IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4885 OF 2026

Arya Abhay Chavan ...Petitioner
(Nee : Swapnali Sitaram Kadam)
(New Name : Gauri Girish Chavan)

Versus

The State of Maharashtra and Others ...Respondents

Mr. Prashant Bhavake a/w Mr. Utkarsh Desai, Mr. Shivaa Navanne, Ms. Durva Jadhav, for the Petitioner.
Ms. Tejas J. Kapre, AGP for the Respondent-State.

CORAM : SHARMILA U. DESHMUKH & NEERAJ P. DHOTE, JJ.

DATE : OCTOBER 09, 2026.

P. C. :

1. By the present Petition, the challenge is to the order dated 30th January, 2025, to the extent that it grants the approval subject to the condition that, for the period from 1st October, 2017, to 31st January, 2025, the arrears of salary will not be paid. The condition is premised on the ground that as per the staffing pattern for the year 2017-2018, the post was not vacant.

2. Learned counsel appearing for the Petitioner has taken this Court through the facts of the present case to demonstrate that the Petitioner came to be appointed in the year 2013, and the previous

litigation, by reason of the rejection of approval and the remand by this Court, resulting in the impugned order. He would submit that the Education Officer took into consideration the fact that, for the year 2017–2018, the staffing pattern did not show any vacant post but failed to notice that the Petitioner was appointed on 29th July, 2013, as Shikshan Sevak and completed the probationary period on 28th July, 2016. He submits that, firstly, the reduction in strength as per the staffing pattern for 2017–2018 would not apply and, in any event, considering the provisions of Rule 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("**MEPS Rules**"), the Petitioner would be entitled to arrears of salary. He would also submit that the Education Officer has also held against the Petitioner on the ground that no permission was taken prior to the issuance of the advertisement and, therefore, the honorarium for the period from 29th July, 2013, to 28th July, 2016, would not be paid.

3. Drawing attention of this Court to the letter-cum-application dated 28th June, 2013, seeking permission from Respondent No. 5 – Education Officer for publishing the advertisement, he submits that it was the Education Officer who did not respond to the said application and the Management was constrained to publish the advertisement in the newspaper, as the post of Shikshan Sevak could not be kept vacant.

4. *Per contra*, learned AGP would support the impugned order. She would submit that there is no pleading and material on record to demonstrate that the post was an aided post for Rule 26 of the MEPS Rules to apply. She would further submit that the Education Officer has taken into consideration the fact that the proposal came to be submitted on 27th January, 2025, and, therefore has granted approval subject to the condition that, for the period from 1st October, 2017, to 31st January, 2025, the arrears of grant-in-aid salary would not be paid.

5. We have considered the submissions and perused the record.

6. Insofar as the rejection by the Education Officer to the payment of honorarium for the period of probation on the ground that the permission for advertisement was not taken, we have on record an application dated 28th June, 2013 by which permission was sought from the Education Officer for publishing advertisement for recruitment to the said post. The post became vacant on 31st December, 2012. The applications dated 29th May, 2013 were addressed to various authorities seeking information about surplus candidates to which there was no response. The Management could not be expected to keep the post vacant and, accordingly, advertisement was issued on 29th June, 2013 / 3rd July, 2013, for the purpose of appointment of Shikshan Sevak from the open category, to which the Petitioner had applied and was

appointed as a Shikshan Sevak on probationary period of three years. Considering that it was the Education Officer's own inaction in responding to the application seeking permission for publishing the advertisement, the same cannot constitute a ground for rejecting payment of honorarium during the probationary period.

7. The impugned order grants approval subject to the condition that, for the period from 1st October, 2017 to 31st January, 2025, the arrears of salary would not be paid due to the staffing pattern of 2017-2018. The Petitioner was appointed on a vacant aided post in the year 2013 and the subsequent reduction in the staffing pattern if any would trigger the provisions of Rule 26 of the MEPS Rules, and in particular sub-rule 2 (iii), which provides that employees of aided schools whose services are proposed to be retrenched shall be absorbed by the Education Officer and that, until they are absorbed, the Management shall not be permitted to effect retrenchment on account of any of the reasons mentioned in sub-rule (1).

8. Sub-rule (1) of Rule 26 of the MEPS Rules governs the retrenchment by the Management on the grounds which are stated therein. Though not demonstrated, in the event that as per the staffing pattern of 2017-2018, the post was not vacant, the Petitioner, having completed the probationary period of three years in the year 2016,

would then be rendered a surplus teacher who will be entitled to be absorbed by the Education Officer and till the absorption takes place, would be entitled to the salary for the said period.

9. The contention of the learned AGP that the proposal was submitted on 27th January, 2025, and, therefore, salary has been directed to be paid only from 31st January, 2025, does not appeal to this Court. The same does not form the basis of the impugned order. Secondly, even if the contention is to be considered, the proposal was submitted on 25th October, 2013, which came to be rejected initially as against which Petition was preferred, pursuant to which the impugned order has been passed. Considering that the approval has been subsequently granted, the rejection in the first instance was unsustainable and therefore for the unsustainable order passed by the Education Officer itself, the Petitioner cannot be put to prejudice.

10. In light of the above discussion, we are inclined to allow the Petition in terms of Prayer Clauses (b), (c) and (d) which reads thus:

> b] By a suitable Writ, Order or direction, this Hon'ble Court be pleased to quashed and set aside the impugned condition Nos. 2,13,14 and 15 imposed by the Respondent No.5-Education officer while approving the appointment of the Petitioner vide order dated 30-1-2025 and accordingly, be pleased to direct the Respondent No. 5-Education Officer to pass revised order by removing said impugned conditions within period of four weeks or any other period stipulated period as this Hon'ble Court may deem fit and proper;
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> c] By suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned condition imposed by the Respondent No.4-Deputy Director in its order dated 7-4-2025, thereby

refusing to pay salary arrears payable to the Petitioner w.e.f. 29-7-2013 (which is the original date of appointment of the Petitioner) till 31-1-2025 and accordingly be pleased to direct the Respondent No. 4-Deputy Director to pass revised order by removing said impugned condition within period of four weeks or any other period stipulated period as this Hon'ble Court may deem fit and proper;

d] By a suitable writ, order or direction, this Hon'ble Court be pleased to direct the Respondents to release entire arrears of honorarium from salary grant payable to the Petitioner from date of her initial appointment w.e.f. 29-7-2013 and further release entire arrears of salary in regular pay scale w.e.f. 29-7-2016 within period of 8 weeks or any other stipulated period as this Hon'ble Court may deem fit and proper;

11. Applications, if any, do not survive for consideration and stand disposed of.

[NEERAJ P. DHOTE, J.] **[SHARMILA U. DESHMUKH, J.]**