

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5870 OF 2025

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Vitthal Tukaram Buwa

... Petitioner

Versus

The State of Maharashtra and Others

... Respondents

Mr.Avinash Fatangare a/w Ms.Archana Shelar, Advocates for the
Petitioner.

Mr.S.H.Kankal, AGP for Respondent Nos. 1 and 2.

**CORAM : RAVINDRA V. GHUGE &
M.M. SATHAYE, JJ.**

DATE : 12th JUNE, 2025

P.C.:

1. The Petitioner has put forth the following prayers :-

“a. That, this Hon'ble Court be pleased to issue a writ, order, direction or a writ of Certiorari thereby calling for entire record and proceedings in respect of the impugned order dated 23/01/2025 passed by the Respondent no.2 and after going through its legality, validity and propriety thereof be pleased to quash and set aside the same.

b. That this Hon'ble Court be pleased to issue a writ, order, direction or a Writ of Mandamus thereby directing the Respondent no.2 to approve the proposal dated 31/10/2023 submitted by the Respondent no.4 to the Respondent no.2 on 01/11/2023 considering the fact that the Petitioner is working from 15/01/2019 with all

Husen

consequential benefits thereof including recording the name of the Petitioner at Shalath ID.”

2. The contention of the Petitioner is that he was appointed as a Peon on 18.03.1996, by following the due process of law. His appointment was sanctioned and on account of his approval, he was receiving salary from the Government grants. On 29.12.2018, one Ananda Ramchandra Kamble who was working as a Laboratory Attendant, unfortunately passed away. It is canvassed that the Management has passed a Resolution dated 10.01.2019, by which the Petitioner was granted promotion. The reason stated (verbatim) is "त्यांच्या रिक्त पदाची जबाबदारी शाळेतील कार्यरत शिपाई श्री. विठ्ठल तुकाराम बुवा हे हाताळण्यास इच्छुक असून त्यांनी सदर पदावर पदोन्नती मिळणे बाबत संस्थेच्या अध्यक्षाकडे तसे प्रस्ताव पत्र दिलेले आहे.”

3. It is canvassed that as the said post had fallen vacant, the Petitioner, who was working as a Peon, could have been promoted to the post of Laboratory Attendant since the qualification of passing 10th standard was the requisite condition for becoming a Laboratory Attendant.

4. The Petitioner further canvassed that an appointment
Husen

order dated 14.01.2019, was issued by the President of the Institution to the Petitioner making a reference to his application dated 31.12.2018. He was appointed as a Laboratory Attendant by the said order. Clause No.2 of the order indicates his appointed was purely temporary OR his appointment was on probation for two years. The blank places have not been filled in.

5. The Petitioner then submits that he had moved an application to the Head Master on 15.01.2019, for joining duty as Laboratory Attendant. On 15.09.2023, the Petitioner addressed a letter to the Management stating therein that his proposal is not sent for approval. He has received the promotional order and there is no approval from the appropriate authority. The Petitioner refers to another communication dated 18.09.2023, addressed by the Secretary of the Institution to the Head Master, calling upon the latter to forward a proposal for seeking approval to the promotion of the Petitioner. The Head Master, therefore, addressed a communication dated 31.10.2023 to the Education Officer (Secondary), seeking approval to the promotion of the Petitioner effected on 14.01.2019.

6. The Education Officer has passed the impugned order dated 23.01.2025 stating therein that the Government

Husen

Resolution dated 28.01.2019 has led to the abolition of the post of Laboratory Attendant, after retirement of the last incumbent and, therefore, approval cannot be granted to the Petitioner's promotion.

7. We have considered the strenuous submissions of the learned counsel for the Petitioner who has taken us through the Petition paper book.

8. We find certain glaring aspects in this matter, as under:

(a) The document dated 14.01.2019, which is a purported Resolution of the Management, indicates that the Petitioner expressed a desire to work in place of the deceased employee as a Laboratory Attendant and therefore, the Management passed a Resolution to give him the said responsibility. The relevant part reads verbatim as under:-

"श्री विठ्ठल तुकाराम बुवा यांना सदर पदाची जबाबदारी देण्यास हरकत नसल्याचे मा. मुख्याध्यापक व विज्ञान शिक्षक यांनी संमती दिल्याने त्यांना प्रयोगशाळा परिचर पदी पदोन्नतीचा आदेश देणेबाबत सभेमध्ये सर्वानुमते मंजुरी देण्यात आली."

(b) It is obvious that there is no specific process followed by the Management for considering candidates for

promotion to the post of Library Attendant.

(c) The copy of the order of appointment dated 14.01.2019, is issued only by the Chairman.

(d) We have perused Schedule 'D' under Rule 9(5) of the The Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 which mandates that the appointment of a candidate in the teaching or non-teaching category should be signed by the Head Master and the Secretary of the School Committee. We do not find two signatures on the said document. It does not bear any seal of the institute / school. Moreover, copy of the said document is not served upon office of the Education Officer.

(e) A copy of the joining report dated 15.01.2019, purportedly tendered by the Petitioner, is placed on record. It is addressed to the Head Master. There is no stamp of receipt, in as much as no stamp of the inward department.

9. Considering the above, we do not find that the process required to be followed for the purpose of considering the candidature of the Petitioner for the post of promotion, was followed by the Management for granting promotion. The

Husen

resolution itself indicates that the Petitioner has expressed his desire to become a Laboratory Attendant and the Management passed a Resolution that the responsibility of the Laboratory Attendant can be given to the Petitioner.

10. It is in these circumstances, that we find the documents placed before us appear to be created or manufactured, to overcome the GR dated 28.01.2019, which indicates that the post of Laboratory Attendant on falling vacant, would be abolished, except on grounds of staffing pattern. There is nothing to indicate that the staffing pattern was considered and a substantive post was available which would receive salary grants from the State Exchequer. In view of the said GR, the Education Officer passed the impugned order concluding that the proposal cannot be entertained since the post stood abolished. We find that the documents shown to us do not inspire confidence for the reasons recorded above.

11. Moreover, the proposal is forwarded on 01.11.2023, more than 4 and a half years after the purported promotion of the Petitioner dated 14.01.2019. We are also informed that even till today the Petitioner is drawing the salary of a Peon.

12. In the absence of valid documents to indicate that a legally acceptable procedure for granting promotion was followed, we do not find that the impugned order can be faulted. It is based on the GR by which the post was abolished.

13. **This Writ Petition sans merit and is dismissed.**

(M.M. SATHAYE, J.)

(RAVINDRA V. GHUGE, J.)