

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2247 OF 2025

NIKITA
KAILAS
DARADE

Smt. Paskamary Sattyaseelan Chetty,

(Nee: Paskamary D.)

Age:- 36 Years, Occupation: Service,

R/o. Devai Niwas Chawl, Raipada School

Road, Malad (West), Mumbai

....Petitioner

versus

1. The State of Maharashtra,
Through the Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai-400 032.
2. The Commissioner of Education
School Education Department,
Maharashtra State, Pune.
3. The Director of Education,
(Secondary and Higher Secondary),
Maharashtra State, Pune-1.
4. The Deputy Director of Education,
Mumbai Region, Mumbai,
Having Office at, Jawahar Balbhawan,

Netaji Subhash Road, Charni Road,
Mumbai- 400 004.

5. The Education Inspector (West Zone),
Brihanmumbai, Having office at,
Ismail Yusuf College Compound,
Jogeshwari (East), Mumbai.

6. Society of Carmel of St. Joseph,
Adarsh Dugdhalaya Road,
Orlem, Malad (West), Mumbai
Through its President/Secretary.

7. Carmel of St. Joseph School,
Adarsh Dugdhalaya Road,
Orlem, Malad West, Mumbai
Through its Head Mistress.Respondents

Mr. Prashant Bhavake, Advocate for the Petitioner.

Ms. N. M. Mehra, AGP for Respondent Nos.1 to 5.

Mr. Sushant A. Khatake i/b. Mr. Utkarsh S. Desai, Advocate for
Respondent Nos.6 and 7.

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

RESERVED ON : 27th MARCH, 2025

PRONOUNCED ON : 17th APRIL, 2025

ORDER (PER ASHWIN D. BHOBE, J.)

1. By the present petition, the Petitioner assails the order dated 05.05.2022 passed by the Respondent No.5, Education Officer, rejecting the proposal for individual approval to the appointment of the Petitioner made by Respondent No.6, Educational Institution in the post of Laboratory Assistant at the Respondent No.7, Secondary School.

2. Petitioner has completed her Higher Secondary from Maharashtra State Board of Secondary and Higher Secondary Education Pune. Respondent No.6, is a Christian Minority Educational Institution. Vacancy to the post of Laboratory Assistant arose on account of retirement of the then Laboratory Assistant Shri. Omana Viju. Said post of Laboratory Assistant was sanctioned by the office of the Respondent No.5 for Academic Year 2018-19. Respondent No.6 issued advertisement on 11.12.2019 in the daily newspaper 'Indian Express' and 'Mumbai Mirror' inviting application from eligible candidates for the post of Laboratory Assistant at the Respondent No.7, School.

3. Petitioner applied for the said post. In the interviews held on 17.12.2019, Petitioner was selected, upon being found to be eligible and meritorious. Petitioner was appointed as Laboratory Assistant by the Respondent No.7 School on 20.12.2019.

4. On 10.02.2020, the Head Master of Respondent No.7 School submitted proposal along with requisite documents in the office of Respondent No.5, seeking individual approval to the appointment of the Petitioner in the post of Laboratory Assistant. No decision was taken or communicated on the said proposal by the Respondent No.5.

5. On 06.12.2021, the Headmistress of Respondent No.7-School resubmitted the proposal along with all documents seeking individual approval to the appointment of the Petitioner.

6. By order dated 05.05.2022, the Respondent No.5 has rejected the said proposal submitted by the Respondent No.7. Ground for rejection of the proposal is that appointment of the Petitioner was made before the sanctioning of post by the Education

Director, as per the Government Resolution dated 28.01.2019 (“impugned order”) .

7. Petitioner is before this Court challenging the order dated 05.05.2022 passed by the Respondent No.5, for a further direction to the Respondent No.5 to grant individual approval to the appointment of the Petitioner in the post of Laboratory Assistant and for allotment of Shalarth ID.

8. Respondent No.5 has opposed the petition by filing affidavit-in-reply dated 27.03.2025. Respondent No.5 has reiterated the grounds of rejection as recorded in the order dated 05.05.2022. Reliance is placed on Government Resolution dated 07.03.2019.

9. Mr. Prashant Bhavake, learned Advocate for the Petitioner has canvassed the following arguments:

(a) Respondent No.6 is a minority institution.

(b) Appointment of the Petitioner was on a post which was sanctioned, which became vacant in view of promotion of the then Laboratory Assistant Shri. Omana Viju. Said post of Laboratory Assistant was sanctioned by the Respondent No.5 for the Academic year 2018-19. Reliance is placed on “Private Secondary

School: Non-Teaching Staff: Sanchmanyata Year 2018-19” which indicates one sanctioned post of Laboratory Assistant. Reliance is placed on the order dated 10.05.2021 of the Respondent No. 5, wherein one sanctioned post of Laboratory Assistant is shown.

(c) Recruitment of the Petitioner was after complying with the procedure as required. Proposal complete in all respect was submitted to the Respondent No.5 for approval.

10. *Per contra*, Ms. N. M. Mehra, learned AGP for Respondent-State relies on the affidavit-in-reply dated 27.03.2025 and the reasons given in the order dated 05.05.2022 to oppose the petition.

11. Records placed before us and more particularly, the letter dated 30.08.2019 of the Respondent No.5 read with the order dated 10.05.2021 issued by the Respondent No.5 indicate that one post of Laboratory Assistant was sanctioned by the Respondent No.5 along with other post in so far as the Respondent No.7 School is concerned.

12. Order dated 05.05.2022 rejects the approval to the

appointment of the Petitioner on the post of Laboratory Assistant on the sole ground of the Petitioner's appointment being made prior to sanctioning of the posts as required by the Government Resolution dated 28.01.2019. Respondent No.5 having granted approval to the post of Laboratory Assistant as evident from the letter dated 30.08.2019 of the Respondent No.5 read with the order dated 10.05.2021, the impugned order is required to be set aside.

13. The order dated 05.05.2022 is passed on the sole ground that the appointment was prior to the sanctioning of the post. Respondent No.5 by the affidavit-in-reply has made an attempt to supply further reason for passing the order dated 05.05.2022. Respondent cannot be permitted to supplement reason by way of Affidavit to support the order impugned (See *Mohindhr Singh Gill & Another versus Chief Election Commissioner, New Delhi and Others*),¹

14. For the aforesaid reasons, the **Petition is partly allowed**. The impugned order dated 05.05.2022 passed by the Respondent No.5 is quashed and set aside. The Respondent No.5 is directed to

¹ 1978 (1) SCC 405

grant approval to the appointment of the Petitioner in the post of Laboratory Assistant under the Shikshan Sevak Scheme from the date of sanction of the said post and three years thereafter, as permanent Laboratory Assistant by issuing a formal order within a period of 45 days. Respondent No.5 is further directed to grant the Shalarth ID to the Petitioner within 15 days of granting approval.

15. There shall be no orders as to costs.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)