

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8980 OF 2025

Jayshree Jayesh Chaudhari
Aged 36 years, Occ. Service, residing at
801/1, Jayesh Bungalow, V. L. Patil Marg
Sharda Gajanan Society, Omkar Vasahat,
Manda, Titwala (E), Dist. Thane.

...Petitioner

Versus

...Respondents

1. The Education Officer,
Thane Municipal
Corporation,
Education Department,
New Administrative Building,
Chandanwadi, Thane (W), Dist. Thane.
2. The Education Officer,
Zilla Parishad (Primary) Thane.
3. The Dy. Director of Education,
Nehru Bal Bhavan, Charni Road,
Mumbai.
4. The Director of Education (Primary)
Maharashtra State, Pune.
5. The Secretary/President
Mumbra Shikshan Prasarak Mandal,
Having its office at B. S. Jondhale
Vidya Mandir, Hindi Primary School,
Mumbra, Behind Police Station,
District Thane.
6. The Head Mistress
B. S. Jondhale Vidya Mandir,
Hindi Primary School,

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Mumbra, Behind Police Station
District Thane.

7. The State of Maharashtra

Mr. Kumud Bhatia, for the Petitioner.

Mrs. Kavita N. Solunke Addl. GP a/w Shri S. L. Babar, AGP, for the
Respondent-State.

Mr Jagdish G. Aradwad (Reddy), for the Respondent No. 1/TMC.

**CORAM: SUMAN SHYAM &
S. M. MODAK, JJ.**

DATED: 09th DECEMBER 2025.

PC:- (S. M. Modak)

1. Rule. Rule made returnable forthwith. Heard Mr. Bhatia, the learned counsel for the Petitioner/teacher, Mrs. Solunke, the learned AGP for Respondent-State and Mr. Aradwad, the Respondent No. 1/TMC, finally at an admission stage.

2. The only issue that has arisen in this Writ Petition is, *‘Whether on the basis of the proposal submitted by Respondent No. 5-Mumbai Shikshan Prasarak Mandal (Sanstha) and Respondent No. 6-Head Mistress of the B. S. Jondhale Vidya Mandir, Hindi Primary School, Mumbra, Behind Police Station, District Thane, the Respondent Nos. 1 to 4 and 7 can be directed to give approval to the name of the Petitioner on the post of Assistant Teacher (aided) from 01.02.2025?’.*

3. The Petitioner was appointed as ‘Assistant Teacher’ in the aided division of B. S. Jondhale Vidya Mandir, Hindi Primary School, Mumbra, Behind Police Station, District Thane, with effect

from 01.02.2025 (as there was vacancy on that date). There is a resolution passed by the said School in the School committee meeting dated 04.03.2025 to the effect that "संस्थेने सौ. शारदा एस कल्लूरकर (सेवानिवृत्त) यांच्या रिक्त जागेवर सौ. जयश्री जयेश चौधरी यांची १ फेब्रु २०२५ पासून शासन निर्णय क्र. एस. एस. एन. २०१६ / प. क्र. ३२/१६ । टी. एन्.टी. २ दिनांक २८ जून २०१६ मधील ब (५) नुसार सौ. जयश्री जयेश चौधरी यांच्या सेवेला पाच वर्षे पूर्ण असल्याने विनाअनुदावरून रिक्त झालेल्या अनुदानावरील पदावर बदली करण्यात यावी अशी सूचना श्रीमती मिनल अशोक पाटील यांनी केली. तसेच श्री. सुनिल गोरख पाटील यांनी अनुमोदन केले."

4. The Sanstha has also given a NOC vide order dated 07.03.2025. The proposal was submitted to Thane Municipal Corporation and the Education Officer, Zilla Parishad (Primary), Thane has submitted the recommendation made by the Education Officer, Thane Municipal Corporation to the Director of Education (Primary) on 30.01.2025. Since then, it is pending for approval and that is why, this Writ Petition for issuance of *Mandamus*.

5. The facts which are relevant for deciding this petition are as follows:-

- a) The Petitioner was appointed in B. S. Jondhale Vidya Mandir, Hindi Primary School, Mumbra, from 01.06.2012 on unaided basis.
- b) The Education Officer, Thane Municipal Corporation has granted approval on 22.07.2013 on unaided basis.

- c) The Petitioner belongs to OBC category. She has passed HSC D. Ed..
- d) She worked there continuously for more than five years.
- e) There is vacancy due to retirement of Assistant Teacher, Smt. Sharda H. Kalurkar, on 31.01.2025. It was on aided basis.
- f) That is why, the School and Management have decided to transfer the Petitioner from unaided to aided division. They contend that this transfer was made in pursuance to the **GR No. SSN/2016 dated 28.06.2016.**

6. According to the Petitioner, in support of his contention, he relied upon the following judgments:-

- (i) **Sagar Harichandra Bhande and Another Vs. State of Maharashtra and Others¹**
- (ii) **Rahul Prakash Nilgar Vs. State of Maharashtra and Anr.** passed by the Division bench of this Court, in Writ Petition No. 2547 of 2021, dated 29.11.2021.
- (iii) **Sau. Shinde Pritam Mangesh Vs. The State of Maharashtra and Ors.,** passed by the Division bench of this Court, in Writ Petition No. 15526 of 2023, dated 22.04.2024.

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- (iv) *Friends Social Circle, Akola and Ors. Vs. State of Maharashtra and Others* alongwith connected matters, passed by the Division bench at Nagpur, in Writ Petition Nos. 8215 of 2022, 770 of 2023, 810 of 2023 and 824 of 2023, dated 21.07.2023.

7. It is observed in case of *Sagar Harichandra Bhande and Another (supra)*, and others how the proposal for approval from unaided to aided division has to be scrutinised. This is recorded in para no. 12. The Education Officer is required to ascertain:-

- (i) Whether the concerned teacher is appointed by the following procedure and as per the Rules?,
- (ii) Whether the teacher has completed the probation period of two years?,
- (iii) Whether the approval is granted to concerned Assistant Teacher on unaided basis?,
- (iv) Whether the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 were fulfilled?,
- (v) Whether the post on aided basis is sanctioned one or not?.

8. Whereas in case of *Friends Social Circle, Akola and Ors. (supra)*, the Division Bench has considered similar issue of transfer of Assistant Teacher from unaided division to aided division. There

is an issue about Circular dated 01.12.2022 issued by the Government, as to whether, it is in consonance with the provisions of Rule 41A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules, 1981. It was held by the Division Bench that there cannot be any circular in contravention of the provision of Rule 41A of the said Rule.

9. In this case, decision has not been taken on the proposal submitted. The proposal is pending since 30.01.2025. There is no justification for keeping the proposal pending and hence, case for issuance of *Mandamus* is made out. Once the decision is taken on the proposal, all consequential orders about payment of the arrears and others, need to be passed. Hence, the following order is passed:-

ORDER

- (i) The Writ Petition is partly allowed.
- (ii) The Respondent Nos. 1 to 4 and 7, are directed to decide the proposal, for appointing the Petitioner as Assistant Teacher on aided basis in Respondent No. 6 School, from 01.02.2025, as early as possible, atleast within a period of three months from the date of order.
- (iii) Once the decision is taken, the authorities are also directed to pass all consequential orders.

10. With these observations, the Writ Petition stands disposed of.

11. Pending Interim Application, if any, also stands disposed of.
12. Rule stands discharged accordingly.

(S. M. MODAK, J.)

(SUMAN SHYAM, J.)