

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.592 OF 2024**

Priyanka Balkrishna Jadhav,)
Aged 44 Yrs., Occ. Service,)
R/o. Ashirwad Niwas, Maal Bhag,)
A/P. Gijavane, Tal. Gadhinglaj,)
Dist. Kolhapur – 416 502)Petitioner

V/s.

1. The State of Maharashtra)
Through the Secretary,)
School Education Department,)
Mantralaya, Mumbai – 400 032)
2. The Deputy Director of Education,)
Kolhapur Region, Kolhapur)
3. Karmveer Vitthal Ramji Shinde)
Shikshan Santha, Gadhinglaj, Dist.)
Kolhapur,)
Through its President/Secretary
4. Sambhajirao Mane Arts, Commerce and)
Science College,)
A/P/T Gadhinglaj, Dist. Kolhapur,)
Through its Principal)Respondents

Mr. Narendra V. Bandiwadekar, Senior Advocate a/w. Mr. Vinayak
R. Kumbhar, Mr. Rajendra B. Khaire and Ms. Ashwini N.
Bandiwadekar for the Petitioner.

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

Mr. Rushikesh G. Patil for Respondent.

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

DATE : 5th FEBRUARY, 2025

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :

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

2. The Petitioner has put forth prayer clause – (b), as under :

(b) By a suitable writ, order or direction, this Hon'ble Court may be pleased to quash and set aside the impugned order dated 11.9.2023 issued by the Respondent No.2, and accordingly the Respondent No.2 may be directed to grant approval to the up-gradation of the Petitioner from the partially aided [40%] post of part time teacher [English] to the fully aided post of full time teacher [English] in the Respondent No.4 Junior College w.e.f. 10.11.2022, and to release 100% grant-in-aid for payment of salary to the Petitioner from 10.11.2022, with all arrears.

3. The Petitioner was appointed on the unaided post as a part time English Teacher on 16th June, 2018. The said appointment was approved by Respondent No.2 vide order dated 8th December, 2020. The Petitioner belongs to the OBC category and has acquired the qualification of M.A. [English] and B.Ed. [English/History].

4. The unaided division on which the Petitioner was working, was granted salary grants at the rate of 20% from 1st November, 2020 and 40% from the year 2023. On 17th August, 2021, the name of the Petitioner was entered in the Shalarth Pranali and she was issued with a Shalarth ID. The Petitioner initially started receiving her salary to the extent of the 20% grants, and thereafter, to the extent of the 40% grants. On 10th November, 2022,

the Petitioner was upgraded to the post of full time English Teacher when the salary grants had reached the scale of 100%. The Principal tendered a proposal dated 5th June, 2023 seeking approval to the upgradation of the Petitioner. By the impugned order dated 11th September, 2023, the approval was refused.

5. The learned AGP points out that the impugned order was passed on the ground that the Petitioner had not completed 5 years prior to being brought on the aided establishment as required under Rule 41-A of the MEPS Rules, 1981.

6. The learned Senior Advocate representing the Petitioner relies upon the judgment of this Court, delivered at the Aurangabad Bench, dated 4th July, 2019 in ***Suryakant S/o. Janardan Muge v/s. The State of Maharashtra and Ors.***, wherein this Court has concluded in paragraph nos. 20 to 23, as under :

20. One anomalous situation that requires to be considered is that if a person is appointed on grant-in-aid post for three years, he is required to work as Shikshan Sevak on honorarium basis, whereas, on an unaided post a person is directly appointed as assistant teacher. For example, if a person has worked as assistant teacher for one year on unaided post and is transferred on grant-in-aid post, he would claim that he was working as assistant teacher and should be considered as assistant teacher that would not be in tune with

the scheme of Shikshan Sevak as framed by the Government under the Government Resolutions.

21. If the assistant teacher on unaided post has worked for less than three years and is transferred to aided post, he will have to work as Shikshan Sevak till he completes three years of service from the date of his initial appointment on an unaided post. That would be in conformity with the scheme of Shikshan Sevak framed by the State.

22. In light of the above, we quashed and set aside the orders rejecting the approvals of petitioners.

23. Upon confirming about the adherence to the seniority list that is those who are transferred to aided post are senior most amongst those working on unaided post and that the roster is maintained, so also their appointments are approved on unaided post, the Education Officer shall grant approvals to their appointments. If the assistant teachers who have been transferred from unaided to aided posts had not completed three years while working on unaided post, then they will be granted approvals as Shikshan Sevaks for a period they would complete three years from the date of their initial appointments and thereafter as assistant teachers. Of course, upon satisfying about the seniority and roster. However, the Education Officer shall not reject the proposal on the ground of circular dated 28.06.2016 and that there is availability of surplus teachers. The Education Officer will have to consider that services of these petitioners are approved on unaided posts.

7. The learned Senior Advocate fairly concedes that since she was brought on the aided establishment before completion of 5

years which is on account of the introduction of Rule 41-A, the view taken in *Suryakant S/o. Janardan Muge* (Supra) requiring a candidate to complete 3 years on unaided establishment as a Shikshan Sevak, will have to be read as 5 years in the light of the said rule.

8. In this context, he points out that the Petitioner was working as a part time Assistant Teacher on the unaided establishment for a period of around 4 years and 6 months and there is a shortfall of 6 months. He, therefore, submits that the impugned order could be modified by mandating that after the Petitioner completes 5 years, she would be entitled for approval on the aided establishment.

9. To counter the above submissions, the learned AGP relies upon the corrigendum dated 10th June, 2005, presumably with reference to the Government Resolution dated 13th October, 2000, and specifically relies upon clause 9 of the corrigendum, which reads as under :

"९) अर्धवेळ शिक्षक म्हणून काम करणाऱ्या शिक्षकांना जर पूर्णवेळ शिक्षकाचा कार्यभार उपलब्ध झाल्यास आणि त्या पदासाठी असलेल्या अन्य अटी व शर्तीची तो पूर्तता करीत असल्यास अशा प्रकरणी त्यास शिक्षणसेवक म्हणून

नियुक्ती द्यावी. मात्र अशा नियुक्त्या करतांना व त्यास मान्यता देतांना मागासवर्गीयांसाठीचे आरक्षण विषयक धोरणाची अंमलजावणी करणे बंधनकारक राहिल. अर्धवेळ शिक्षकांची शिक्षणसेवक म्हणून नियुक्ती करावयाची झाल्यास त्याने अर्धवेळ शिक्षक म्हणून केलेली सेवा ही शिक्षणसेवकासाठी निम्मी / अर्धी सेवा (सहा महिने) गणण्यात यावी. त्यानंतर प्रचलित अटी व शर्तीची पूर्तता करीत असल्यास त्यांस नियमित वेतनश्रेणीमध्ये नियुक्त करावे. जर अर्धवेळ शिक्षकाने ६ वर्षे अर्धवेळ शिक्षक म्हणून काम केले असेल व त्याला पूर्णवेळ शिक्षकाचे पदी नियुक्ती द्यावायची झाल्यास त्याला शिक्षणसेवक म्हणून नियुक्ती न देता त्याला नियमित वेतनश्रेणीमध्ये प्रचलित अटी व शर्तीच्या पूर्ततेच्या अधीन राहून नियुक्ती देण्यात यावी”.

10. The learned Senior Advocate further submits that the Petitioner having joined as a part time teacher on the unaided establishment on 16th June, 2018, has been receiving salary proportionate to the extent of the grants of 20% and 40% until now. Reading clause 9 reproduced above, he submits that the Petitioner will have to complete 6 years as a part time teacher on the unaided establishment so as to conclude that she has put in 3 years, thereby being eligible to be upgraded to the aided establishment in terms of clause 9 of the corrigendum.

11. In view of the above, this peculiar situation can be resolved by directing that the Petitioner would continue to be a part

time assistant teacher drawing salary through the grants in aid, proportionate to 40% for a period of 18 months beyond the date on which she was upgraded to the aided establishment, so as to satisfy clause 9 in completing 3 years on unaided establishment. Since she has been drawing her salary to the extent of the 40% grants, in this peculiar situation, we direct that she would be deemed to continue to receive the said salary proportionate to the 40% grants until she puts in 6 years as a part time Shikshan Sevak from the date of the initial appointment. Thereafter, she would be eligible to be upgraded.

12. We, therefore, direct that the impugned order shall stand modified in the nature of granting approval to the Petitioner after completing 6 years as a part time teacher. A formal order granting approval shall be issued by the Education Officer in the light of these directions. As a consequence of the above directions, the Petitioner's salary, after being deemed to be transferred on the aided establishment after 6 years from the date of initial appointment, would be calculated by following the due procedure laid down in law and the same shall be paid to the Petitioner within a period of 60 days.

13. With the above directions, **this Petition stands partly allowed**. Rule is made partly absolute in the above terms.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)