



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 1985 OF 2024**

**Tukaram Anandrao Askar,**  
Aged about 54 years,  
Occ.- Assistant Teacher,  
R/o. Indira Gandhi Wardh  
Hinganghat, Dist. Wardha.

.... **PETITIONER**

**// VERSUS //**

- 1) **State of Maharashtra,**  
Through its Secretary,  
Department of Education,  
Mantralaya Mumbai-32.
- 2) **Additional Commissioner,**  
Tribal Development Department,  
Civil Lines, Nagpur.
- 3) **Assistant Commissioner,**  
Office of Additional Commissioner,  
Tribal Development Department,  
Civil Lines, Nagpur.
- 4) **The Education Officer (Sec.)**  
Zilla Parishad, Wardha.
- 5) **Project Officer,**  
Integrated Tribal Development  
Department Aheri, Dist. Gadchiroli.
- 6) **Shaskiya Madhyamik Va Uccha  
Madhyamik Ashram Shala,**  
Through its Headmaster,  
Jimalgatta, Tal. Aheri, Dist. Gadchiroli.

- 7) **Bharat Dinant Vidyalyaya,**  
Through its Headmaster  
Hinganghat, Dist. Wardha.

.... **RESPONDENTS**

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Mr. P. P. Thakare, Advocate for Petitioner.  
Ms. S. S. Jachak, Assistant Government Pleader for  
Respondent Nos.1 and 2.  
Mr. Anand Parchure, Advocate for Respondent No.7.  
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**CORAM : MRS. M. S. JAWALKAR AND**  
**RAJ D. WAKODE, JJ.**

**DATE ON RESERVING THE JUDGMENT : 10.09.2025.**  
**DATE ON PRONOUNCING THE JUDGMENT : 23.09.2025.**

**JUDGMENT : (Per – M. S. JAWALKAR, J.)**

1. Heard. Rule. Rule is made returnable forthwith.  
Matter is taken up for final hearing at the stage of admission by consent of the parties.
2. The petitioner, by this Petition, is challenging the impugned order dated 30/11/2023; passed by the Respondent No. 2 – Additional Commissioner, Tribal Development Department, Nagpur.
3. The petitioner submits that he holds the qualification of B.A. B.Com. M.A. B.Ed. The Petitioner being otherwise

eligible and qualified was initially appointed as “Assistant Teacher” in the Bharat Dinant Vidyalara, Hinganghat – Respondent No.7 - School run by the “Progressive Education Society, Hinganghat” vide order dated 19/01/1999. It is submitted that said appointment was also approved by the Education Officer (Secondary), Zilla Parishad, Wardha vide order dated 21/12/1999. The Petitioner worked there from 22/01/1999 to 12/12/2005 for almost six years. The Petitioner thereafter resigned from the said school with due permission of the Management since he was to join at the Respondent No.6 school. The said Management on 13/12/2005 had also informed the said fact to the Respondent - Authority.

4. The Petitioner further submitted that after relieving from the earlier school, the Petitioner came to be appointment as Shikshan Sewak vide appointment order dated 08/12/2005 and after the said appointment, he joined at Respondent No.6 School w.e.f. 15/12/2005. The said appointment was also approved by the Respondent - Authority. The contention of the Petitioner is that as per the Government Resolution dated

10/06/2005, if any employee had rendered services as a part time teacher, then the said period ought to be considered for the purpose of calculating the period of Shikshan Sewak. The Respondent No.7 - School had also given relieving certificate dated 28/01/2006 to the Petitioner wherein also it is specifically mentioned that the Petitioner worked w.e.f. 22/01/1999 till 12/12/2005 in the said school and he is being relieved on 13/12/2005.

5. The Petitioner made applications on 06/01/2009 and 25/11/2009 to the Respondent Nos.2 and 3 to consider his earlier service as per Government Resolution dated 10/06/2005 and grant him appointment as Assistant Teacher w.e.f. 2005 itself and not as Shikshan Sewak. The Respondent No.6 had submitted a proposal of Assistant Teacher w.e.f. 2005 by converting his appointment as Shikshan Sewak to Assistant Teacher on 06/11/2017 and requested to the Respondents to grant necessary approval as Assistant Teacher w.e.f. 2005 itself. The Petitioner filed a Writ Petition No.8553/2018 before this Court for directions to decide the said proposal, however, during

the pendency of the said petition, the Respondent No.6 again submitted a fresh proposal on 08/05/2019 to the Respondent No.2 for grant of the benefit of considering the earlier service of the Petitioner rendered with erstwhile school. In view of the said development, the Petitioner filed Pursis on 06/06/2019 for withdrawal and accordingly the said Petition came to be disposed off as withdrawn. The Respondent No.3 rejected the said proposal vide order dated 11/07/2019.

6. It is further submitted that the Petitioner filed one more Writ Petition No.754/2020 before this Court, the same came to be disposed of vide order dated 31/01/2023. In pursuance to the aforesaid order, the Petitioner made a Representation before the Respondent Authority on 25/02/2023 and brought to their notice that the Petitioner was working w.e.f. 22/01/199 to 12/12/2005 in Bharat Dinant Vidyalaya, Hinganghat as Assistant Teacher. The Respondent No.3 accordingly informed to the Petitioner to attend the hearing on 24/04/2023 at 11.00 am. The Petitioner appeared for hearing and he was asked to submit the true copies of the pay bills w.e.f.

July 2005 to December 2005. The Petitioner vide communication dated 10/06/2023 informed the Authorities that on 25/02/2023 he has already submitted the entire record regarding he worked during 22/01/1999 to 12/12/2005 at Respondent No.7 School and submitted the pay bills for the aforesaid period.

7. It is further contended that since the Respondent Nos.2 and 3 were reluctant to consider the representation of the Petitioner issued a legal notice on 24/07/2023 to act as per order of this Court. The Petitioner also submitted a copy of Service Book of his erstwhile school at Respondent No.7 School during 1999 to 2005 and also he received salary from the Government during the said period. Thus, the said period of service needs to be considered for the purpose of his permanency. As instead of granting him approval as permanent Assistant Teacher, his services in the Respondent - School is shown to be Shikshan Sewak. Since the Respondent No.2 did not consider the representation, the Petitioner filed one more Writ Petition No.7538/2023 and same came to be disposed of on

the motion hearing by directing the Additional Commissioner Respondent No.2 to decide the said representation. In pursuance to the said order, the Respondent No.2 Additional Commissioner passed the impugned order dated 30/11/2023. In support of his contention, the learned Counsel for the Petitioner relied on ***Union of India & Ors. Vs. Braj Nandan Singh***, reported in ***(2005) 8 SCC 325***.

8. As against this, learned AGP for the Respondent Nos.1 to 5/State contended that the Petitioner was directly recruited as “Shikshan Sewak” vide order dated 08/12/2005 and joined on 14/12/2005. His earlier appointment with Respondent No.7 school vide order dated 19/01/1999, was purely part-time and approved only for two years. No further approval for appointment was granted beyond 21/01/2001, showing absence of regular employment. The Petitioner resigned from Respondent No.7 school and was freshly appointed in Government service; therefore, continuity of service cannot be claimed.

9. The learned AGP for the Respondent Nos. 1 to 5 further submitted that the Petitioner's application dated 25/11/2009 for recognition of past service was duly considered and rejected on 25/08/2011 on the ground that no prior permission was taken and his resignation was accepted by Respondent No.7 school. Subsequent proposals forwarded in 2017 and 2019 were also considered and rejected by communication dated 11/07/2019. As per Government Resolution dated 15/09/2011, continuity requires three years' service as "Shikshan Sewak" and receipt of 100% salary. The Petitioner, being only a part-time teacher earlier and later appointed as Junior College Teacher, cannot be entitled to continuity. His earlier challenge in Writ Petition No. 752/2020 was dismissed on 31/01/2023, with liberty only to place additional material. However, despite opportunities, the Petitioner not produced fresh documents and admitted the same. Accordingly, his claim was again rejected by order dated 30/11/2023.

10. The Respondents contended that reliance on Government Resolution dated 10/06/2005 is misplaced, as Clause-9 applies only to 'Shikshan Sewaks' completing three years of service, whereas the Petitioner had only two years of approved part-time service. Hence, his claim is devoid of merits and hence needs to be rejected.

11. Heard both the parties at length. Perused the documents placed on record and considered the citations relied on by the petitioner.

12. The Petitioner placed on record the copy of appointment order dated 19/01/1999. By this appointment order, the petitioner came to be appointed as a part time Assistant Teacher. There is due approval to his appointment from 22/01/1999 and the probation of 2 years. The petitioner, thereafter, resigned from the post by taking due permission of the earlier institution. He was relieved on 13/12/2005 and joined in the Progressive Education Society on 14/12/2005 in the Government Junior College, Jimalgatta. As per the

appointment order dated 08/12/2005, he came to be appointed as Shikshan Sewak in the Government Junior College. The petitioner relied on the government resolution, clause 9 of which reads as under:-

“9. अर्धवेळ शिक्षक म्हणून काम करणाऱ्या शिक्षकांना जर पूर्णवेळ शिक्षकाचा कार्यभार उपलब्ध झाल्यास आणि त्या पदासाठी असलेल्या अन्य अटी व शर्तीची तो पूर्तता करित असल्यास अशा प्रकरणी त्यास शिक्षणसेवक म्हणून नियुक्ती द्यावी. मात्र अशा नियुक्त्या करतांना व त्यास मान्यता देतांना मागासवर्गीयांसाठीचे आरक्षण विषयक धोरणाची अंमलजावणी करणे बंधनकारक राहिल. अर्धवेळ शिक्षकाची शिक्षणसेवक म्हणून नियुक्ती करावयाची झाल्यास त्याने अर्धवेळ शिक्षक म्हणून केलेली सेवा ही शिक्षणसेवकासाठी निम्मी / अर्धी सेवा (सहा महिने) गणण्यात यावी. त्यानंतर प्रचलित अटी व शर्तीची पूर्तता करित असल्यास त्यास नियमित वेतनश्रेणीमध्ये नियुक्त करावे. जर अर्धवेळ शिक्षकाने ६ वर्षे अर्धवेळ शिक्षक म्हणून काम केले असेल व त्याला पूर्णवेळ शिक्षकाचे पदी नियुक्ती द्यावयाची झाल्यास त्याला शिक्षणसेवक म्हणून नियुक्ती न देता त्याला नियमित वेतनश्रेणीमध्ये प्रचलित अटी व शर्तीच्या पूर्ततेच्या अधीत राहून नियुक्ती देण्यात यावी.”

13. From the documents, it can be seen that the petitioner, in all, put in 6 years and 11 months of service as a part time Assistant Teacher in the Bharat Dinanth Vidyalaya, Hinganghat. He made representation to grant the benefit of clause 9 of the government resolution dated 10/06/2005. His application turned down by the Additional Commissioner Tribal

Development, Nagpur on the ground that there is no order of adoption of the GR by the Tribal Development. There is no gap from the relieving order from the earlier establishment and joining the new posting at Junior College. In view of the fresh proposal submitted by the petitioner, Writ Petition No. 8553/2018 came to be withdrawn. Though the respondents claimed that the GR is not adopted by the Tribal Development Department, it has no substance. On one hand, the respondents are appointing the teachers as Shikshan Sewak under the same government resolution and on the other hand, denying the benefits provided under clause 9 of the said GR. If it was not applicable to the Tribal Development, there would not have been any appointment of the Shikshan Sewak.

14. Learned counsel for the petitioner relied on ***Braj Nandan Singh (supra)*** wherein the Hon'ble Apex Court held in Paragraph No. 5 as under:-

*“5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:*

*"26. Forfeiture of service on resignation (1) Resignation from a service or post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. (2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."*

*Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub- rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies...."*

15. In view of this finding, we are of the considered opinion that due permission was taken by the petitioner and the resignation letter itself gives the reason for the resignation. The petitioner has informed to the earlier institution that he has

secured a job in the Additional Commissioner Tribal Development, Nagpur as a full time teacher. His resignation is accepted by the earlier institution and he was relieved immediately the next day he joined the duties. As such, the impugned communication/order is liable to be quashed and set aside being contrary to the government resolution.

16. Hence, we proceed to pass following order:-

**ORDER**

- (a) The Writ Petition is **allowed**.
- (b) The impugned order dated 30/11/2023 passed by the respondent No. 2 - Additional Commissioner Tribal Development Department, Nagpur is hereby quashed and set aside.
- (c) The respondents are directed to grant benefit of the government resolution dated 10/06/2005 issued by the respondent no. 1 - State Government to the effect that half of the earlier services rendered by the petitioner as a part time Assistant Teacher be counted as his service period and accordingly grant benefit of permanency in service w.e.f.

14/12/2005 as an Assistant Teacher instead of Shikshan Sewak along with all consequential benefits. This exercise shall be completed within a period of 8 weeks.

**Rule is made absolute in the above terms.** Pending Application(s), if any, stand(s) disposed of.

**(RAJ D. WAKODE, J.)**

**(SMT. M.S. JAWALKAR, J.)**

*Kirtak/Ansari*