

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

CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 8710 OF 2024**

|                               |   |                |
|-------------------------------|---|----------------|
| Jospin Maykal Dsouza          | ] |                |
| Age 38 years, Occ. Service,   | ] |                |
| Gavthanwadi, Adoli, Kolhapur. | ] | ... Petitioner |

**Versus**

|    |                                           |   |                 |
|----|-------------------------------------------|---|-----------------|
| 1. | The State of Maharashtra                  | ] |                 |
|    | Through Principal Secretary,              | ] |                 |
|    | Department of School Education,           | ] |                 |
|    | Having office at Mantralaya, Mumbai.      | ] |                 |
| 2. | Deputy Director of Education              | ] |                 |
|    | Kolhapur Division, Kolhapur.              | ] |                 |
| 3. | Education Officer (Secondary)             | ] |                 |
|    | Zilla Parishad, Kolhapur.                 | ] |                 |
| 4. | Dipak Society                             | ] |                 |
|    | C/o. Holy Cross Convent Highschool,       | ] |                 |
|    | Near Head Post Office Tarabai Park,       | ] |                 |
|    | Kolhapur, Through its President/Secretary | ] |                 |
| 5. | Holy Cross Convent Highschool             | ] |                 |
|    | Near Head Post Office Tarabai Park,       | ] |                 |
|    | Kolhapur, Through its Head Mistress       | ] | ... Respondents |

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*Mr. Chetan G. Patil i/b. Mr. Mandar G. Bagkar for the Petitioner.  
Mr. R.P. Kadam, 'B' Panel Counsel, A.G.P. for the Respondent Nos.1 to 3-  
State.*

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

**Date :** 19<sup>th</sup> November 2025.

**JUDGMENT ( Per : M. S. Karnik, J. )**

1. Heard Mr. Patil, learned counsel for the Petitioner and Mr. Kadam, learned A.G.P. for the Respondent Nos.1 to 3.
2. The challenge in this Petition is order dated 19<sup>th</sup> July 2021 passed by the Respondent No.3-Education Officer (Secondary), Zilla Parishad, Kolhapur, by which the proposal seeking approval to the appointment of the Petitioner has been rejected.
3. The facts of the case in brief are that :
  - 3.1 The Respondent No.4 is a Minority Institution. The Certificate dated 3<sup>rd</sup> July 2009 which shows that the Respondent No.4 is a minority institute is annexed at Exhibit-A of the Writ Petition. One employee who was working on the post of Lady Peon in the Respondent No.5-School retired on attaining the age of superannuation on 31<sup>st</sup> May 2015. As a result of her retirement, the post fell vacant. The Respondent No.5 addressed a letter dated 7<sup>th</sup> February 2017 to the Respondent No.3

bringing to his notice that the vacancy is created in the Respondent No.5-School. The Respondent No.5 addressed a letter dated 15<sup>th</sup> March 2017 thereby seeking permission to issue advertisement for filling up the posts of Junior Clerk and Lady Peon.

**3.2** As the post of Lady Peon could not be kept vacant for longer duration, the Respondent Nos.4 & 5 initiated the procedure of making appointment of the said vacant post and accordingly, issued an advertisement in the daily newspaper inviting applications from eligible candidates. The Petitioner was eligible to be appointed on the post of Lady Peon. As the Petitioner was found to be most suitable candidate by the School Committee of Respondent No.4, she was appointed on the said post of Lady Peon with effect from 1<sup>st</sup> July 2017.

**3.3** The Respondent No.5 submitted a proposal dated 15<sup>th</sup> March 2017 seeking approval to the appointment of the Petitioner. However, initially on the ground of some Government Resolution (G.R.) purportedly imposing an embargo on appointments on non teaching posts in school, the Respondent No.3 did not accept the proposal. However, the proposal dated 15<sup>th</sup> March 2021 was accepted after some time seeking approval to the appointment of the Petitioner.

**3.4** By the impugned order the proposal rejected relying on four G.R.'s purportedly imposing ban on the recruitment of the non teaching posts.

4. Learned A.G.P. opposed the Petition and argued in support of the impugned Order. Our attention is invited to the detailed order passed by the Respondent No.3, which according to him, is in consonance with the four G.R.'s referred to therein. Learned A.G.P. submits that despite the ban, the post was filled up in breach of the G.R.'s and hence, the impugned order does not call for any interference.

5. We must indicate that the learned A.G.P. requested for some time to file an Affidavit-in-Reply. However, we are not inclined to accede to the request of the learned A.G.P., as we found that the impugned G.R.' on the basis of which the impugned order is passed, is already placed on record by the learned counsel for the Petitioner. Therefore, the learned A.G.P. in any case has to justify the impugned order on the strength of the reasons provided therein.

6. There is no dispute that an advertisement was issued for filling up of the vacant post of Lady Peon. In fact, the Management had written to the Education Officer seeking permission. The post could not have been kept vacant for long awaiting response of the Respondent No.3, which would be detrimental to the interest of the Education Institution. Since the Respondent No.3 did not respond, the Management proceeded to issue the advertisement.

7. Firstly, the Education Officer has placed reliance on the G.R. dated 10<sup>th</sup> June 2010. We have perused the said G.R. dated 10<sup>th</sup> June 2010. In the said G.R., which is at page 24 of the paper-book, it is clearly mentioned therein that ban for the purpose of recruitment of non teaching staff is for a period of one year from 5<sup>th</sup> June 2010. There is nothing placed on record to indicate that such a ban continued and was in force even on the date when the Petitioner came to be appointed in respect of which the approval is sought. We therefore find that the G.R. dated 10<sup>th</sup> June 2010 is not applicable in the present case.

7.1 Secondly, reference is made to the G.R. dated 12<sup>th</sup> February 2015 and G.R. dated 23<sup>rd</sup> October 2013 to contend that the appointment of the Petitioner is not in consonance with the staffing pattern as required by the said G.R.'s.

8. Our attention is invited by the learned counsel to the decision of this Court in *Shital Kumar Patil Vs. State of Maharashtra & Ors.*<sup>1</sup>. Reference to paragraph Nos. 17 and 18 of the said decision would be significant; the same are reproduced below.

*“17. The respondent no.2 in the impugned order did not consider the crucial aspect that neither the said Government Resolution dated 23rd October, 2013 nor the Government Resolution dated 12th February, 2015 were applicable to the minority institutions. The Government of Maharashtra itself had issued a subsequent*

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1 2022 (1) Mah. L.J. 389 : 2021 SCC OnLine Bom 1115

*Government Resolution dated 13th July, 2016 after adverting to the judgment of Hon'ble Supreme Court in case of T.M.A.Pai Foundation vs. State of Karnataka (supra) and in case of Secretary, Malankara Syrian Catholic College (supra) and had clearly stated that the minority institutions had to be excluded from the applicability to the section 5(1) of the MEPS Act. It was further stated that if the minority institutions seek permission before recruitment, then permission should be given by following the procedure stated in the said Government Resolution. But if an appointment is made by minority institutions without taking permission then in that case appropriate action shall be taken for granting individual approval to such appointment.*

*18. The respondent no.2 in the impugned order has totally overlooked the Government Resolution dated 13th July, 2016 which was issued in conformity with the principles of law laid down by the Hon'ble Supreme Court in case of T.M.A.Pai Foundation vs. State of Karnataka (supra) and in case of Secretary, Malankara Syrian Catholic College (supra). In our view, the respondent no.2 thus could not have relied upon the Government Resolutions dated 12th February, 2015, 8th August 2017 and the Government Resolution dated 23rd October, 2013 in the impugned order while rejecting the proposal submitted by the respondent no.4 in respect of the appointment of the petitioner made to the post of peon. Section 5(1) of the MEPS Act is excluded and is not applicable to the minority institutions including the respondent no.3 in this case. The respondent no.2 did not consider all these crucial aspects in the impugned order and has mechanically rejected the proposal made by the respondent no.4 to the appointment of the petitioner to the post of the peon.”*

9. It is therefore clear that the Respondent No.4 being a Minority Institution, the Respondent No.4 would not be governed by the G.R.'s dated 12<sup>th</sup> February 2015 and 23<sup>rd</sup> October 2013. The impugned order which provides the basis of reasoning of the Education Officer, that the Management has appointed the Petitioner in breach of the G.R.'s dated 12<sup>th</sup> February 2015 and 23<sup>rd</sup> October 2013, therefore cannot be sustained.

10. The Education Officer then in the impugned order makes a reference to the G.R.'s dated 28<sup>th</sup> January 2019 and 11<sup>th</sup> December 2020 to show that the appointment of the Petitioner is contrary to the conditions mentioned in the said G.R.'s. It is significant to note that the Petitioner was appointed in the year 2017, when the G.R.'s of 28<sup>th</sup> January 2019 and 11<sup>th</sup> December 2020 were not in force. The aforesaid G.R.'s in our opinion cannot have retrospective applicability.

11. We are supported in our view by the decision of this Court in the case of *Dilip Mohan Desai Vs. State of Maharashtra & Ors.*<sup>2</sup>. In the said decision authored by His Lordship (Shri Madhav J. Jamdar, J.) in para Nos.16 to 18 has observed thus :

*“16. Mr. Thorat has also relied on G.R. dated 28<sup>th</sup> January, 2019. In fact, the said G.R. states that all the decisions of the State of Maharashtra regarding staffing pattern taken earlier are cancelled and the staffing pattern is to be implemented as set*

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2 2021 (3) Mah.L.J. 759

*out in the said G.R. In so far as staffing pattern of class-IV employees are concerned, it is specifically mentioned that new separate G.R. will be issued. In the affidavit in reply it is specifically stated that Government has not decided the staffing pattern, recruitment pattern about the post of peon. Be that as it may, all these Government Resolutions which are subsequent to the appointment of Petitioner will not apply to the Petitioner's case and therefore, it can not be said that approval granted to his appointment as peon by orders dated 21<sup>st</sup> January, 2019 and 25<sup>th</sup> February, 2019 issued by Respondent No.2-Education Officer (Secondary) are illegal.*

*17. Mr. Patil rightly relied on the judgment of this Court in the matter of Suman Shriram Kakad (supra). In the said case also the question was whether the Government Resolution dated 5<sup>th</sup> August, 2010 would apply with retrospective effect. This Court has held that it is a cardinal principle of construction of statute that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. It is further held that unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective. As a logical corollary of general rule, retrospective operation is not taken to be intended unless that intention was manifested by express words or necessary implication. Another principle flowing from presumption against retrospectivity is that one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed.*

*18. In the present case, not only that the Government Resolutions on which Mr. Thorat has heavily relied are subsequent to the appointment of Petitioner but, in fact, the said Government Resolutions clearly contemplates/specifies that either they are applicable from the date of Government Resolution or the date specifically mentioned therein.”*

12. In this view of the matter, the Education Officer could not have refused the approval on the strength of the G.R.s dated 12<sup>th</sup> February 2015, 23<sup>rd</sup> October 2013, 28<sup>th</sup> January 2019 and 11<sup>th</sup> December 2020. The impugned order therefore calls for interference and is accordingly quashed and set-aside.

13. The Petition is allowed in terms of prayer clauses (a) and (b), which reads thus :

*(a) That this Hon'ble Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ thereby quashing and setting aside the impugned Order dated 19<sup>th</sup> July 2021 (being Exhibit "G" hereto) passed by Respondent No. 3 herein and further be pleased to direct Respondent No. 3 herein to grant approval to the appointment of the Petitioner on the post of Lady Peon in Respondent No. 5 School with effect from 1<sup>st</sup> July 2017.*

*(b) That this Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or*

*direction in the nature of writ thereby directing Respondent No. 2 herein to enter the name of the Petitioner in the Shalarth System and issue Shalarth Identity to the Petitioner and further be pleased to direct Respondent Nos. 1 to 3 to release grant in aid towards the payment of monthly honorarium / salary as per regular pay scale to the Petitioner with effect from 1<sup>st</sup> July 2017 onwards with all consequential benefits.*

[ Ajit B. Kadethankar, J. ]

[ M. S. Karnik, J. ]

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