

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

WRIT PETITION NO. 6940 OF 2024

1. Shri. Nilambika Basaveshwara
Shikshan Sanstha, Sankh,
Taluka: Jath, District: Sangli,
Through its President/Secretary,
2. New English School, Jalihal (BK),
Taluka: Jath, District: Sangli,
Through its Head Master,
3. Shri. Ravichandra Mahadev Mededar,
Age: 26 Years, Occupation: Service,
R/o. A/p. Jalihal (Budruk), Tal.: Jath,
District: Sangli.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary,
School Education & 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 Somwar Peth, Hatti Mahal,
Ganji Galli, Kolhapur – 416 002.

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5. The Education Officer (Secondary),
Zilla Parishad, Sangli,
Having Office at, Zilla Parishad
Building, Sangli.

...RESPONDENTS

AND

WRIT PETITION NO. 6941 OF 2024

1. Shri. Nilambika Basaveshwara
Shikshan Sanstha, Sankh,
Taluka: Jath, District: Sangli,
Through its President/Secretary,
2. Rajarambapu Patil Madhyamik
Prashala Va Junior College
(Arts & Science), Sankh Taluka: Jath,
District: Sangli,
Through its Head Master.
3. Shri. Annasaheb Siddanna Biradar,
Age: 30 Years, Occupation: Service,
R/o. A/p. Sankh, Taluka: Jath,
District: Sangli.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
Through the Secretary,
School Education & 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 Somwar Peth, Hatti Mahal,
Ganji Galli, Kolhapur – 416 002.
5. The Education Officer (Secondary),
Zilla Parishad, Sangli,
Having Office at, Zilla Parishad
Building, Sangli.

...RESPONDENTS

Mr. Prashant Bhavake, Advocate for petitioners (in W.P.6940/2024 and
W.P. No. 6941/2024).

Ms. Tejas J. Kapre, AGP for Respondent Nos. 1 to 5/State.(in W.P. No.
6940/2024)

Mr. V. M. Mali, AGP for the Respondent/State. (in W.P. No. 6941/2024)

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

RESERVED ON : 09th JUNE, 2026.
PRONOUNCED ON : 12th JUNE, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. Since the facts in both petitions are identical, they are being
disposed of by a common judgment.

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2. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

3. Both petitions filed under Article 226 of the Constitution of India, challenges the order dated 19.06.2023 passed by the respondent No. 5-Education Officer, whereby the proposal submitted by the Petitioner Nos. 1 and 2 for seeking individual approval for the appointment of the petitioner No. 3 on the post of Peon is rejected.

4. The facts, as can be seen from the memo of the petition, are as under:-

a) The Petitioner No. 1 is an educational institution registered under the Maharashtra Public Trusts Act, 1950, and the Societies Registration Act, 1860, and is a linguistic minority educational institution. The said petitioner runs the petitioner No. 2 minority secondary school.

b) In the year 2016, a vacancy of two unaided posts of Peon arose at the petitioner No. 2 school. Therefore, to ascertain whether any suitable surplus Peons are available on record, the petitioner No. 1 approached the office of the respondent No. 5 to ascertain the said fact. It is the contention of the petitioners that this was by way of abundant caution and was not required since the petitioner No. 1 is a minority institution and constitutional protection is guaranteed under Article 30 (1) of the Constitution of India. However, no information was provided regarding any surplus Peons from minority / non-minority school by the respondent No. 5.

c) It is further stated that thereafter the petitioner No. 1 published an advertisement calling upon eligible candidates for recruitment on the said vacant unaided posts in the petitioner No. 2 school. The petitioner No. 3, in pursuance to the said advertisement, applied for the said post and was duly interviewed. Upon being found meritorious, a resolution was passed on 12.08.2016, resolving to appoint the petitioner No. 3 to the said post. Accordingly, an appointment order was issued on 16.08.2016

to the petitioner No. 3 in Writ Petition No. 6940/2024 and on 31.12.2019 in Writ Petition No. 6941/2024.

d) It is further the submission of the petitioners that by way of a Government Resolution dated 06.02.2012, the State of Maharashtra has directed the Education Officers to organize camps for accepting proposals seeking approval to the appointments made in the schools. The petitioners were waiting for such camps to be organized for submitting the proposals, but such camps were not organized for a considerable period of time. However, finally on 09.06.2023, the Headmaster of the petitioner No. 2 school submitted a proposal seeking individual approval to the appointment of petitioner No. 3, but the same was rejected on 19.06.2023. The said rejection is impugned in the present petition.

5. We have heard Mr. Prashant Bhavake, learned counsel for the petitioner, and Ms. Tejas J. Kapre, learned AGP for the respondent No. 1 to 5/State.

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6. The learned counsel for the petitioners submits that the order rejecting the proposal for individual approval is unsustainable in law, in as much as the authority, i.e., the respondent No. 5, failed to appreciate that the appointment of the petitioner No. 3 was done after following due process of law in a vacant unaided post.

7. He further submits that the constitutional guarantee has been granted to the minority educational institution such as that of the petitioner Nos. 1 and 2, and in view of that, the approval ought to have been granted. He further submits that the responder No. 5 failed to appreciate that the appointment of the petitioner No. 3 is made on vacant sanctioned post and there was no new creation of the post.

8. By taking us through the impugned order dated 09.06.2023, he submits that the same is unsustainable in law, having overlooked the binding precedents of this Court in judgment **dated 02.09.2013** in **Writ Petition No. 3707 of 2013**, in the case of ***Parbhani Education Society v. The State of Maharashtra through Education Department, Mantralaya, Mumbai and Anr.*** and also judgment in

the case of *Shital Kumar Patil v. State of Maharashtra through Secretary School Education Dept. Mantralaya, Mumbai and Ors.* in Writ Petition No. 4273 of 2019 with connected writ petitions at the principal seat. Therefore, he submits that the action needs to be quashed and set aside and the approval ought to be granted.

9. Per contra, the learned AGP opposes the contentions advanced by the learned counsel for the petitioners and supports the impugned action. It is his submission that the Education Officer was right in rejecting the proposal for individual approval of petitioner No. 3, as it is the Government Policy that when a sanctioned post falls vacant due to superannuation, the said post are lapsed. He therefore supports the impugned order.

10. We have given our thoughtful consideration to the contentions advanced by the learned counsel for the parties and, with their able assistance, gone through the record. It is a matter of fact that petitioner No. 3 was duly appointed after publishing an advertisement and after conducting interview. It is also an admitted fact from the record that petitioner Nos. 1 and 2 are the minority

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educational institutions and are protected under Article 30(1) of the Constitution of India.

11. An almost identical controversy was considered by Principal Seat of this Court in Writ Petition No. 4273 of 2019 as also connected writ petitions. After taking into consideration the previous judgment of the Aurangabad Bench of this Court in **Writ Petition No. 5547 of 2013** in the case of *St. Francis De Sales Education Society & Ors. v. The State of Maharashtra & Anr.* this Court held that minority institutions are entitled to make appointment of teachers of their choice and such appointments cannot be vetoed until the time surplus teachers are accommodated/absorbed. It further held that subsequent Government Resolutions which are issued after the appointment of the petitioner are not applicable to the concerned employee.

12. The appointment of the petitioner is of 16.08.2016, therefore, the Government Resolutions dated 28.01.2019 and 11.12.2020 would not come in his way, since they are issued subsequent to the date of his appointment. The respondent No. 5 has not appreciated

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this fact and has mechanically placed reliance on the Government Resolution dated 11.12.2020. In our view, the reasoning of the respondent No. 5 as reflected in the impugned order dated 19.06.2023 cannot be countenanced. Furthermore, the respondent No. 5 also erred in recording a finding that the posts on which the petitioner No. 3 was appointed is lapsed since it was an admitted position on record that the said post was a sanctioned post. Thus, the order of the respondent No. 5 is unsustainable in law. We, therefore, pass the following order:-

ORDER

- i) Both writ petitions are partly allowed.
- ii) The order dated 19.06.2023, Exhibit "L", is quashed and set aside.
- iii) The matter is relegated to the respondent No. 5, i.e., the Education Officer (Secondary), Zilla Parishad, Sangli.

iv) The said authority is directed to decide the proposal for individual approval of the petitioner No. 3 in both petitions within four weeks from the date of receipt of the order.

v) In order to avoid any confusion, we direct the petitioners to appear before the said Authority, i.e., the respondent No. 5 on 16.06.2026 and place the order of this Court before the said Authority.

vi) Needless to mention, that the respondent No. 5 should decide the proposal of the petitioner No. 3 for individual approval in accordance with law and in accordance with the observations made by us in the present order.

13. Rule is made absolute in the above terms. Both writ petitions are disposed of.

(NANDESH S. DESHPANDE, J.) (SMT. VIBHA KANKANWADI, J.)