

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16142 OF 2023

Mahadev Jagannath Bhosale	]	
Occ. Service,	]	
R/at. Nagawadi, Taluka Talegaon,	]	
District Sangli.	]	... Petitioner
<u>Versus</u>		
1. The State of Maharashtra	]	
Through Principal Secretary,	]	
Department of School Education,	]	
Having Office at Mantralaya, Mumbai.	]	
2. The Deputy Director of Education	]	
Kolhapur Division, Kolhapur	]	
3. The Education Officer (Secondary)	]	
Zilla Parishad, Sangli, District Sangli.	]	
4. Seva Ashram Shikshan Sanstha	]	
Through its Secretary, Murabe,	]	
Taluka Palghar, District Thane.	]	
5. Seva Ashram Vidyalaya	]	
Through its Head Master,	]	
Having address at Gavhan,	]	
Taluka Tasgaon,	]	
District Sangli – 416 511	]	... Respondents

Mr. Chetan Patil a/w. Mr. Prathamesh Magadum i/b. Mandar Bagkar for the Petitioner.

Mr. V.M. Mali, A.G.P. for the Respondent Nos.1 to 3-State.

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

Date : 27th November 2025.

JUDGMENT (Per : Ajit B. Kadethankar, J.)

1. **Rule.** Rule returnable forthwith and heard finally with the consent of parties.

2. **Subject-matter: -** The Petitioner challenges rejection of approval to his appointment on the post of Shikshan Sevak. Petitioner was appointed on vacant post of Shikshan Sevak. He turned to be Assistant Teacher on completion of three years of his services. The School Management submitted proposal to the Education Officer (Secondary), Zilla Parishad Sangli to seek approval to Petitioner's appointment. The proposal was turned down by the said Authority. As against the rejection of approval proposal, Petitioner has filed present Writ Petition seeking directions to the Education Officer (Secondary) to approve Petitioner's appointment. Consequent prayer for directions to the Deputy Director of Education to grant Shalarth Identity to the Petitioner, is also made in the writ Petition.

3. **Facts in brief:-**

3.1 Mr. Chetan Patil, learned counsel for the Petitioner submits that the Petitioner was appointed as 'Shikshan Sevak' (Now serving as

Assistant Teacher) in Respondent No.5 – School, run and administered by the Respondent No.4-Institution.

3.2 The Respondent No.4 is a ‘Trust’ registered under the Bombay Public Trusts Act, 1950.

3.3 An Application under Section 41D of the Bombay Public Trusts Act, 1950 was filed by one Bhanudas Raghunath Jadhav before the learned Joint Charity Commissioner, Maharashtra being Application No. 17 of 2007 against the Trustees of the said Trust i.e. Respondent No.4-Management.

3.4 Id. Joint Charity Commissioner, upon hearing the parties appointed a Committee of three “Fit persons” to administer the affairs of the Respondent No.4-Management Institution till the decision of First Appeal No. 699 of 2005.

3.5 Suffice to note that, the Id. Joint Charity Commissioner appointed one Shri Bhanudas Raghunath Jadhav, Shri S.M. Wangikar and the Education Officer, Zilla Parishad, Thane, as Members / Fit persons in the said Committee. (hereinafter referred as “Committee” for the sake of convenience).

3.6 It reveals that there arose a vacancy in the Respondent No.5-School pertaining to the post of ‘Assistant Teacher’ on 31st May 2015 on account of superannuation of one Shri S.P. Powar, who was working as

Assistant Teacher with the Respondent No.5-School. (hereinafter referred as “Subject-matter post” for the sake of brevity)

3.7 Since it was incumbent to fill in the vacancy of the subject matter post, in the interest of the students, the Committee of three Fit persons issued an advertisement on 4th June 2015 in daily newspaper namely, Rajhit. Copy of such advertisement is annexed at page No.71 being Exhibit-B.

3.8 Pursuant to the advertisement, the Petitioner underwent recruitment procedure conducted for the subject matter post of Assistant Teacher in the Respondent No.5-School. After due process, the Petitioner came to be appointed as Shikshan Sevak with effect from 1st July 2015.

3.9 The Respondent No.4-School Management then submitted a proposal to the Respondent No.3 seeking approval to the appointment of the Petitioner. However, the inordinate delay at the hands of the Respondent No.3 in processing the approval constrained the Petitioner to file Writ Petition No. 12043 of 2018 in this Court.

3.10 On 23rd August 2021 this Court disposed of the said Writ Petition thereby directing the Respondent No.3 to adjudicate the proposal dated 10th August 2015 within a period of four weeks thereafter.

3.11 The record further reveals that, despite of the time frame given by this Court, the Respondent No.3 did not process the Petitioner's proposal for a long period.

3.12 Lastly, i.e.on 10th October 2023, the Respondent No.3, however, rejected the proposal filed by the Respondent No.4-Management seeking approval to the services of the Petitioner.

3.13 Hence, the Petitioner has preferred this Petition.

4. Petitioner's arguments:

4.1 Mr. Patil, learned counsel for the Petitioner would invite our attention to Exhibit-H (page 92 of the Writ Petition compilation). This is the impugned rejection order dated 10th October 2023 passed by the Respondent No.3-Education Officer (Secondary), Zilla Parishad Sangli. The order reveals that on account of five reasons recorded therein, the approval was rejected.

4.2 Mr. Patil, learned counsel for the Petitioner would submit that the reasons recorded therein are absolutely misconceived and could not frustrate Petitioner's legitimate right to get approval to his services.

4.3 He would submit that the record attached to the Petition as also the reply affidavit filed by the Respondent No.3 would demonstrate that, no reason in the rejection order could be sustained in the light of the actual record.

4.4 Mr. Patil would conclude his arguments by submitting that, if the Respondent No.3 looks into the record correctly, he has to approve the proposal submitted by the Respondent No.4-Management.

5. **Respondent's arguments :-**

5.1 *Per contra* Mr. Mali, learned A.G.P supports the order dated 10th October 2023 passed by the Respondent No.3, rejecting the approval proposal. He would submit that there is no reason that the Respondent No.3 would record incorrect grounds / reasons to refuse the proposal. Mr. Mali would submit that the R.No. 3 has cautiously passed the rejection order keeping in mind the applicable procedure and the rules.

5.2 Mr. Mali would pray to dismiss the Writ Petition.

6. **Consideration and discussion:**

6.1 We have heard the counsel for the parties at length. We also keenly scrutinized the documents relied upon by the Petitioner as also the same documents relied upon by the learned A.G.P

6.2 In view of the explanation tendered by the Petitioner to each of the grounds mentioned in the rejection order dated 10th October 2023, now we deal on each ground contained in the rejection order dated 10th October 2023.

6.3 The Ground No.1 in the rejection order is that the Respondent No.4-Management has not published the advertisement, as

per G.R. dated 6th February 2012.

6.3.1 Mr. Patil, Id. counsel for the Petitioner submits that the sum & substance of the objection is that the advertisement has to be published upon taking permission from the Education Officer in view of GR dtd.06-02-2012. It is a matter of fact that the Petitioner's appointment was made by the Committee of fit persons appointed by the Id. Joint Charity Commissioner. The Education Officer, Zilla Parishad Thane himself was the Member of the said 'Committee' administering the affairs of the School Management. The said Committee has published the advertisement inviting applications to fill in the subject post. As such, separate permission won't be required in this case.

6.3.2 In view of this we are of the view that the first ground in the rejection order is highly technical and need not be sustained.

6.3.3 Mr. Mali, learned A.G.P would offer to submit that the Respondent No.5-School is located in the District Sangli and hence, the permission ought to have been taken from the Respondent No.3-Education Officer, Sangli.

6.3.4 This argument also we reject for the reason that the appointment is made on the Respondent No.4-Trust (which was at the relevant time being administered by the Committee of fit persons), which is located in the District Thane.

6.3.5 In view of this and particularly when the Education Officer himself is one of the fit person in the Committee, we are of the view that such objection is too technical, and cannot be fatal to the proposal for approval of the Petitioner's appointment. These observations are in the peculiar facts of the present case.

6.4 So far as Ground No.2, that there is no vacancy for the 'General category' is concerned, Mr. Patil, learned counsel for the Petitioner placed on record the typed copy of the roster evidencing the position staff vacancy in respect of the schools run by the Respondent No.4-Management as on 31st August 2013. The record clearly show vacancy of General Category on the date of Petitioner's appointment.

6.4.1 We appreciate the arguments of Mr. Patil that the findings of the Respondent No.3-Education Officer on this point appears to be perverse to the record. Placing reliance on the document relied upon by the Petitioner, we find that it cannot be said that there was no vacancy for the 'General category'.

6.5 So far as the Ground No.3 of not attaching the roster extract is concerned, it is also factually incorrect, since it was on record.

6.6 Then, as regard to Ground No.4 that the reason for vacancy is not shown; the answer is the staffing pattern produced on record and the roster that showed the vacancy of the subject matter post.

6.7 The last Ground No.5 is that, since 12 posts in excess have been filled in from General category, approval cannot be given to the Petitioner from the General category.

6.7.1 Mr. Patil, learned counsel would submit that the extract of the roster and the staffing pattern in fact shows that there was vacancy of 12 posts from the General category. He would submit that the Respondent No.3 has recorded exactly opposite and perverse to the record, which in fact was prevailing at the relevant time.

6.7.2 We agree that the submissions made by learned counsel Mr. Patil that in fact on the date of appointment of the Petitioner there were multiple vacancies available with the Respondent Nos.4 & 5 for the General category candidates.

6.7.3 Hence, we find substance in the arguments of the learned counsel for the Petitioner that the Respondent No.3 misread the roster and held erroneously that 12 additional / excess posts were filled in through the General category.

7. In view of the above, we are of the considered opinion that the Petitioner has made out a successful case to demonstrate that the impugned rejection order dated 10th October 2023 is not well founded. Therefore, we have no hesitation to allow the present Writ Petition in following terms.

ORDER

- (i) The Writ Petition stands allowed.
- (ii) The impugned Order dated 10th October 2023 passed by the Respondent No.3 (Exhibit 'H', page No.92 to the Petition) stands quashed and set-aside.
- (iii) The Respondent No.3 shall accord approval to the services of the Petitioner as 'Shikshan Sevak' from 1st July 2015 and as 'Assistant Teacher' with effect from 1st July 2018.
- (iv) Upon grant of such approval, the Respondent No.3 shall submit the proposal / case to the Respondent No.2 for granting Shalarth Identity to the Petitioner, and the Respondent No.2 shall include the name of the Petitioner in the Shalarth Pranali and shall issue Shalarth I.D. to the Petitioner.
- (v) The Respondent No.3 shall issue approval Order within four weeks from receipt of copy of this Order.
- (vi) The Respondent No.2 shall carry out the exercise of granting Shalarth I.D. to the Petitioner within four weeks after the receipt of copy of the approval to the Petitioner's services.
- (vii) The Respondent Nos.2 & 3 shall release grant-in-aid for payment of monthly honorarium to the Petitioner with effect from 1st July 2015 to 30th June 2018 and regular salary with effect from 1st July 2018 with all consequential benefits.
- (viii) Such payment shall be made by the Respondent Nos.2 & 3 within eight weeks after the grant of Shalarth I.D. to the Petitioner.

8. Rule is made absolute in the above terms.
9. Writ Petition stands disposed of.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]

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