

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

**WRIT PETITION NO.17407 OF 2024**

Ganeshkumar Prakash Agarwal,  
age 40 years,  
Indian Inhabitant of Thane,  
Permanent resident of 2/404,  
Evrshine woods, Beverly Park,  
Mira Road (E), Dist. Thane

... Petitioners

Versus

1. The State of Maharashtra  
Through Principal Secretary,  
Ministry of Education and Sports  
To be served through Government Pleader,  
High Court, Bombay
2. The Divisional Deputy Director  
of Education Mumbai Region,  
Charni Road Mumbai,  
to be served Through Government Pleader,  
High Court, (A.S.), Mumbai.
3. The Education officer Palghar,  
to be served Through Government Pleader,  
High Court, (A.S.), Mumbai.
4. The Senior Auditor Thane  
to be served Through Government Pleader,  
High Court, (A.S.), Mumbai.
5. The Provident fund Officer Thane  
to be served Through Government Pleader,  
High Court, (A. S. ), Mumbai
6. The Principal Late  
Pandurang Raghunath Patil Utkarsha  
Madhyamik Vidyalaya & Junior College,

Virar, Bolinj, Opp D'Mart, Virar (W),  
Tal. Vasai, Dist.

... Respondents.

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Mr. Vaibhav V. Ugle for the Petitioner.  
Ms. P. B. Chavan, AGP for the State.  
Mr. Leroy Collaco a/w Prachi Collaco for the Respondent No.6.

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

**RESERVED ON : 3<sup>rd</sup> MARCH, 2025  
PRONOUNCED ON: 13<sup>th</sup> MARCH, 2025**

**JUDGMENT PER (Ashwin D. Bhobe, J.)**

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

2. By this petition filed under Article 226 of the Constitution of India, the Petitioner has prayed for a direction to the Respondent Nos. 2 to 6, to treat the Petitioner's service from the date of his appointment i.e. 15.06.2005, for the purpose of applicability of the Old Pension Scheme.

3. **Case of the Petitioner:-**

a) Petitioner was initially appointed as an Assistant Teacher on unaided post in the institute of the Respondent No.6 w.e.f. 15.06.2005. Petitioner was issued the following appointment orders on year to year basis:-

- i) Appointment order dated 06.06.2005, for the period commencing from 15.06.2005 to 30.04.2006.
  - ii) Appointment order dated 03.06.2006, for the period commencing from 12.06.2006 to 30.04.2007.
  - iii) Appointment order dated 04.06.2007, for the period commencing from 15.06.2007 to 30.04.2008.
  - iv) Appointment order dated 04.06.2008, for the period commencing from 16.06.2008 to 30.04.2009.
  - v) Appointment order dated 04.06.2009, for the period commencing from 15.06.2009.
- b) Respondent No.6 sought approval from the Respondent No.2 for the appointment of the Petitioner, as an Assistant Teacher.
- c) By letter dated 30.04.2010, the Respondent No.2 granted approval to the Petitioner's appointment as an Assistant Teacher w.e.f. 15.06.2009.
- d) Dissatisfied, by the approval dated 30.04.2010, to the extent the same approved Petitioner's appointment w.e.f. 15.06.2009, instead of 15.06.2005, Petitioner filed Writ Petition No.7933 of 2021. Respondent No.2 in Writ Petition No.7933 of 2021, filed

reply affidavit, stating that when the Petitioner was appointed on 15.06.2005, the approval was not granted till 14.06.2009, since there was a backlog in respect of Reserved Category post.

e) This Court by order dated 20.06.2024, disposed off Writ Petition No.7933 of 2021, by directing the Respondent No.2 to examine the issue as to the backlog and decide the claim of the Petitioner as regard to the applicability of Old Pension Scheme.

f) Upon remand, the Respondent No.2 has passed the order dated 20.09.2024 rejecting Petitioner's request, thereby maintaining the date of appointment of the Petitioner as 15.06.2009.

g) Petitioner is before this Court seeking the following reliefs:-

*"a) That, this Hon'ble Court be pleased to issue appropriate writ order directions to respondent no.2 to 6 to accept the service of the petitioner from the date of appointment i.e. 15<sup>th</sup> June, 2005 on such terms and condition of this Hon'ble Court may deem fit and proper.*

*b) That, this Hon'ble Court be pleased to issue appropriate writ order directions to respondent no. 2 to 6 to grant old pension scheme to the petitioner on the basis of date of appointment i.e. 15<sup>th</sup> June, 2005 on such terms and conditions of this Hon'ble Court may deem fit and proper.*

*c) That this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the Respondent No.1 to forthwith hold necessary inquiry in respect of representations made by the Petitioner vide letters commencing from 6<sup>th</sup> Sep, 2018 and 21<sup>st</sup> Sep, 2018 and subject to outcome of such inquiry, necessary action be initiated against the concerned persons.*

*d) That this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the Respondents to consider the seniority of the Petitioner for the purpose of confirming the post of assistant teacher on which, the Petitioner is already employed by the Respondent No. 6, taking into consideration, the appointment date 15 June, 2005 on such terms as*

*this Hon'ble Court may deem fit and proper.*

*e) .....*

*f) .....*

*g) .....*

*h) That, this Hon'ble Court be pleased to issue appropriate writ order directions quash and set aside the order dated 20<sup>th</sup> Sep, 2024, passed by the respondent No.2 on such terms and condition of this Hon'ble Court may deem feet and proper.” (Prayer clause added as per amendment dated 16.12.2024)*

#### 4. **Case of the Respondent No.2:-**

Respondent No.2 in its reply dated 04.02.2025, has opposed the petition. Contentions of the Respondent No.2 are that the Petitioner though being from Open Category, his appointment from 15.06.2005 till 14.06.2009 was made against vacancies reserved for the Divyang quota/Backward Class Reservation and as such no case was made out by the Petitioner seeking modification of the date of appointment in the personal approval order dated 30.04.2010.

#### 5. **Case of Respondent No.6:-**

Respondent No.6 has filed reply affidavit dated 01.02.2025. Contentions of the Respondent No.6 are that the Petitioner was initially appointed on 15.06.2005; that upon the expiry of the term of 10 months, Petitioner was reappointed up to 30.04.2006 on year to year basis; that as per the Sanchya Manyata teachers eligible for grants for the academic year 2005-2006 send by the Respondent No.3 was 84 teachers,

accordingly the Respondent No.6 had prepared Bindunamavali; that names of teachers were sent for approval from time to time as per seniority; that the turn of the Petitioner came for the academic year 2009-2010; accordingly by approval dated 30.04.2010, Petitioner's appointment was approved for the year 2009-2010; that the Petitioner's initial appointment as a Assistant Teacher being on unaided post, Respondent No.6 is not liable to grant any pension to the Petitioner.

6. **Submissions:-**

a) Mr. Vaibhav V. Ugle, learned Advocate for the Petitioner has submitted that the Petitioner was appointed as an Assistant Teacher w.e.f. 15.06.2005 and since then, the Petitioner has been in continuous service. He submits that the appointment of the Petitioner as an Assistant Teacher was in compliance with all the formalities and as such the Petitioner is entitled for a direction to the Respondent authorities to treat the Petitioner's service from the date of appointment i.e. from 15.06.2005 and consequently, the Petitioner would be entitled to the benefits under the Old Pension Scheme. He submits that he is on instructions from the Petitioner to state that in the event the Petitioner's services are treated from 15.06.2005, the Petitioner would not claim salary from 15.06.2005, however the said period be treated for post-retiral benefits. He

submits that the Respondent No.2 by the order dated 20.09.2024 denied the Petitioner the applicability and benefits of Old Pension Scheme. He therefore, prays that the petition be allowed.

b) Per contra, Ms. P. B. Chavan, learned AGP for the State submits that the Petitioner was appointed in Open Category on the vacancies reserved for Divyang quota/Backward Class Reservation. She submits that the appointment of the Petitioner for the period from 15.06.2005 till 14.06.2009 was contractual appointment, which would be evident from the period of such appointment being of 10 months each. She submits that the Respondent No.2 has considered all the issues and has passed a reasoned order on 20.09.2024. By relying on the affidavit dated 04.02.2025 and the decision of this Court in the case Zoya Vrushal Chaudhari Vs. State of Maharashtra and Ors.<sup>1</sup>, she submits that the petition be dismissed.

c) Mr. Leroy Collaco, learned Advocate for the Respondent No.6 by placing reliance on the appointment orders at Exh. B of the petition paper book, submits that the Petitioner's appointment during the period 15.06.2005 till 14.06.2009 was of 10 months duration. He submits that the names of teachers recorded in the

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<sup>1</sup> Writ Petition No.10752 of 2022

Bindunamavali were sent for approval as per seniority and the Petitioner's turn came in the year 2009, wherein the Respondent No.2 granted approval.

7. From the rival contentions of the parties, the question that falls for determination, is whether the Petitioner is entitled for grant of approval to his appointment on the post of Assistant Teacher w.e.f. 15.06.2005? Consequently, whether the order dated 20.09.2024 warrants interference?

8. **Analysis:-**

a) Perusal of the appointment orders dated 06.06.2005, 03.06.2006 and 04.06.2007 issued by the Management would indicate that the appointment of the Petitioner was of a limited tenure, which would be evident from clause (2) in the said orders.

We may extract the said clause (2) of the said appointment orders:-

**Appointment order dated 06.06.2005**

२) सदर नियुक्ती ही ( एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या मागासवर्गीय प्रवर्गातील उमेदवाराच्या जागी करण्यात आलेली असल्याने तात्पुरत्या स्वरूपाची आहे व त्यासाठी सदर पदावर आपला कोणताही हक्क नसल्याबाबतचे सोबत हमीपत्र देण्यात यावे.

- हमी पत्र-

१) माझी नियुक्ती (एस. सी. / एस. टी. / डी. टी. / एन. टी.) या आरक्षित पदावर झालेली आहे.

२) त्यामुळे माझी नियुक्ती २००५-२००६ या शैक्षणिक वर्षापुरतीच झालेली आहे. त्यामुळे मला वर्षाच्या कालावधीनंतर कार्यमुक्त केल्यास मी सादर पदावर हक्क सांगणार नाही. व कोणत्याही प्रकारची तक्रार करणार नाही. सदर हमी पत्र मी स्वखुशीने लिहून देत आहे.

दिनांक : ११/०६/०५

सही

स्थळ : विरार

### **Appointment order dated 03.06.2006**

२) सदर नियुक्ती ही (एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या मागासवर्गीय प्रवर्गातील उमेदवाराच्या जागी करण्यात आलेली असल्याने तात्पुरत्या स्वरूपाची आहे व त्यासाठी सदर पदावर आपला कोणताही हक्क नसल्याबाबतचे सोबत हमीपत्र देण्यात यावे.

- हमी पत्र-

१) माझी नियुक्ती (एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या आरक्षित पदावर झालेली आहे.  
२) त्यामुळे माझी नियुक्ती २००६-२००७ या शैक्षणिक वर्षापुरतीच झालेली आहे. त्यामुळे मला वर्षाच्या कालावधीनंतर कार्यमुक्त केल्यास मी सादर पदावर हक्क सांगणार नाही. व कोणत्याही प्रकारची तक्रार करणार नाही. सदर हमी पत्र मी स्वखुशीने लिहून देत आहे.

दिनांक : ०९-०६-२००६

सही

स्थळ : विरार

### **Appointment order dated 04.06.2007**

२) सदर नियुक्ती ही (एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या मागासवर्गीय प्रवर्गातील उमेदवाराच्या जागी करण्यात आलेली असल्याने तात्पुरत्या स्वरूपाची आहे व त्यासाठी सदर पदावर आपला कोणताही हक्क नसल्याबाबतचे सोबत हमीपत्र देण्यात यावे.

- हमी पत्र-

१) माझी नियुक्ती (एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या आरक्षित पदावर झालेली आहे.  
२) त्यामुळे माझी नियुक्ती २००७-२००८ या शैक्षणिक वर्षापुरतीच झालेली आहे. त्यामुळे मला वर्षाच्या कालावधीनंतर कार्यमुक्त केल्यास मी सादर पदावर हक्क सांगणार नाही. व कोणत्याही प्रकारची तक्रार करणार नाही. सदर हमी पत्र मी स्वखुशीने लिहून देत आहे.

दिनांक : ०९/०६/२००७

सही

स्थळ : विरार

### **Appointment order dated 04.06.2008**

२) सदर नियुक्ती ही (एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या मागासवर्गीय प्रवर्गातील

उमेदवाराच्या जागी करण्यात आलेली असल्याने तात्पुरत्या स्वरूपाची आहे व त्यासाठी सदर पदावर आपला कोणताही हक्क नसल्याबाबतचे सोबत हमीपत्र देण्यात यावे.

- हमी पत्र -

१) माझी नियुक्ती (एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या आरक्षित पदावर झालेली आहे.

२) त्यामुळे माझी नियुक्ती 2008-2009 या शैक्षणिक वर्षापुरतीच झालेली आहे. त्यामुळे मला वर्षाच्या कालावधीनंतर कार्यमुक्त केल्यास मी सादर पदावर हक्क सांगणार नाही. व कोणत्याही प्रकारची तक्रार करणार नाही. सदर हमी पत्र मी स्वखुशीने लिहून देत आहे.

दिनांक : 09/06/2008

सही

स्थळ : विरार

### **Appointment order dated 04.06.2009**

२) सदर नियुक्ती ही (एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या मागासवर्गीय प्रवर्गातील उमेदवाराच्या जागी करण्यात आलेली असल्याने तात्पुरत्या स्वरूपाची आहे व त्यासाठी सदर पदावर आपला कोणताही हक्क नसल्याबाबतचे सोबत हमीपत्र देण्यात यावे.

- हमी पत्र -

१) माझी नियुक्ती ( एस. सी. / एस. टी. / डी. टी. / एन. टी. ) या आरक्षित पदावर झालेली आहे.

२) त्यामुळे माझी नियुक्ती 2009-10 या शैक्षणिक वर्षापुरतीच झालेली आहे. त्यामुळे मला वर्षाच्या कालावधीनंतर कार्यमुक्त केल्यास मी सदर पदावर हक्क सांगणार नाही. व कोणत्याही प्रकारची तक्रार करणार नाही. सदर हमी पत्र मी स्वखुशीने लिहून देत आहे.

दिनांक : 09/06/2009

सही

स्थळ : विरार

b) Records of the case bear out that the Petitioner, a candidate from open category was appointed, on the vacancies reserved under the Divyang quota/Backward Class Reservation. It is apparent that the appointment of the Petitioner from 15.06.2005 up to

14.06.2009, was without filling the backlog vacancies. Even otherwise, the appointment of the Petitioner during the said period was contractual and for the limited tenure, as rightly submitted by the learned AGP.

c) Appointment orders dated 06.06.2005, 03.06.2006 and 04.06.2007 issued by the Management indicate that the Petitioner was appointed on the post reserved for Backward Classes and the appointment of the Petitioner was of temporary nature. Petitioner having accepted the said orders with open eyes which would be evident from the endorsement (हमी पत्र) signed by the Petitioner, acknowledging that his appointment is on vacancies reserved for backward class and that he would not claim any right, the Petitioner cannot now raise contentions contrary to the said records.

d) Respondent No.6 is on record to submit that as per the Sanchaya Manyata for the year 2005-2006 only 84 teachers were eligible for the grant. Respondent No.6 had forwarded the names of the teachers as per seniority for approval. Petitioner's turn as per seniority came in the year 2009-2010, which upon being sent for approval was granted approval by the Respondent No.2 vide order dated 30.04.2010.

e) The appointment of the Petitioner for the period from 15.06.2005 up to 14.06.2009 was on year to year basis. Approval to the appointment of the Petitioner was refused since, the employer of the Petitioner did not fill in the backlog vacancies reserved for the backward class. Respondent No.2 in its order dated 20.09.2024 upon examination of the case, found that the Petitioner's appointment during the period 15.06.2005 up to 14.06.2009 was on vacancies reserved under Divyang quota/Backward Class reservation, hence rejected the request of the Petitioner. No fault can be found in the order dated 20.09.2024, passed by the Respondent No.2 rejecting to change/modify the date of appointment of the Petitioner. In view of the above, we do not find any case made out to exercise extraordinary jurisdiction of this Court.

9. Thus, the approval granted by the Respondent No.2 is legal. **The Writ Petition is dismissed.**

10. No orders as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)