

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.185156 OF 2024**



Narsu Somana PatilPetitioner
versus
State of Maharashtra and Ors.Respondents

Mr. Chetan Patil a/w Mr. Vishwesh Gadaye i/b Mandar Bagkar for the Petitioner.

Mr. P. P. Kakade, Addl. G. P. a/w Mr. K. S. Thorat 'B' PNL advocate for the State/Respondent Nos. 1, 2 and 5.

Mr. Prashant Bhavake for the Respondent Nos.3.

Mr. Bhooshan Mandlik for the Respondent Nos. 3 and 4.

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

DATE : 11th MARCH, 2025

P.C. :-

1. Considering the order that we are passing by consent, we are not adverting to all the contentions of the learned Advocate for the Petitioner and the learned Advocate for Respondent Nos. 3 and 4. Suffice it to say that, it is glaring that there is a serious dispute amongst the Trustees of the Shetkari Shikshan Mandal,

Dolgarwadi, Taluka Chandgad, District Kolhapur.

2. Respondent No.4 is the Headmaster and the learned Advocate appears on his behalf. Insofar as Respondent No.3 Trust is concerned, we have two learned Advocates appearing before us, both having Vakalatnama of the Trust and both are claiming that there are two persons who claim to be the Chairman, two Vice-Chairmen, two Secretaries, two Treasurers and two Managing Committees. Hence, we do not wish to go into this, as it would amount to deciding an issue which is not addressed to us and diverting from the main issue which has been taken up by Mr. Patil, learned advocate for the Petitioner.

3. Issue is as regards, the transfer of the Petitioner from the unaided post to the aided establishment on a post of Peon, which purportedly fell vacant in view of the retirement of Mr. Shivaji Narayan Patil on 31st March, 2023.

4. The learned Additional Government Pleader Mr. Kakade places reliance upon a Government Resolution dated 11th December, 2020 indicating that if a person working in the categories

mentioned in Clause (2) of the Government Resolution (Peon is one of the categories) retires from service on attaining the age of retirement, the said post shall immediately be abolished. The availability of the number of posts falling in the Class (IV) category is mentioned in the said chart.

5. Mr. Patil submits on instructions that there are 774 students presently taking education in the said school. If this be a matter of fact, there would be three posts available for the Class (IV) category. The concerned Education Officer will have to take a call as to which would be positions for which these 3 posts could be earmarked.

6. Mr. Bhavake, learned Advocate claiming to be representing Respondent No.3 Management on the basis of the Vakilpatra from the Chairman, submits that the change reports of the two factions amongst the Trustees is pending adjudication before the Competent Authority. Same is the contention of the learned Advocate Mr. Mandlik, again representing Respondent No.3 on the basis of a Vakilpatra issued to him by the Management. His contention is that his client has rightly tendered the proposal.

7. Mr. Kakade has pointed out a judgment delivered by this Court at the Aurangabad Bench, dated 10th May 2024, in Writ Petition No.6046 of 2022 (Deepak Madhukarrao Rajegore Vs. The State of Maharashtra and Ors.) wherein this Court has concluded in paragraph Nos.15 and 16 as under:-

“15. Thus, at the cost of repetition it can be said that as the Government has issued the impugned Government Resolution dated 11th December 2020 on the basis of the powers within it under the legislative enactments and as a part of policy decision; it cannot be said to be arbitrary.

16. Now, in this case by virtue of the said Government Resolution dated 11th December 2020; upon death of one Pandit who was holding the said fully aided post, as the said post had lapsed, respondent No.3 education society could not have transferred the present petitioner in place of said Pandit. We want to make it clear that even if the said proposal of transfer of the petitioner is not accepted or approved, the petitioner would be reverted back to his old position i.e. the post which he was holding was partially aided post and the said position would continue and not that the petitioner would be required to work on honorarium in view of the Government Resolution dated 11th December 2020. Respondent No.2 was justified in rejecting the proposal to grant approval to the appointment of the petitioner by way of transfer to the fully aided post. We, therefore, do not find any merit in the present case and it deserved to be dismissed.”

8. We find that two factions in the Trust are at

loggerheads. On behalf of these two factions, the two lawyers are before us. However, all of them are *ad-idem* on the point that the case of the Petitioner be relegated to the Education Officer Secondary, Zilla Parishad Kolhapur, to be considered on the primary aspect beginning from whether the proposal was tendered by a Competent Managing Committee, whether the post has lapsed, whether 774 is the strength of the students and whether one post of Peon can be said to be available in the face of the retirement of Mr. Shivaji Narayan Patil.

9. In view of the above, by consent, the Impugned order dated 6th August 2024, is set aside and this **Writ Petition is disposed off** with the following directions:

- a) Respondent No.4 Headmaster of the school shall re-tender the proposal which is returned to him by the Impugned order. Needless to state, the proposal shall be re-tendered after removal of all deficiencies within a period of 30 days from today.
- b) Respondent No.2 would carry out an indepth verification exercise in the said proposal by considering each and every aspect of the matter, including the aspect as to whether the

proposal has been forwarded by an authorized Officer of the Management and whether there are 774 students in the school could also be considered.

c) The judgment delivered in Deepak Madhukarrao Rajegore (supra) dated 10th May, 2024 would also be considered while arriving at a decision.

d) A reasoned order be passed within a period of 60 days from the date of receipt of the re-tendered proposal.

e) Any party aggrieved by the decision delivered by the Respondent No.2, would be at liberty to avail of a remedy as is permissible in law.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)