



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

WRIT PETITION NO. 7139 OF 2023

PETITIONER :- Sau. Bhagyashree w/o. Shrikant
Zadgaonkar, aged about 59 years, Occu.
Retired, R/o. Plot No. 4, Flat No. 301,
Sai Prasad Apartment, Rajashree Nagar,
Beltarodi Road, Nagpur-27.

..VERSUS..

RESPONDENTS :- 1) The State of Maharashtra, through its
Secretary, Department of Education,
Mantralaya, Mumbai-32.
2) The Joint Director, Minimum
Competency Vocational Course,
Regional Office, Nagpur.
3) C.P. & Berar College, through its
Principal, Tulshibag Mahal, Nagpur.

Mr. S. S. Ghate, Advocate for Petitioner.
Mr. H. R. Dhumale, A.G.P. for the Respondent/State.

CORAM : ANIL S. KILOR AND
VRUSHALI V. JOSHI, JJ.

DATE : 31/07/2025

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.

2. **Rule.** The Rule is made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. By way of present petition, the petitioner who was working on the post of Teacher on 01.08.1997 and his appointment was made in open category, is praying for quashing and setting aside the order dated 04.01.2023, denying approval from 2000 to 2011.

4. The brief facts of the present case are as under:-

The petitioner was appointed as a Teacher to teach Marathi subject for XI and XII standards in respondent No.3- College. The proposal for grant of approval was forwarded to the respondent No.2 as the college was grant-in-aid college. The petitioner was granted approval on year to year basis for the academic year 1997-1998, 1998-1999 and 1999-2000 i.e. for 3 years. However, there was a condition to remove the backlog.

5. From 2000 to 2011, though the petitioner was in service, the approval was not granted and in the year 2011, the approval was accorded to the appointment of the petitioner w.e.f. 21.07.2011 on probation period.

6. The reason for granting the approval w.e.f. 21.07.2011 was that a fresh roster point was certified by the Backward Cell. The order granting approval further states that, as per the roster point dated 31.12.2007 there was one vacant post for the open category. However, in subsequent year, it was noticed that one post was reduced. It is further observed that on 31.12.2008 and 31.12.2009 as per the roster point, one post was vacant in open category and since there was backlog, it was made clear to the management that, the post in open category cannot be filled in.

7. It is further stated that, as per the roster, as on 31.12.2010, there were total nine sanctioned posts out of which, six posts were filled in and three posts were vacant and there was a backlog of Scheduled Tribe and VJ/NT Category. It is further stated that, there was one post vacant for open category. It is thus clear that, the petitioner was denied the approval from 2000 to 2010 for the reason that the roster point was approved by Backward Cell on 21.07.2011.

8. As far as vacancy in open category is concerned, there is no dispute that there was a vacancy in open category and the

appointment of the petitioner was made in open category. The fact that from 1997 till 2000 for 3 years, the approval was granted to the petitioner shows that there was a vacancy and considering the said vacancy and the appointment of the petitioner in open category, the approval was granted.

9. The learned A.G.P. while opposing the present petition submits that, one of the conditions which were put in the order of approval i.e. the condition No.11 states that, no change will be carried out to the approval granted to the appointment of the petitioner w.e.f. 21.07.2011 and further the employee will not make any such demand for change of date of approval.

10. We are of the opinion that the condition No.11 stating that the petitioner will not demand change in the date of approval is arbitrary and the respondent No.2 cannot put such condition. The respondent No.2 cannot preclude any person from claiming any legal right, if he is entitled to claim so. Therefore, such condition will not come in the way of the petitioner to claim approval from the period of 2000-2010.

11. It appears that, such denial of approval to the petitioner w.e.f 2000-2010 is because of the fault of the authorities. If there was no approval to the roster point till 21.07.2011, the employee or the Management cannot be held responsible.

12. As we have observed that, there is no dispute that the petitioner was continuously in service and performing the duties from 2000-2010. Furthermore, there is no valid reason stated in the order except the reason that, the roster point was approved by the Backward Cell on 21.07.2011.

13. In the circumstances, in absence of any valid and legal reason to deny the approval of the petitioner from 2000-2010, we are of the opinion that, the petitioner is entitled for grant of approval by the respondent No.2 from 2000-2010.

14. The petitioner has already given an undertaking that, he will not claim any monetary benefits if such approval is granted. In the circumstances, such approval would be for the purpose to find out the eligibility of the petitioner as regards to Old Pension Scheme

and for the notional benefits which will be accrued after granting such approval to the petitioner. Accordingly, we pass the following order:-

- i) The writ petition is **allowed**.
- ii) The impugned order dated 04.01.2023 passed by the respondent No.2, is hereby quashed and set aside.
- iii) It is declared that, the petitioner is entitled for grant of approval from the year 2002 to 2011. However, as he undertook he shall not claim any monetary benefits except pensionary benefits if he is entitled to it.
- iv) It is expected that considering the time period lapsed in between and the fact that the petitioner has superannuated on 31.12.2022, the order be complied within a reasonable time.

Rule is made absolute in above terms. No costs.

(VRUSHALI V. JOSHI, J.) (ANIL S. KILOR, J.)

C.L. Dhakate