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

WRIT PETITION NO. 7261 OF 2019

Shri. Swapnil Maruti Sawant and Another ...Petitioners

Versus

The State of Maharashtra and Others ...Respondents

WITH

INTERIM APPLICATION NO. 1117 OF 2026

Mr. Sagar Mane a/w Mr. Rushikesh Jagdale and Ms. Neha Farakate, Advocate for the Petitioners
Mr. Ravi P. Kadam, B Panel Counsel for the Respondent – State.

* * *

CORAM : SHARMILA U. DESHMUKH &
ABHAY J. MANTRI, JJ.

DATE : OCTOBER 14, 2026.

P. C. :

1. In the present petition, Rule was issued on 22nd July 2021. By the present petition, the Petitioners impugns the order dated 30th March 2019 passed by the Education Officer, rejecting the proposal submitted by the Petitioner No.2 seeking approval to the appointment of Petitioner No.1 as Shikshan Sevak in the aided Secondary School of Petitioner No.2.

2. The facts, as pleaded in the present petition, are that an Assistant Teacher working in Nigadi Khurd School of Petitioner No.2 retired from service and in his place a surplus teacher from the school at

Banali came to be absorbed. Thereafter a vacancy was created in the school at Banali due to retirement of open category teacher on 31st May 2016. The Management repatriated the surplus teacher from Nigadi Khurd School to the Banali School and in view thereof a post of teacher became vacant in Nigadi Khurd School. It is pleaded that an application dated 13th June 2016 was filed by Petitioner No.2 with Respondent No.2 – Education Officer, requesting to depute a surplus teacher and, if no surplus teacher is available, then to grant the permission to the Management to fill up the vacancy by publishing advertisement. As there was no response, an advertisement was published on 13th June 2016, pursuant to which Petitioner No.1 applied and came to be appointed on 25th June 2026. A proposal seeking approval to the appointment of Petitioner No.1 was submitted, which came to be rejected by the impugned order. Hence, the present petition.

3. The learned counsel appearing for the Petitioners has taken this Court through the grounds on which the proposal for approval came to be rejected by the Education Officer. Insofar as the ground at serial No.1 is concerned, he would point out that the as per the roster is at page No.21, one post was vacant for open category, as against which Petitioner No.1 came to be appointed. Hence, the said ground does not survive for consideration. Insofar as the ground at serial No.2 is concerned, he submits that an application was filed with the Education

Officer on 13th June 2016 seeking permission for publishing the advertisement to which there was no response and, hence, the same cannot constitute a ground for rejection. He would further submit that the ground at serial No.3 is as regards the ban which was imposed by the Government Resolution dated 02nd May 2012 and as Petitioner No.1 was teaching Science subject, the ban does not apply in view of the decision of this Court in the case of *Smt. Munoli Rajashri Karabasappa Vs. State of Maharashtra and Others in Writ Petition No.8587 of 2016 with connected writ petitions.* He submit that, insofar as the ground at serial No.4 is concerned, Petitioner No.2 had filed an application seeking permission to publish advertisement and, as there was no response, it cannot be said that without ascertaining whether any surplus teacher is available, Petitioner No.1 has been appointed.

4. Per contra, learned AGP would support the impugned order and submit that Petitioner No.1 came to be appointed without verifying whether any surplus teacher was available for absorption. Therefore, the appointment cannot be said to be in accordance with law.

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

6. Insofar as the ground at serial No.4 of the impugned order is concerned, the Education Officer has noted that, under Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service)

Regulation Act, 1977 (for short ***"MEPS Act"***), before the vacancy is filled by the Management, the Management is required to ascertain from the Education Officer whether any suitable person is available on the list of surplus person maintained by him for absorption in other schools. Section 5(1) of the MEPS Act, reads as under :

> *"5. (1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy :*
>
> *Provided that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy."*

7. A plain reading of the said provision would indicate that a duty is cast upon the Management before proceeding to fill such vacancy to ascertain whether there is any suitable person is available on the list of surplus persons maintained by the Education Officer for

absorption in other schools. In the present case, the Management claims to have filed an application on 13th June 2016, and the endorsement on the application shows that the same was received by the Education Officer on 14th June 2016. The advertisement, which is at page No.23, was published on 13th June 2016 and, therefore, it is evident that the Management has issued the advertisement before filing the application with the Education Officer.

8. The provisions of Section 5 of the MEPS Act is clear and specific and provides that, before proceeding to fill the said vacancy, it is necessary to ascertain whether there is any surplus teacher available for absorption. It is no answer to say that despite the application on 13th June 2016, there is no response by the Education Officer. The mandate of Section 5 of the MEPS Act is the ascertainment of the surplus teacher prior to filling up such vacancy and as the advertisement was issued on 13th June 2016, it is evident that steps were taken to fill up the vacancy prior to 13th June 2016. The endorsement of 14th June 2016 on the application of 13th June 2016, makes it evident that the application was filed in a perfunctory manner to do lip service to the statutory requirement of ascertaining the availability of suitable person from the list of surplus persons for absorption in the school.

9. Insofar as the ground No.2 is concerned, the finding is that no prior permission is taken for issuing advertisement. The

advertisement was issued on 13th June 2016 and the application seeking permission was filed with Education Officer on 14th June 2016. The Education Officer has therefore rightly rejected the proposal on the said ground.

10. Even if there is an answer for other grounds of rejection, the reasons at serial No.2 and serial No.4 will militate against the grant of any relief to the Petitioners.

11. In the light of the above discussion, we are not inclined to interfere in the impugned order, which is in consonance with the statutory provisions of the MEPS Act.

12. Resultantly, the Writ Petition fails and stands dismissed. No order as to costs.

13. The Interim Application does not survive and stands disposed of.

14. Rule is discharged.

[ABHAY J. MANTRI, J.] **[SHARMILA U. DESHMUKH, J.]**