



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4852 OF 2026

District : Nanded

Shalubai Kashiram Pawar,
Age: 36 Years, Occu.: Asst. Teacher,
R/o. Chavhanwadi, Tq. Mukhed,
Dist. Nanded.

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai - 32.
2. The Education Officer (Secondary),
Zilla Parishad Nanded,
Tq. & Dist. Nanded.
3. Janjagruti Shikshan Prasarak Mandal,
Vandgir Tanda, Tq. Mukhed,
Dist. Nanded, Through its Secretary
4. Kai. Vasantrao Naik Vidyalay, Wadgaon,
Tq. Mukhed, Dist. Nanded.
Through its Headmaster.

..Respondents

Mr.Mahesh P. Kale, Advocate for petitioner
Ms.Neha B. Kamble, AGP for respondent nos.1 and 2

**CORAM : SMT.VIBHA KANKANWADI &
AJIT B. KADETHANKAR, JJ.
DATED : MAY 04, 2026**

JUDGMENT (Per : Ajit B. Kadethankar, J.) :-

Rule. Heard the parties for final disposal of the Writ Petition at their request. Rule made returnable forthwith.

2. Introduction:

2.1 The petitioner was appointed by Respondent no.3 - School Management in the Respondent no.4 School on compassionate ground w.e.f. 15-01-2014 as an Assistant Teacher. The compassionate appointment was against the death of Petitioner's father namely Mr. Kashiram Pawar who succumbed to a heart attack on 14-12-2013 while on duty.

2.2 Consequent to at least three rounds of litigation at the behest of the Petitioner, at last the Respondent no. 2- Education Officer granted approval to the Petitioner's appointment as Shikshan Sevak for a period of three years i.e. 17-06-2021 to 16-06-2024 on honorarium. The date of appointment on the subject-matter post was held as 17-06-2021.

2.3 The school Management subsequently submitted another proposal to the Education Officer for approval to the Petitioner's continuation of service. Vide order dated 25-03-2025,

the Education Officer granted approval to the Petitioner's services as an Assistant Teacher on regular pay scale with pay band S-10 w.e.f. 17-08-2024.

2.4 Now, the Petitioner has two grievances i.e. (i) the initial approval has to be w.e.f. 15-01-2014 i.e. the date of her compassionate appointment by the school management; and (ii) the Petitioner be held entitled for regular pay scale as an Assistant Teacher *ab initio* in stead of honorarium for initial three years.

3. Brief facts:-

3.1 Facts are almost undisputed. The petitioner's father was serving at Respondent no.4 - School run by the Respondent no.3 - School Management as an Assistant Teacher. He died on 14-12-2013 due to heart attack during his service tenure.

3.2 The Petitioner is qualified to be appointed as an Assistant Teacher. Hence, on her application the School Management appointed her on the post of Assistant Teacher on compassionate ground w.e.f. 15-01-2014.

3.3 The Petitioner is in continuous service on the subject-matter post. On 17-01-2014, the School Management submitted a proposal to the Respondent no.2 - the Education Officer seeking approval to Petitioner's appointment.

3.4 Due to inaction on the part of the then Education Officer, the Petitioner filed Writ Petition No. 4499 of 2015 in this court for directions. The Writ Petition came to be disposed on 21-09-2015 thereby directing the Education Officer to take appropriate decision within eight weeks therefrom, and to act accordingly.

3.5 Failure on the part of the Education Officer to take decision timely, constrained the Petitioner to lodge Contempt Proceedings vide Contempt Petition No. 430 of 2016. During the proceedings, the responding authority disclosed that the subject-matter proposal was rejected on merit on 09-02-2017. The contempt proceeding was therefore closed, leaving the Petitioner at liberty to assail the order dated 09-02-2017 rejecting the proposal.

3.6 The Petitioner then filed Writ Petition No.7860 of 2018 challenging the order dated 09-02-2017. Referring to a statement made by the authorities that the Petitioner shall be absorbed, this

Court disposed the Writ Petition directing the authority to take early decision on Petitioner's absorption, and intimate her.

3.7 In the meantime, the Education Officer granted approval to other employees. Hence, the Petitioner filed Writ Petition no. 14419 of 2021. This Court disposed the Writ Petition thereby directing the Education Officer to decide the representation filed by the Petitioner for appropriate relief, and also to call upon the School Management to submit the necessary documents and information.

3.8 Tired of the delay and inaction on the part of the Education Officer, the Petitioner filed Contempt Petition No.706 of 2022 in this Court. During the course of hearing of the contempt proceeding, the School Management submitted before this court that it has already submitted a proposal on 19-01-2023 with the Education Officer for approval. Further in the course of hearing, it so happened that the Education Officer granted approval to the Petitioner's appointment as Shikshan Sevak w.e.f. 17-06-2021 to 16-06-2024 on honorarium. The Education Officer further granted approval to the petitioner's continuation as an Assistant Teacher on regular pay scale w.e.f. 25-03-2025.

3.9 The Petitioner lodged his grievances with the Education Officer to grant her approval from the date of her initial appointment i.e. w.e.f. 15-01-2014 and that too, on regular pay scale. Hence, to seek directions to the Education Officer, the Petitioner has lodged present Writ Petition.

4. Submissions:

4.1 Mr. Mahesh Kale, learned Advocate representing the Petitioner would submit that its an undisputed fact that the Petitioner is well qualified to be appointed on the subject-matter post, and that she is appointed on 15-01-2014. He would submit that in the light of the fact that the Education Officer has approved her services, excluding the period w.e.f. 15-01-2014 till 17-06-2021 and honorarium for three years is highly unjustifiable.

4.2 Mr. Kale would submit that when none of the facts are disputed, deprivation of the Petitioner from her legitimate right for approval from the date of her initial appointment is unjustifiable. He concludes his argument with the submission that the authorities cannot deviate from their liability thereby offering something else to the Petitioner.

4.3 Ms. Neha Kamble, learned Assistant Government Pleader has offered her submissions to justify the action on the part of the Education Officer.

4.4 She would submit that the approval order dated 28-02-2023 is self explanatory. She submits that although the Petitioner was appointed by the School Management on 15-01-2014, for the purpose of approval on grant- -in-aid basis, the Education Officer was under obligation to verify whether the Petitioner is accommodated on a vacant available post.

4.5 Ms. Kamble submits that in terms of the approval of staff received on 15-07-2014, one post of graduate untrained teacher was reduced due to reduction in the number of students. She submits that accordingly, the Petitioner's name was kept on wait list of approval on grant basis. That, three vacancies for aided posts arose in the Respondent no.4 on 31-05-2021,31-07-2021 and 31-08-2021. Accordingly, the School Management was directed to submit a fresh proposal. That, the School Management again filed similar proposal akin to earlier one.

4.6 Learned Assistant Government Pleader Ms. Neha Kamble concludes her submissions that if post was not vacant corresponding

to the staff approval, the Education Officer could not have granted the approval w.e.f. 15-01-2014. Thus, she justifies the approvals granted by the Education Officer.

5. Consideration:

5.1 We intensely went through the record of the case, particularly the first approval order dated 28-02-2023. It is a matter of record that as per the staff approval received on 15-07-2014, the post on which the Petitioner could have been accommodated on grant in aid basis did not exist. It was on account of reduction in the number of students.

5.2 Here, we may note that it is not the date of the Petitioner's appointment which solely clamps responsibility on the Education Officer to grant her approval on aided post. There must be such vacant post available in the school. It is manifest on record that such aided vacant post is surfaced firstly on 31-05-2021.

5.3 The Petitioner held qualification of B.A, D.Ed. Hence she could be appointed for the standards 6th to 8th. Hence, the moment vacancy on an aided post of Shikshan Sevak (Assistant Teacher) was created, approval to the Petitioner against such post was granted by the Education Officer. We do not find any illegality or arbitrariness in

the act of the Respondent no.2 whereby the approval is not granted w.e.f. 15-01-2014, but the same is granted w.e.f. 17-06-2021. We also take a note that the subject-matter post found vacant and available consequent to superannuation of Mr. Baburao Rathod who retired on 31-05-2021, and hence the approval is granted w.e.f. the first day of following academic year, i.e. w.e.f. 17-06-2021.

5.4 For the reasons recorded above, we hold that the Education Officer can grant approval to such an appointment which happens or settles only on a suitable vacant post, and off course, the appointment made in accordance with law. We further hold that 'it is not the date of appointment that is solely countable for grant of approval, but availability of a vacant sanctioned post is a *sine qua non* for an approval'.

5.5 Now, as regards to Petitioner's other and last objection as regards to grant of honorarium for three years instead of regular pay scale, we are in full agreement with such objection.

5.6 This tempts us to make a profitable reference to the observations made by the Division Bench of this court of which one of us (V.V. Kankanwadi J.) was a Member, in the case of **Salman**

Chaush Vs. State and ors., (2024) 4 AIR Bom R 754. At paragraph No. 9 of the cited judgment, it is observed as follows:

“9. In *Sanjai Kumar vs. Deputy Director General (NCE), Directorate, U.P., Lucknow and others* [(2002) 3 UPLBEC 2748] and *Ram Chandra vs. State of U.P. and others* [2008(2) ESC 1053] which has been referred in the Division Bench of Hon’ble Allahabad High Court in *Jagdish Narain vs. Union of India, Civil Miscellaneous Writ Petition No.4059 of 2003* decided on 14.07.2011, wherein it has been held that the appointment on compassionate ground is always permanent in nature. Therefore, taking into consideration the fact that the petitioner came to be appointed on compassionate ground which is in common parlance against the post that was held by his father on permanent basis, then he cannot be considered on probation. It is not his regular recruitment and, therefore, the Government Resolution dated 25.11.2005 applicable to the regular recruited employees will not be made applicable. It is not in dispute that after the approval dated 16.08.2019 the petitioner is getting salary by pay scale. Therefore, the question was in respect of period in between 29.12.2014 to 29.12.2017. For that purpose in view of the above said pronouncements and the findings of this Court that the petitioner’s appointment was against the permanent post, the petitioner is entitled to get salary in pay scale since the date of his appointment i.e. 29.12.2014. Therefore, the impugned order dated 23.03.2023 and the communication dated 26.03.2023 by respondent No.4 deserves to be set aside.”

5.7 It is not in dispute that Petitioner’s deceased father was serving on a sanctioned permanent post. The post was lapsed due to reduction in number of students. The Petitioner therefore was accommodated on next vacant permanent post which became available due to retirement of one Mr. Baburao Rathod. The post held by the retired employee Mr. Baburao Rathod, on which the Petitioner is accommodated, is also a permanent post. Hence, the

petitioner cannot be termed on probation for three years restricting her pay perks on honorarium in the light of the fact that Petitioner's appointment is on compassionate ground. Petitioner's case is identical to the case of **Salman Chaush** (supra).

5.8 In view of above discussion, we are of the considered opinion that the Writ Petition deserves to be allowed partially. Hence we pass following order:-

ORDER

- I. The Writ Petition is partly allowed;
- II. Prayer for grant of approval w.e.f. 15-01-2014 is rejected. Grant of approval to Petitioner's appointment w.e.f. 17-06-2021 is upheld.
- III. However, the approval to Petitioner's appointment on honorarium w.e.f. 17-06-2021 to 16-06-2024 is held to be erroneous. The Respondent no.2 shall issue corrected approval to Petitioner's appointment on regular pay scale applicable to Assistant Teacher w.e.f. 17-06-2021 within a period of eight weeks here-from.
- IV. The approval order dated 25-03-2025 shall stand merged in the corrected approval as ordered above.
- V. Petitioner shall be paid the salary dues w.e.f. 17-06-2021 adjusting such amount if already paid.
- VI. Rule made absolute partly in above terms.

[AJIT B. KADETHANKAR, J.]

[SMT.VIBHA KANKANWADI, J.]

KBP