

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18654 OF 2024

- | | | |
|----|--|------------------------------|
| 1] | Bapu Gorak Bansode. |] |
| | |] |
| 2] | Maharani Ahilyabai Holkar |] |
| | Education Society Sangli. |] |
| 3] | Jawaharlal Nehru Secondary and |] |
| | Higher Secondary Vidyalay, |] |
| | Zare, Taluka: Atpadi, District : Sangli. |] |
| | | <u>..Petitioners.</u> |

Versus

- | | | |
|----|-------------------------------|------------------------------|
| 1] | The State of Maharashtra |] |
| | Thr. The Secretary, |] |
| | School Education Department. |] |
| 2] | Deputy Director of Education, |] |
| | Kolhapur Region, Kolhapur. |] |
| 3] | Education Officer (Secondary) |] |
| | Zilla Parishad, Sangli. |] |
| | | <u>..Respondents.</u> |

Mr. Satish Raut for the Petitioner.

Mr. S. B. Kalel, AGP for the Respondent-State.

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

Date : December 23, 2025.

Oral Order [Per Ajit B. Kadethankar, J.]:

1. By the present petition, the Petitioners have sought two fold reliefs. Firstly, that the services rendered by Petitioner No.1 on non-grant basis be computed for granting approval as Shikshan Sevak /

Assistant Teacher. Secondly, consequent to completion of 3 years' probation period as Shikshan Sevak, Petitioner No.1 be held entitled for regular pay scale.

2. It is submitted that Petitioner No.1 possesses qualification of M.A., B.Ed. and belongs to Scheduled Caste category. After following due procedure, Petitioner No.1 came to be appointed as an Assistant Teacher on an unaided post on part-time basis with effect from 1st August 2009 vide appointment order dated 27th July 2009 issued by the school management.

3. The Deputy Director of Education approved services of Petitioner No.1 vide order dated 31st October 2009. The services of Petitioner No.1 were continued from time to time and approvals were also granted from 2009 to 2014. In due course of time, two posts of Assistant Teachers in fully aided division in Petitioner No.3 School fell vacant.

4. In view of the provisions of Section 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, Petitioner No.1 was appointed on the fully aided post of Assistant Teacher vide order dated 1st June 2014.

5. The school management submitted proposal for approval to the appointment of Petitioner No.1 which was however turned down by the Respondent No. 2 initially.

6. The Petitioners were constrained to file a Writ Petition in this Court bearing Writ Petition No.815 of 2017, which came to be decided on 26th March 2018 whereby the Petitioner no.1 was allowed to lodge a fresh representation and a direction was given to the Respondent No.2 to decide the proposal afresh in the light of directions.

7. Consequently, the school management submitted a proposal for approval to the services of Petitioner No.1, which came to be granted by Respondent No.2 as Shikshan Sevak with effect from 16th June 2014. It is pertinent to note that in the approval order dated 19th June 2019, regular pay scale was made applicable to Petitioner No.1 from 16th June 2017.

8. On 9th August 2024, Petitioner No.1 made a representation to the Respondent No.2 to consider his part-time services rendered on unaided post for determining seniority, regular pay scale and consequential benefits. Vide order dated 2nd September 2024, the Respondent No.2 rejected the proposal of Petitioners on 3 grounds which are as follows :

"१. उमेदवाराचा अर्ज दि.०९.०८.२०२४ चा आहे तर संस्था ठराव दि.२६.०५.२०२४ चा सादर केलेला आहे.

२. कायम विनाअनुदानितची अर्धवेळ सेवा अनुदानित तुकडीच्या पूर्णवेळ पदासाठी ग्राह्य धरणेबाबत आपण दिलेल्या संदर्भित शासन निर्णयामध्ये नमूद नाही.

३. श्री. बनसोडे यांच्या नियुक्तीस मा. उच्च न्यायालय यांनी दिलेल्या निकालानुसार शिक्षणसेवक म्हणून मान्यता दिलेली आहे.

४. अनुदानित तुकडीवर पूर्णवेळ शिक्षणसेवक म्हणून नियुक्ती करताना कायम विनाअनुदानितची अर्धवेळ सेवा पूर्णवेळ शिक्षणसेवक मध्ये समाविष्ट करणेबाबतचा धोरणात्मक शासन निर्णय/ आदेश/परिपत्रक नाहीत. सबब, सदरचा प्रस्ताव अमान्य करून परत पाठविण्यात येत आहे.”

Therefore, the Petitioners have lodged the present petition.

9. Mr. Raut, learned Counsel for the Petitioners would submit that services rendered by Petitioner No.1 as part-time teacher on unaided post has to be computed for the purpose of monetary benefits including the regular pay scale as also the pensionary benefits. He would further submit that Petitioner No.1 is entitled to regular pay scale once having been appointed as Shikshan Sevak by virtue of his appointment from unaided to aided post. With such argument, learned Counsel for the Petitioner would pray to allow the Writ Petition.

10. Mr. S. B. Kalel, learned Assistant Government Pleader would however support the order impugned in the Writ Petition. Mr. Kalel would submit that reasons assigned by Respondent No.2 in the order dated 2nd September 2024 are well founded and Respondent No.2 cannot be said to have committed any error in rejecting the proposal.

11. Upon hearing both parties, we find that this Court vide order dated 13th June 2022 passed in bunch of petitions with lead matter

Writ Petition No. 9098 of 2021 (at Principal Seat) has observed as follows :

4. This Court under its judgment and order dated 04th July, 2019 in Writ Petition No. 1493 of 2018 with connected writ petitions has observed that some of the clauses of the Circular dated 28th June, 2016 are erroneous. The services rendered on unaided posts are required to be counted while granting approval to the transfer from unaided to aided posts.

5. To illustrate if the Petitioners have worked for two years on unaided posts and they are transferred thereafter to the aided posts, they have to be granted approval as a Shikshan Sevak for one year and thereafter as an assistant teacher.

6. In light of the above, the impugned order granting approval to the transfer of the Petitioners in phase wise grant-in-aid manner, is quashed and set aside.

7. The Education Officer / Deputy Director shall consider that if the Petitioners are transferred on 100% grant-in-aid posts, then the services rendered on the unaided posts shall also be counted while granting the approval as Shikshan Sevak / Assistant Teacher.

8. We have passed the aforesaid order as the Education Officer / Deputy Director has granted the approval to the transfer of the Petitioners from unaided to aided posts. Meaning thereby, the Education Officer / Deputy Director was convinced about the qualification, seniority list, the roster and all other aspects. The same shall be considered expeditiously, preferably within four months.”

12. Thus, services rendered by Petitioner No.1 on the unaided post have to be considered while granting approval as Shikshan Sevak upon his transfer on 100% grant-in-aid post.

13. However, facts of the case in hand are peculiar inasmuch as services of Petitioner No.1 on the unaided post were not on full-time basis. It is an admitted fact that services of Petitioner No. on part-time basis have to be counted for the service purpose.

14. It is the contention of the Petitioner that while rejecting the proposal on 2nd September 2014, if opportunity of hearing would have been given to the Petitioners by Respondent No.2, the Petitioners could have satisfied those deficiencies and queries raised by the Respondent No.2. The Petitioners are aggrieved by the order dated 2nd September 2024 for the reason that no opportunity of hearing was given by Respondent No. 2 to the Petitioners to explain and answer the queries.

15. Mr. Raut, learned Counsel for the Petitioners would submit that now the law is developed that Petitioner No.1 has to be actually in regular pay scale with effect from his date of appointment in the fully aided post.

16. In the light of rival submissions advanced by both the parties, we find that Petitioners were not given any opportunity of hearing before Respondent No.2 rejected the proposal for grant of approval by raising four objections. We have heard the contention of learned Counsel for the Petitioners that the objections raised by the Respondent No. 2 do not stand in the light of law developed in the field.

17. In these circumstances, we deem it appropriate to grant liberty to the Petitioners to satisfy the queries and objections raised by Respondent No.2 in the impugned order dated 2nd September 2024,

copy of which at Exhibit–“K” to the petition. For that, impugned order dated 2nd September 2024 be treated as show cause notice.

18. As such we dispose of the Writ Petition with following directions:

- [A] Within four weeks herefrom, the Petitioners shall lodge/re-submit with the Respondent No.2, the proposal for grant of approval to the services of Petitioner No.1 and for regular pay scale. Petitioners are at liberty to attach in support of their proposal, all such documents and judgments rendered by this Court.
- [B] Respondent No.2 shall give personal hearing to the Petitioners on the proposal and pass appropriate orders thereon. Respondent No.2 shall record categorical finding against each objection. Respondent No.2 shall take into consideration the explanation tendered by the Petitioners as also the judgments and orders referred to by the Petitioners.
- [C] Respondent No.2 shall complete this exercise within a period of eight weeks from the date of receipt of proposal from the Petitioners.
- [D] It is made clear that we have not expressed any opinion on the merits of the matter. All contentions are kept open.

[Ajit B. Kadethankar, J.]

[M. S. Karnik, J.]