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

WRIT PETITION NO. 19013 OF 2024

1. Shri Sagun Bala Neman,
Age: 37 Years, Occupation: Service,
R/o. A/P. Nemale, Tal. Sawantwadi,
District: Sindhudurg.

2. Nemale Panchakroshi Shikshan
Sanstha, Poklenagar, Nemale,
Tal: Sawantwadi, Dist: Sindhudurg,
Through its President/Secretary.

3. Nemale Panchakroshi Madhyamik Va
Ucch Madhyamik Vidyalaya, Nemane
Tal: Sawantwadi, Dist: Sindhudurg,
Through its Head Mistress. **... Petitioners**

VERSUS

1. The State of Maharashtra,
Through the Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-400 032.

2. The Commissioner of Education
School Education Department,
Maharashtra State, Pune.

3. The Director of Education,
(Secondary and Higher Secondary),
Maharashtra State, Pune-1.

4. The Deputy Director of Education,
Kolhapur Region, Kolhapur
Having office at, Hatti Mahal, Ganji Galli,
Somwar Peth, Kolhapur.

5. The Education Officer (Secondary),
Zilla Parishad, Sindhudurg,
Having Office at, Zilla Parishad Building,
Sindhudurg. … Respondents

…

Mr. Prashant Bhavake a/w. Mr. Utkarsh Desai, Advocate for the Petitioners.
Mr. A. P. Vanarase, AGP for the Respondent – State.

…

CORAM : ABHAY AHUJA &
NEERAJ P. DHOTE, JJ.
DATE : 22nd OCTOBER, 2026

ORAL JUDGMENT: (PER ABHAY AHUJA, J.)

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioners are challenging the order dated 30th August 2024 passed by the Respondent No. 5 – Education Officer whereby, the proposal for individual approval to the appointment of the Petitioner No. 1 made by the Petitioner No. 2 – Educational Institution at the Petitioner No. 3 – Secondary School in the post of Junior Clerk was rejected.

2. The Petitioners are further seeking a direction to the Respondent No. 5 – Education Officer to grant the said proposal and issue order granting individual approval to the appointment of the Petitioner No. 1 and also release all salary/arrears payable to the Petitioner No. 1 and also a direction to the Respondent No. 4 – Deputy Director to allot Shalarth ID to the Petitioner No. 1.

3. When the matter was heard on 29th July 2025, the learned AGP for the Respondents No. 1 to 5 had sought four weeks time for filing reply in the matter. Thereafter, on 28th September 2026 also time was granted at the request of the learned AGP. There is also a file noting dated 15th October 2026 that the AGP has not filed reply till date.

4. Mr. Bhavake, learned Counsel appearing for the Petitioners has submitted that, the Petition has been filed on the 20th September 2024 and despite order dated 29th July 2025 granting time to the learned AGP to file reply, no reply has been filed and that this Court may in view of the gross facts of this case, proceed to hear and finally dispose the Petition.

5. Mr. Vanarase, learned AGP appearing for the Respondent – State leaves it to the orders of this Court.

6. Accordingly, Rule. Rule is made returnable forthwith and is heard finally.

7. It is not in dispute that the Petitioner No. 1 is a graduate and also passed MS-CIT as well as Marathi and English Typing Examinations and was appointed to the post of Junior Clerk at the Petitioner No. 3 – Secondary School on 8th December 2023 to fill up the vacancy of a Junior Clerk who retired on 30th June 2023.

8. Mr. Bhavake has submitted that the order dated 30th August 2024 passed by the Respondent No. 5 – Education Officer rejecting the proposal submitted by the Petitioners No. 2 and 3 seeking individual approval to the appointment of the Petitioner No. 1 in the post of Junior Clerk at the Petitioner No. 3 – Secondary School deserves to be quashed and set aside as the deficiencies that have been raised for rejecting the proposal are untenable.

9. Drawing this Court's attention to the first deficiency, as cited in the order dated 30th August 2024, Mr. Bhavake submits that, although the Petitioners No. 2 and 3 had sought the no objection from the Respondent No. 5 – Education Officer on 20th November 2023 submitting that due to the retirement of the Junior Clerk viz. N. T. Gaonkar on 30th June 2023 by way of superannuation, a vacancy of post of Junior Clerk was created at the Petitioner No. 3 – Secondary School and since it was a sole post of Junior Clerk sanctioned at the Petitioner No. 3 – Secondary School and it was necessary to fill up the said post/vacancy, keeping in mind *inter alia* the school's requirement to complete online work, keeping in mind the large number of students and to avoid any loss to the students, it was necessary to fill up the vacancy and therefore, it was requested that permission be granted to advertise the vacancy in the form annexed to the said communication.

10. Mr. Bhavake submits that since no permission came nor reply to the said communication was received, in view of the obligation under Section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (the "MEPS Act") which required the Petitioner No. 2 – Educational Institution to fill up the said vacant post as early as possible and also since no suitable surplus Junior Clerk was available and no reply had been received to the application seeking permission for publication of advertisement, the Petitioner No. 2 – Educational Institution published the advertisement in two daily newspapers viz. Ratnagiri Times and Prahaar dated 4th December 2023 copies whereof have been annexed and marked Exhibit – C Collectively, whereby, it is noticed that applications for recruitment of the post of Junior Clerk have been invited and the suitable candidates had been called for interview with their respective original documents on 8th December 2023 at 11.00 a.m. at the Petitioner No. 3 – Secondary School.

11. Since the Petitioner No. 1 was having requisite qualification, the Petitioner No. 1 applied for the said post and remained present for the interview on the scheduled date along with several other candidates. After verifying the documents and conducting the interview, School Committee of the Petitioner No.3 – Secondary School finding the

Petitioner No. 1 to be a meritorious candidate and eligible for the said post, selected the Petitioner No. 1 for the said post and passed Resolution No. 3 in the meeting dated 8th December 2023 which is annexed as Exhibit – D to the Petition thereby resolving to appoint the Petitioner No. 1 on the post of Junior Clerk. Pursuant to the Resolution, the Appointing Authority of the Petitioner No. 2 vide appointment letter dated 9th December 2023 (Exhibit – E to the Petition) appointed the Petitioner No. 1 in the post of the Junior Clerk on probation of three years with effect from 9th December 2023. The Petitioner No. 1 also submitted his joining report on 9th December 2023 (Exhibit – F) and the Headmistress of the Petitioner No. 3 – Secondary School allowed the Petitioner No. 1 to join the post.

12. It has been submitted that the Petitioner No. 1 has been continuously working in the said post of Junior Clerk at the Petitioner No. 3 – Secondary School. That, thereafter, the Headmistress of the Petitioner No. 3 – Secondary School on 20th December 2023 submitted the proposal dated 19th December 2023 for individual approval to the appointment of the Petitioner No. 1 along with documents to the Respondent No.5.

13. Mr. Bhavake, learned Counsel has submitted that, it is settled law that if the Respondent No.5 – Education Officer does not communicate

the approval to the application for permission to advertise the vacancy and there has been no communication by the Education Officer with respect to the availability or otherwise of any surplus candidates, the management cannot be expected to leave the post vacant for such time that the State decides to take cognizance of the request of the management and it is logical on the part of the management to presume unavailability of surplus candidates in view of the Education Officer's failure to respond and as such no blame can be foisted on the Petitioners No. 2 and 3 for proceeding with the process of filling up the vacant post.

14. Mr. Bhavake has tendered across the bar a decision of this Court in the case of ***Gramvikas Shikshan Mandal Vs. The State of Maharashtra***[1] in support of his contention.

15. Mr. Bhavake submits that therefore, the Deficiency No.1 as raised by the Education Officer deserves to be rejected.

16. We agree with Mr. Bhavake that after the request for approving the advertisement vide communication dated 20th November 2023, since no response had been received and the individual vacancy had arisen on 30th June 2023 for the sole post of Junior Clerk, there being no Reservation Policy applicable to the said post and there being a

1 Writ Petition (Stamp) No. 4493 of 2022 dated 26th April 2023 (Principal Seat)

requirement to fill up the said post from the General Category, in view of MEPS Act, the Petitioners No. 2 and 3 were, in the absence of any input on the availability or otherwise of any surplus candidates, not at fault to proceed with the process of filling up the vacant post and cannot be expected to leave the post vacant for such time as the State decides to take cognizance of the request of the management. There is also a declaration by the Petitioner No. 2 (at page 68) which is dated 9th December 2023 that there is no surplus candidate. Accordingly, after duly advertising the post as noted above and conducting the interviews, the Petitioner No. 1, being found to be a meritorious and eligible candidate was appointed on 9th December 2023 as a Junior Clerk pursuant to a Resolution dated 8th December 2023, which is evidenced by the various Exhibits annexed to the Petition and also noted as above.

17. It is also not in dispute that the Petitioner No. 1 has been working in the said post of Junior Clerk at the Petitioner No. 3 – Secondary School. Therefore, the Deficiency No. 1 as rightly submitted by Mr. Bhavake deserves to be rejected and is hereby rejected.

18. As regards, the Deficiency No. 2 which refers to Government Resolution dated 6th February 2012, learned Counsel has submitted that, the said deficiency does not specifically indicate which part of the

said G. R. has not been complied with and the said deficiency ought to be rejected as vague and without any substance.

19. We agree with Mr. Bhavake that the said deficiency does not specify any clause or any non-compliance except to say that the procedure prescribed in G. R. dated 6th February 2012 has not been complied with. Nowhere it is stated as to what procedure has not been followed and accordingly, the said deficiency is also rejected.

20. As regards Deficiency No. 3, learned Counsel has submitted that since this is an isolated post, the question of roster would not arise and has been generally listed as one of the deficiencies without any application of mind. Mr. Bhavake is right that since this is an isolated/individual post, the roster is not applicable. Accordingly, this deficiency is also stated to be rejected as a complete non-application of mind.

21. As regards Deficiencies No. 4 and 5 are concerned, learned Counsel submits that since the appointment of the Petitioner No. 1 is of the year 2023, the said two G.Rs dated 23rd October 2013 and 12th February 2015 would not be applicable in view of the G.R. dated 28th January 2019 which has superseded the said two G.Rs.

22. A perusal of the G.R. Dated 28th January 2019 (annexed as Exhibit – L) to the Petition clearly indicates that the said two G.Rs

dated 23rd October 2013 and 12th February 2015 have been superseded by the G.R. dated 28th January 2019. It is the GR dated 28th January 2019 which should be applied to the case of the Petitioners as the process of recruitment as well as the appointment of the Petitioner No. 1 is of the year 2023. Accordingly, the Deficiencies No. 4 and 5 are also not applicable to the case of the Petitioners and are hereby rejected.

23. As regards Deficiency No. 6, Mr. Bhavake has submitted that the same is a clerical requirement to submit one more copy of the list of the Petitioner No. 2 – Institution which deficiency cannot legitimately be a reason to reject the proposal. We agree with Mr. Bhavake.

24. As regards Deficiency No. 7 which is with respect to declaration that there is no litigation pending with respect to the proposal, Mr. Bhavake submits that the said deficiency is also not tenable in view of the declaration dated 9th December 2023 (at page 67) that there is no litigation pending with respect to the proposal and therefore, this deficiency also is not tenable and deserves to be rejected. We have perused the said declaration dated 9th December 2023 (at page 67) and agree with Mr. Bhavake.

25. In view of the aforesaid discussion and also observing that no opportunity was granted to the Petitioners to comply with the said deficiencies, the order dated 30th August 2024 of the Respondent No. 5

– Education Officer deserves to be quashed and set aside and is hereby quashed and set aside.

26. In our view, the appointment of the Petitioner No. 1 in the post of Junior Clerk by the Petitioners No. 2 and 3 has been done in compliance with the obligation under Section 5(1) of the MEPS Act. There is no infirmity in the process followed to fill up the vacant post.

27. Accordingly, this Court is inclined to allow the Petition in terms of prayer Clauses (b) and (c) which read thus:

> *"b] By suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order dated 30-8-2024 passed by Respondent No. 5 – Education Officer whereby the proposal submitted by the Petitioner Nos. 2 and 3 seeking individual approval to the appointment of the Petitioner No. 1 in the post of Junior Clerk at the Petitioner No. 3 – Secondary School is rejected and accordingly, be pleased to further direct the Respondent No. 5 – Education Officer to grant individual approval to the appointment of the Petitioner No. 1 in the post of Junior Clerk at the Petitioner No. 3 – Secondary School w.e.f. 9-12-2023 as Junior Clerk under Shikshan Sevak scheme within the period of four weeks or within any other period which this Hon'ble Court deems fit and accordingly, release salary/honorarium payable to Petitioner No. 1 with its all arrears within further period of six weeks from the date of allotting Shalarth ID or within any other period which this Hon'ble Court deems fit;*

c] By suitable writ, order or direction, this Hon'ble Court be pleased to direct the Respondent No. 4 – Deputy director to allot Shalarth ID to the Petitioner No. 1 and permit the Respondent No. 5 – Education Officer to include the name of the Petitioner No. 1 in Shalarth Pranali within two weeks from the date of granting approval in the post of Junior Clerk or within any other period which this Hon'ble Court deems fit and proper;"

28. Rule is made absolute in terms of prayer Clauses (b) and (c). Writ Petition to accordingly stand allowed and disposed as above.

29. All to act on a copy of this order duly authenticated by the Sheristedar of this Court.

(NEERAJ P. DHOTE, J.) (ABHAY AHUJA, J.)