document is essential to verify the actual requirement and vacancy position in the school at the time of making the fresh appointment.

vi. The advertisement for the post does not appear to have been published in a widely circulated newspaper as mandated under the rules. There is no evidence that the vacancy was advertised in a newspaper having wide circulation, which is a mandatory requirement to ensure transparency and equal opportunity to all eligible candidates.

vii. As per the Government Resolution dated 23/10/2013, the number of Class IV employees working in the school exceeds the sanctioned

posts. Therefore, there is no vacant post available in the Class IV cadre to accommodate Petitioner No. 1. Since the sanctioned strength has already been exceeded, no fresh appointment can be permitted.

viii. I further submit that vide Government Resolution No. SSN 1008/(200/08) Mashi-2, dated 10th June 2010, restrictions were imposed on filling up non-teaching posts in the recognized private aided secondary schools in the State.

ix. Subsequently, vide Government Resolution No. Sankirna 2015/San. Kra. 10/15/TNT-2, dated 12/02/2015 issued by the Government of Maharashtra, School Education and Sports Department, regarding the revised establishment pattern for non-teaching staff in recognized private partially aided secondary and higher secondary schools in the State as per the Government Resolution dated 23/10/2013, a Committee was constituted. The Government had issued orders to maintain status quo until further orders regarding the report of the said Committee. During the intervening period, clear instructions were issued that under no circumstances shall recruitment be made to any new or vacant post in the concerned schools. Therefore, due to the restriction on filling vacant posts until the

revised establishment pattern for non-teaching staff was issued, and maintaining the status quo, recruitment to vacant posts was prohibited.

x. Further, vide Government Resolution No. SSN-2015/Pra. Kra.12/TNT-2, dated 28th January 2019, issued by the Government of Maharashtra, School Education and Sports Department, Ministry, Mumbai, a revised establishment pattern for non-teaching staff in recognized private partially or fully aided secondary and higher secondary schools in the State has been implemented. However, the said Government Resolution does not contain any orders regarding the establishment pattern for Class IV employees”.

5. In paragraph 4 and 5, stand of the respondents is as under;

4. I say that in view of the aforesaid facts and circumstances, and particularly in view of the fact that:

a) There is no vacant post available in the Class IV cadre as the existing strength exceeds the sanctioned posts; b) No directions have been issued by the School Education Department regarding granting approval to non-teaching employees; c) Multiple procedural irregularities and non-compliances have been noticed in the appointment process; d) No satisfactory explanation has been provided for the delay of eight

years in seeking approval; Under the present circumstances, approval to appointment of Petitioner cannot be granted.

5. I further submit that Petitioner Nos. 2 & 3, being the school management, have appointed Petitioner No. 1 without following the prescribed rules and Government policy. The appointment was made unilaterally by the private management without obtaining prior permission from this Respondent as mandated under the applicable Government Resolutions. It is respectfully submitted that the Government cannot be held accountable or responsible for the wrongful and irregular actions of a private institute. The management cannot be permitted to derive any benefit or advantage from their own illegal and unauthorized actions done in violation of statutory provisions and Government policies. When the management itself has acted in contravention of the established rules and procedures by recruiting Petitioner No. 1 without the requisite permission of this office, they cannot now seek to compel the Government authorities to grant retrospective approval to such irregular appointment”.

6. Having heard learned Counsel for the petitioners as well as learned A.G.P for respondents – State, we are of the view that the petition needs to be allowed. An application dated 2nd August, 2014 has been made by the Management to the Education Officer

(Secondary) for permission to advertise the vacant post. The same was received by the Education Officer (Secondary) on 2nd August, 2014 as per the endorsement on the copy. In the application, it is clearly stated that one post of Laboratory Attendant was vacant due to retirement of existing incumbent. The Management had informed respondent No.2 to send the surplus Laboratory Attendant. The affidavit-in-reply does not deal with the application dated 2nd August, 2014 made by the Management to respondent No.2 seeking permission to issue the advertisement. Moreover, in the application dated 4th July, 2024, which was duly received by respondent No.2, it was clearly stated that the Department may send surplus Laboratory Attendant. It is only after respondent No.2 failed to send the surplus Laboratory Attendant, advertisement came to be issued on 12th September, 2014 in daily newspaper "Agradoot" which is at page 22 of the petition.

7. In the interest of the students and the Institution, the management could not have waited endlessly. We find that there was no response to the request made by the Management. In such circumstances, if the Management proceeded to issue the advertisement and filled in the vacant post, it could not be said that no prior permission was obtained or for that matter, sanctioned post was not available as the appointment was made on the post which

fell vacant due to the retirement of one Salauddhin Rasul Mulani. Petitioner No.1 was duly qualified.

8. Moreover, the Education Officer relied upon the ban imposed by the State Government for recruitment of non teaching employees by the Government Resolution issued in the year 2010. It is pertinent to note that the said ban was imposed only for one year. In the year 2011, the State Government extended the said ban for one more year and thereafter, it was not further extended. In such view of the matter, the appointment was made in the year 2014, when apparently there was no ban in existence. The respondents are not justified in rejecting the proposal on the basis of Government Resolution dated 10th June, 2010 by which the State Government had imposed ban on recruitment of non teaching employees. The Government Resolution was not applicable.

9. It is further pertinent to note that petitioner No.1 was appointed as Laboratory Attendant with effect from 1st October, 2014. The proposal was rejected, relying on the Government Resolutions dated 28th January, 2019 and 12th February, 2015, which were issued subsequent to the appointment of petitioner No.1. The said Government Resolutions dated 28th January, 2019 and 12th February, 2015 are not having the retrospective application to

cover the appointment of petitioner No.1 which was made in the year 2014. Rejection of the proposal on this ground is unwarranted.

10. The next ground urged by the learned A.G.P is that State Government had taken a decision to re-consider revised staffing pattern for non teaching posts. It is submitted that in view of the directions in the Government Resolution dated 12th February, 2015 that till final decision is taken in respect of Staffing Pattern, no appointments should be made on new posts of non teaching staff, the proposal was rightly rejected. We find that the Government Resolution dated 12th February, 2015 came into force subsequent to the appointment of petitioner No.1. Making the Government Resolution dated 12th February, 2015 retrospectively applicable to the appointment of petitioner No.1, which was made in the year 2014, is not justified. Petitioner No.1 was appointed against vacant post which was created on the basis of Staffing Pattern which was in existence prior to the issuance of Government Resolution of 2015. We, therefore, do not find any force in the submission of the learned A.G.P.

11. Learned A.G.P then tried to justify the impugned order on the ground that though appointment is of the year 2014, the proposal was sent belatedly in October, 2022. There is nothing placed on

record to show that the appointment of petitioner No.1 was fraudulent or was not actually made. Further, it is not the case of the respondents that petitioner No.1 had not discharged his duties as a Laboratory Attendant since the date of his appointment. It is further not the case of the respondents that any advantage is taken by submitting the proposal belatedly.

12. In such view of the matter, merely submitting proposal belatedly cannot by itself be a ground to reject the proposal. It is for the employee concerned to take recourse against the Management, claiming compensation or otherwise, for such belated submission of the proposal. Belated submission of proposal ought not be a factor depriving petitioner No.1 the benefit of approval of his appointment. Even otherwise, petitioner No.1's appointment is in consonance with the provisions of law. The impugned order is, therefore, quashed and set aside. The petition is allowed in terms of prayer clauses (b) and (c) which read thus;

"b] By a suitable writ, order or direction, this Hon'ble Court may be pleased to quash and set aside the impugned order dated 25.11.2022 issued by the Respondent No. 2, and accordingly the Respondent No. 2 may be directed to grant approval to the appointment of the Petitioner No. 1 as a Laboratory Attendant w.e.f. 1.10.2014 in the aided Secondary School of the Petitioner No. 2 Management, and to release the grant-in-aid for

payment of monthly salary in pay scale from the said date of appointment, with all arrears.

c] After the approval would be granted as per prayer clause [b] above, that by a suitable writ, order or direction, this Hon'ble Court may be pleased to direct the Respondent No. 3 to grant permission to enter the name of the Petitioner No. 1 in Shalartha Pranali and to allot him Shalartha I.D. as a Laboratory Attendant w.e.f. 1.10.2014, in the aided School of the Petitioner No. 2 Management, with all consequential benefits”.

13. The petition is disposed of. No costs.

[AJIT B. KADETHANKAR, J.]

[M.S. KARNIK, J.]