

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

19 WRIT PETITION NO. 6892 OF 2024

TANUJA UDAY SHIRGAVE

VERSUS

THE STATE OF MAHARASHTRA THR THE SECRETARY SCHOOL
EDUCATION AND SPORTS DEPARTMENT AND OTHERS

...

Mr. Prashant Bhavake, Advocate for Petitioner

Mr. A.A. Naik, AGP for respondent Nos.1 to 5

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CORAM : SMT. VIBHA KANKANWADI &
NANDESH S. DESHPANDE, JJ.

DATE : 08th JUNE, 2026

ORDER :

. Present petition is filed for following reliefs :

“(b) By suitable writ, order or direction, this Hon’ble Court be pleased to quash and set aside the impugned order dated 10.04.2023 passed by respondent No.5 – Education Officer (Exh.-J) thereby rejecting to rant proposal submitted by respondent Nos.6 and 7 seeking individual approval to the appointment of the petitioner in the post of Shikshan Sevak at respondent No.7 – Secondary School and accordingly, be pleased to further direct

respondent No.5 – Education Officer to grant individual approval to the appointment of petitioner in the post of Shikshan Sevak at respondent No.7 – Secondary School w.e.f. 01.03.2023 within the period of four weeks and accordingly be pleased to direct respondent No.4 – Deputy Director to allot Shalarth ID to petitioner within a period of four weeks from the date of granting approval and be pleased to further direct respondent No.5 – Education Officer to release salary / honorarium payable to petitioner with its all arrears within six weeks from the date of allotment of Shalarth ID to petitioner.”

2 Heard learned Advocate Mr. P.S. Bhavake for petitioner and learned AGP Mr. A.A. Naik for respondent Nos.1 to 5.

3 The petitioner has come with a case that respondent No.6 is a minority institution running respondent No.7 – school. Petitioner came to be appointed by adopting due procedure as Shikshan Sevak w.e.f. 01.03.2023, initially on probation for a period of three years. He is continuously in service of respondent No.7 – school. Respondent Nos.6 and 7 had then given proposal for the approval of appointment of petitioner on 05.04.2023, however, it has been rejected by order dated 10.04.2023 by reporting about five defects. Hence, the petition.

4 It has been submitted on behalf of petitioner that respondent No.5 had failed to consider that respondent No.6 – educational institution is

a minority institution in view of Article 30(1) of the Constitution of India and, therefore, the liberties or the privileges those have been granted could not have been considered as objection. In fact, there was no necessity for respondent No.6 to seek permission to fill up the vacant post; yet, by communication dated 01.02.2023 the permission was sought. There was no reply to the said application seeking permission and, therefore, the advertisement was given in the widely circulated newspaper and after the due procedure was adopted the petitioner came to be appointed as Shikshan Sevak. The impugned order dated 10.04.2023 directly rejects the proposal, when in fact, respondent No.5 could have given an opportunity to respondent Nos.6 and 7 to remove the defects.

5 Learned Advocate for petitioner is relying on the decision in **Parbhani Education Society, Parbhani vs. The State of Maharashtra and another** in Writ Petition No.3707 of 2013 decided by this Court (Aurangabad Bench) on 02.09.2013, wherein after considering all the decisions affecting the points it has been held and especially relying on the decision in Writ Petition No.116 of 2012 decided on 16.07.2012 following observations have been made :

“13. Considering the law laid down by the Supreme Court in the judgments cited supra, it is clear that the law which interferes with

a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution would be void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person who is not selected by it as a teacher.

14. The directions issued by the Grievance Committee to the Education Officer in respect of sending surplus teachers for being accommodated by the minority institution and mandate requiring the managements of minority institutions to absorb such teachers and prescription of consequences for breach of the directives issued by the Grievance Committee, is beyond the scope of interference in view of the rights guaranteed to the minority institutions under

Article 30(1) of the Constitution.”

If all these things ought to have been considered on the point that respondent No.6 is the minority institution, there would not have been any objection.

6 Learned AGP submits that all the points have been considered and when the documents were not annexed, respondent No.5 was justified in rejecting the proposal.

7 The first and the foremost fact that is required to be considered here is that from the impugned order it is certain that respondent No.5 has not taken into consideration the minority status of the institution. If that would have been taken note of, then taking into consideration the position of law as well as decisions of the Hon’ble Supreme Court as well as this Court ought to have been considered in deciding the proposal. One more fact that is required to be reiterated, though it has been reiterated by this Court in **Dipak Pralhadrao Nikam vs. The State of Maharashtra and others** in Writ Petition No.15487 of 2025 decided by this Court (Aurangabad Bench) on 07.01.2025, wherein it has been stated that there should not be a direct rejection of the proposals by Education Officers, but they should give an opportunity and should adhere to the principles of natural justice to cure the defects to be given to the educational institution before any decision is taken

and accordingly, taking note of the same directions in Government Resolution dated 10.06.2022 have been issued by the Education Department. Of course, this is a subsequent event as compared to the impugned order dated 10.04.2023 and, therefore, we find that this is a matter where we should set aside the impugned order and relegate the matter for fresh decision on the proposal. Hence, we proceed to pass following order.

ORDER

- i) The writ petition stands partly allowed.
- ii) The impugned order dated 10.04.2023 stands quashed and set aside.
- iii) Respondent Nos.6 and 7 are directed to submit a fresh proposal before respondent No.5 – Education Officer (Secondary), Zilla Parishad, Kolhapur for approval of the appointment of petitioner as Shikshan sevak, within a period of 15 days from today, annexing all the documents including those, which were allegedly not annexed along with the proposal dated 05.04.2023.
- iv) After the proposal is received by respondent No.5, he should undertake the scrutiny of the same within a period of 15 days and if any

shortcomings are found in respect of documents then further 15 days time be given to respondent Nos.6 and 7 to cure those defects and ultimately respondent No.5 to take the decision on the said proposal, within a period of three months from today.

(NANDESH S. DESHPANDE, J.)

(SMT. VIBHA KANKANWADI, J.)

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