

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

NIKITA
KAILAS
DARADE
ADVOCATE GENERAL
HON'BLE JUSTICE
JAYANTH K. K. SHARMA
JUDGE, CIVIL
JUDGE, CIVIL

WRIT PETITION NO.4820 OF 2024

Mr. Lokhande Namdeo Maruti,
Age 42 Years, Occ. Service,
Residing at Pawandham Complex,
Mahavir Society, Room No.204,
Gandhari Road, Kalyan, West,
Dist-Thane

... Petitioner

Versus

1. The State of Maharashtra,
through its Secretary,
School Education Department
Mantralaya, Mumbai-400032

2. The Deputy Director of Education,
Mumbai Region, Charni Road, Mumbai

3. The Education Officer (Secondary),
Zilla Parishad, Thane.

4. The President,
Walwa Taluka Boudha Society,
Having its Head Office at
C/o New High School, Sangli,
107, Uttar Shivaji Nagar,
Near Swaroop Theater,
Tal. Miraj Dist. Sangli.

5. The Head Master,
Lonad Chaudharpada Panchkrushi
Highschool, /Chaudharpada,
Tal. Bhiwandi, Dist. Thane.

... Respondents

Mr. Y. B. Lengare for the Petitioner.
Mr. S. B. Kalel, AGP for the State.

**CORAM : M. S. KARNIK &
ASHWIN D. BHOBE, JJ.**

DATE : 21st MARCH, 2025

ORDER (PER ASHWIN D. BHOBE. J.)

1. Heard, Mr. Y. B. Lengare, for the Petitioner and Mr. S. B. Kalel, learned AGP for the State.

2. Grievance of the Petitioner is that the Respondent No.3 has refused to consider the service of the Petitioner from 01.10.2007 to 27.06.2011 (3 years 7 month 27 days) for the purpose of service benefits, increments, promotion, seniority, pension scheme and senior grade benefit.

3. **Factual matrix:-**

a) Petitioner holds qualifications of B.A. M.Ed. (Hindi). Petitioner had worked with the Shri Umajirao Sanamdikar Adhyapak Vidhyalaya managed and run by Siddharth Shikshan Prasarak Mandal w.e.f. 01.10.2007 to 30.11.2010 on permanent non-grant in basis. Said appointment had the approval from the Respondent No.2.

b) On 30.11.2010, the Petitioner was appointed by the

Respondent No.4 in the Shivkhandeshwar Vidhya Mandir w.e.f. 01.12.2010 to 27.06.2011, on unaided basis. Said appointment had the approval from the Respondent No.3.

c) On 27.06.2011 Petitioner was appointed in the Respondent No.5 school w.e.f. 28.06.2011 on grant in aid basis. Respondent No.3 approved the said appointment vide order dated 09.11.2011.

d) By order dated 26.06.2014, Respondent No.4 appointed the Petitioner on regular basis w.e.f. 28.06.2014. Respondent No.3, granted approval to the Petitioner in the regular pay scale by its order dated 04.08.2014.

e) By proposal dated 27.04.2018, the Respondent Nos. 4 and 5 requested the Respondent No.3 to consider the services rendered by the Petitioner from 01.10.2007 to 27.06.2011 and services rendered from 01.12.2010 to 27.06.2011 for all service benefits.

f) By order dated 22.08.2023, Respondent No.3 rejected the proposal dated 27.04.2018 submitted by the Respondent Nos. 4 and 5. Respondent No.3 has rejected the said proposal on the ground that Petitioner's appointment as Shikshan Sevak from 28.06.2011 to 27.06.2014 was approved vide order dated 09.11.2011 and the regular pay scale was approved w.e.f. 28.06.2014, vide order dated 04.08.2014. Thus, according to the

Respondent No.3, the said approval granted cannot be cancelled by the same Officer and the said approvals can be cancelled or modified by a Superior Authority.

g) Petitioner, by this petition assails the said order dated 22.08.2023 and seeks a direction to the Respondent No.3 to grant approval to the appointment of the Petitioner as an Assistant Teacher in the regular pay scale of Rs.9300-34800 grade pay Rs.4300 from 28.06.2011 and to release the difference of arrears and salary.

h) Respondent No.3 has filed affidavit in reply dated 19.03.2025. The Respondent No.3 has reiterated the contents of the order dated 22.08.2023.

4. **Submissions:-**

a) Mr. Lengare learned Advocate for the Petitioner submits that the services of the Petitioner from 01.10.2007 to 27.06.2011 i.e. 3 years 7 months 27 days are required to be considered for the purpose of continuity of service and consequential service benefits. By placing reliance on the decisions of this Court in the case of Sunanda Raosaheb Bhokare Vs. The State of Maharashtra and Ors.¹ and in the case of Ms. Sandhya Laxman Ghosalkar Vs.

¹ Writ Petition No.1672 of 2013

State of Maharashtra and Ors.², submits that the Petitioner is entitled to the reliefs as prayed.

b) Mr. Kalel learned AGP for the State, submits that Petitioner's appointment as Shikshan Sevak from 28.06.2011 to 27.06.2014 and the approval for regular pay scale from 28.06.2014 being approved by the Respondent No.3, the Respondent No.3 would not have authority to cancel or modify the said approval. He submits that in terms of the Government Resolution dated 23.08.2017, such cancellation or modification can be at the instance of the superior Authority.

5. **Analysis:-**

a) In the case of Kiran Dhanpal Vanvade Vs. the State of Maharashtra³, after having examined the Scheme of Shikshan Sevak in the backdrop of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981 (MEPS Act) has held that the Petitioner who is appointed as Assistant Teacher in an unaided division and subsequently transferred to another unaided division under the same Management and whose appointment was approved on probation cannot be deprived of the said service when he took up

² Writ Petition No.5258 of 2012

³ Writ Petition No.9407 of 2017

an assignment in a grant in aid school. This Court in the case of Sunanda Raosaheb Bhokare (supra), placing reliance on the decision of Kiran Dhanpal Vanvade (supra), held that the Petitioners who were appointed as Assistant Teacher on a regular basis against a permanent vacancy though in an unaided institution could not be deprived of the benefits of consideration of the previous service rendered as Assistant Teachers.

b) In the case of Ms. Sandhya Laxman Ghosalkar (supra), the service of teachers who had been transferred from unaided section to aided section was considered for the purpose of Shikshan Sevak and approval was granted as an Assistant Teacher.

c) This Court in the case of Pramod Prabhakar Pokale Vs. the State of Maharashtra and Ors.⁴ in paragraph No.18 has held as under:-

“18. Upon careful perusal of sub-clause 5(A) of clause 3 of the said Circular, it is mentioned therein that, if the teacher appointed on unaided basis, has rendered less than 5 years service, and in case the management wishes to make such transfer from unaided school to aided school, in that case, an undertaking should be obtained from such teacher to work as Shikshan Sevak on consolidated pay. Prima facie said provision appears to be attractive, however, in case candidate is appointed on the post of Assistant Teacher after following the mandate of section 5 of the MEPS Act, 1977, and on completion of two years probation period, if the Education Officer has granted approval to his

⁴ 2019 (4) Mh.L.J. 278

appointment on regular basis, and in case he is senior most teacher serving in the school on unaided basis run by the Institution, requests for his transfer from unaided school to aided school or on aided post from unaided post in same school, and if he has already completed 3 years period as Assistant Teacher, there is no justifiable reason to ask him to work again as Shikshan Sevak on consolidated pay for three years. The subclause 5(A) of clause 3 of the said Circular can be invoked wherein the Assistant Teacher has not completed three years period after his appointment as an Assistant Teacher in the school on unaided basis, and he has not received approval to his services as an Assistant Teacher on regular basis. In short, if the Assistant Teacher has not completed satisfactory probation period, and if his service or services are not approved by the Education Officer on regular basis or there is no adherence to the provisions of section 5 of the MEPS Act, 1977, in that case, the management is not entitled to transfer such teacher from an unaided school to aided school or on aided post of Assistant Teacher/Shikshan Sevak from unaided post held by the Assistant Teacher. It is only in case where the Assistant Teacher has acquired status of regular employee on completion of two years probation period, and his appointment is in adherence to the provisions of section 5 of the MEPS Act, 1977, and the approval is granted by the Education Officer to his appointment on regular basis on the post of Assistant Teacher on completion of satisfactory probation period, and he is senior most teacher working in the school on unaided basis, in that case, the question of invoking sub-clause 5(A) of Clause 3 of the said Circular would not arise. In such case, invoking said provision would run contrary to the judgment of the Division Bench (Coram : Dr. D.Y. Chandrachud and A.A. Sayed, JJ.) of the Bombay High Court at Principal Seat in the case of Ms. Sandhya Laxman Ghosalkar (supra), wherein it' is observed in para 4 that, there was no justification whatsoever for the Education Officer (Secondary) to grant his approval only as Shikshan Sevaks to the three Petitioners. It is further observed that, if the Petitioners had been appointed as Assistant Teachers in the aided school by transfer from the unaided school on the basis of seniority, the approval ought to have been granted to them as Assistant Teachers. This is especially so having due regard to the fact that they were similarly circumstanced with other Teachers in whose case approval was granted as Assistant Teachers."

d) In the instant case, there is no dispute of the Petitioner having rendered service from 01.10.2007 to 27.06.2011 on unaided basis. Said appointment was approved by the Respondent No.2. Respondent Nos.1 to 3 do not dispute the said fact. The ground for rejecting the proposal dated 27.04.2018 submitted by the Respondent Nos. 4 and 5 in the order dated 22.08.2023 and the contention in the Affidavit in Reply filed by the Respondent No.3 is that the approval granted to the Petitioner vide order dated 09.11.2011 and 04.08.2014 cannot be cancelled or modified by the same Officer.

e) In our view, this not case of correction of approval granted. The Petitioner has prayed for benefit of continuation of service and treating the period spent in the unaided division for continuity in the part of the division above referred. We find that the case of the Petitioner is covered by the decisions referred to herein above and the Respondent No.3 ought to have considered the Petitioner's service from 01.10.2007 to 27.06.2011 for the purpose of continuity of service. We, therefore, set aside the Impugned order dated 22.08.2023 and direct the Respondent No.3 to grant approval to the appointment of the Petitioner as an Assistant

Teacher w.e.f. 28.06.2011, with continuity in service. On instructions, Mr. Lengare, learned Advocate for the Petitioner submits that the Petitioner will not insist for arrears for this period. Statement is accepted.

f) The Respondent No.3 shall issue a formal order of approval within a period of six weeks from today.

6. The Writ Petition is disposed of in above terms. There shall be no orders as to costs.

(ASHWIN D. BHOBE, J.)

(M.S. KARNIK, J.)