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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15487 OF 2025

Dipak S/o. Pralhadrao Nikam,
Age: 36 years, Occu.: Service,
R/o. Rajmata Jijau, Adarsh Nagar,
Jafrabad, Tq. Jafrabad, Dist. Jalna.

... Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
School Education and Sports Department,
2. The Director of Education,
Secondary and Higher Secondary,
Directorate of Education,
Central Building, Camp, Near Sasun Hospital,
Pune – 411 001.
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad.
4. The Education Officer (Secondary),
Zilla Parishad, Jalna,
Tq. & Dist. Jalna.

... Respondents.

.....
Mr. T.M. Venjane, Advocate for Petitioner
Mr. S.B. Narwade, AGP for Respondents/State
.....

CORAM : SMT. VIBHA KANKANWADI AND
HITEN S. VENEGAVKAR, JJ.

DATED : 07 JANUARY, 2025

JUDGMENT [Per Hiten S. Venegavkar, J.] :-

1. The petitioner has approached this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India seeking; (i) quashing and setting aside the impugned communication

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dated 07.08.2025 issued by the Deputy Director of Education, Aurangabad, and (ii) direction to the said authority to grant approval to the promotion of the petitioner to the post of Assistant Teacher within a stipulated period.

2. The factual matrix that can be narrated from the pleadings in the petition is that the petitioner is a graduate holding Bachelor's degree in Agricultural and also Master's degree in Biotechnology and he belongs to socially and educationally backward category. The petitioner came to be appointed on a clear, vacant and sanctioned post of Junior Clerk by an appointment order dated 10.10.2019 in Jai Bhavaji Vidyamandir and Higher Secondary School, Devlegavahn, Tq. Jafrabad, Dist. Jalna, which is run and managed by the Dnyanraj Shikshan Prasark Mandal, Sawangi Tekale, Tq. Deulgaonraja, Dist. Buldhana. According to the petitioner, his appointment was made by following due process of law as contemplated under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 against a clear vacancy to which the State Government was initially sanctioned on unaided basis. Consequently, the State Government granted 20% grant in aid to the School, which was gradually increased and as on today, the institution is receiving 60% grant in aid.

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3. The petitioner further submits that he was promoted to the post of Senior Clerk and the proposal for approval was submitted by Headmaster on 06.06.2024 and 26.06.2024 to the Education Officer (Secondary), Jalna for approval. After due scrutiny and satisfaction, the Education Officer on 05.07.2024 had granted permanent approval to his initial appointment on the post of Junior Clerk and also approved his promotion to the post of Senior Clerk. The petitioner's name was thereafter included in *Shalarth Pranali* by order dated 18.07.2024 passed by the Deputy Director of Education, Aurangabad.

4. During the course of his service, the petitioner acquired B.Ed. qualification. A vacancy on the post of Assistant Teacher in the subject of Biology arises in the school on account of death of one Shri. Kautik Anandrao Gawande on 10.01.2021, which was the sanctioned post. Considering the petitioner's qualifications and seniority, the Management passed resolutions dated 09.06.2024 and 28.09.2024 promoting the petitioner to the post of Assistant Teacher. Pursuant thereto, a promotion order was issued on 07.10.2024, and accordingly, the petitioner joined the post of Assistant Teacher on 11.10.2024. The proposal seeking approval for the promotion of the petitioner from Senior Clerk to Assistant Teacher was forwarded along with requisite documents by the Headmaster to the Deputy Director of Education,

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Aurangabad on 10.10.2014. However, it is the contention of the petitioner that without affording an opportunity of hearing, the Deputy Director, Aurangabad on 07.08.2024 rejected the proposal on the ground that the petitioner's appointment as Assistant Teacher is not in accordance with Government Resolution dated 10.06.2022. The Deputy Director of Education has held that appointments of Assistant Teachers are required to be made only through *Pravitra Portal* and cannot be made directly. Feeling aggrieved by the said decision, the petitioner has preferred the present petition.

5. Learned Advocate appearing for the petitioner vehemently submitted that the decision of the Deputy Registrar of Education suffers from manifest illegality and arbitrariness. He argued that the petitioner was already in service and his appointment and promotions as non-teaching staff were duly approved by the competent authorities, and therefore, his promotion to the Assistant Teacher cannot be termed as a fresh appointment, but the appointment by way of promotion on a clear and sanctioned vacant post. He further argued that the petitioner has been discharging duties as Assistant Teacher, but due to non-grant of approval, he is deprived of salary. The learned advocate further argued that the impugned order also violates the principles of natural justice, as no notice or opportunity of being heard was provided by the Deputy

Director of Education before rejecting the petitioner's proposal. According to the petitioner, it would have been just in the natural course of justice if the Deputy Director of Education, prior to rejection, had granted an opportunity of hearing either to the petitioner or to the Management which had forwarded the petitioner's proposal for approval. It is further argued by the advocate that the Deputy Director of Education has stated to consider the crucial distinction between fresh appointment and an appointment made on the basis of promotion from non-teaching to teaching cadre and has thus erroneously applied mandate on Government Resolution dated 10.06.2022. The learned advocate also places reliance on various decisions of this Court, which are annexed to the petitioner as under:

- (i) ***Shri Suhas S/o. Rangraoji More Vs. State of Maharashtra and Others*** [Writ Petition No.7706 of 2022 (Nagpur Bench)].
- (ii) ***Madhav Sadashiv Kakade Vs. The State of Maharashtra and Others*** [Writ Petition No.3856 of 2025 (Aurangabad Bench)].

6. Per contra, the learned AGP appearing for the respondents supported the impugned decision and submitted that the State has taken a conscious policy decision mandating appointments to the post of Assistant Teachers to be made only through the *Pavitra Portal*. He

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further argued that the petitioner's past service as a non-teaching employee does not entitle him to be directly appointed to a teaching post without complying with the procedure prescribed under the Government Resolution dated 10.06.2022, and therefore, the rejection of the proposal, according to learned AGP, is legal and proper. He further submitted that as the petitioner's appointment is not in accordance with the above-mentioned G.R. and the same is made directly, there is no necessity of granting any hearing to the petitioner before taking a decision on the proposal.

7. We have given anxious consideration to the rival submissions and have perused the material placed on record. *Prima facie*, we find substance in the contention of the petitioner that his appointment as Assistant Teacher is not a fresh appointment, but a promotion effected on a clear and sanctioned vacant post, which arose due to the death of the incumbent. We are also of the considered opinion that if the Deputy Director of Education had any reason to believe that the Government Resolution dated 10.06.2022 was applicable to the case of the petitioner, it was necessary to issue notice to the petitioner and the Management and to seek their reply on the said issue. Without granting an opportunity of hearing, the Deputy Director of Education ought not to have decided the petitioner's proposal. The object of making

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appointments through the *Pavitra Portal* is to maintain clarity and transparency while making fresh appointments in educational institutions and to provide equal opportunity to all similarly situated candidates. However, cases in which appointments are made internally on the basis of promotion are not regulated or governed by the Government Resolution dated 10.06.2022. Without dwelling further on this aspect, and without expressing any final opinion on the merits of the controversy, we deem it appropriate to remit the matter back to the Deputy Director of Education, Aurangabad. The said authority is permitted to recall the proposal from the petitioner's Management and, after granting a reasonable opportunity of hearing to the Management as well as to the petitioner, shall reconsider and decide the proposal afresh in accordance with law.

8. Accordingly, the writ petition stands partly allowed in the above terms. There shall be no order as to costs.

[HITEN S. VENEGAVKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE