

Shailaja

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11049 OF 2024

Abhijit Eknath Patil	]	Petitioner
versus		
The State of Maharashtra and others	]	Respondents

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Mr. Prashant Bhavake, for Petitioner.

Mr. R.P. Kadam “B” Panel Counsel, for Respondent Nos.1 to 5 – State.

Mr. Urkarsh Desai, for Respondent Nos.6 and 7.

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**CORAM : R.G. AVACHAT AND
AJIT B. KADETHANKAR, JJ.**

DATE : 30th JANUARY, 2026.

ORAL ORDER: [PER AJIT B. KADETHANKAR, J.]:

1. Heard Mr. Bhavake, learned Counsel for the petitioner, Mr. Kadam, learned “B” Panel Counsel for respondent Nos.1 to 5 – State and Mr. Desai, learned Counsel for respondent Nos.6 and 7.

2. Rule. Rule made returnable forthwith. Considering subject matter of the writ petition, we heard the parties for final disposal.

3. Consequent to superannuation of one Mr. A.M. Shaikh, Assistant Teacher who retired on 31st May, 2015, respondent No.6 – School Management appointed the petitioner on the vacant post of Assistant Teacher at respondent No.7 – Navjeevan High School, Jaysingpur. Accordingly, proposal was moved to respondent No.5 – The Education Officer (Secondary) seeking individual approval to the appointment of the petitioner. Since respondents No.5 – The Education Officer did not decide the proposal, the petitioner filed Writ Petition No.12310 of 2022. The Writ Petition was disposed of vide order dated 20th October, 2022 directing respondent No.5 – Education Officer to decide the same on its own merits and, in accordance with law and policy, preferably within six months.

4. Accordingly, vide impugned order dated 5th January, 2023, respondent No.5 - Education Officer (Secondary) turned down the proposal referring to the conditions No.9a, 9b and 9c contemplated in the Government Resolution dated 24th August, 2018.

5. Learned Counsel for the petitioner would submit that the petitioner had admittedly appointed on 15th June, 2015 and the Government Resolution dated 24th August, 2018 has not at all

retrospective effect. As such, the said Government Resolution would not be applicable to the petitioner's appointment. Learned Counsel further submits that the impugned order be quashed and set aside. He would further submit that respondent No.5 – The Education Officer be directed to grant individual approval to the petitioner's appointment.

6. Learned Counsel placed reliance on the judgment of this Court (Aurangabad Bench) in case of **Baliram s/o Pandurang Salunke Vs. The State of Maharashtra and others in Writ Petition No.11172 of 2019.**

Relevant portion of the order reads thus;

“14. It is also a matter of record that as far as said application dated 02.01.2017 is concerned, neither the same has been rejected nor any decision on it has been communicated by Respondent No.2-Education Officer to Respondent Nos.3 and 4 therefore, the ground mentioned in the impugned order that Respondent No.2 has not granted permission for advertisement is unsustainable. One more ground mentioned in the impugned order that the subjects which the petitioner is teaching are not covered in the Government Resolution dated 28.04.2018 has no bearing for a simple reason that, the petitioner has been appointed on 04.03.2017, therefore the said Government Resolution cannot be given retrospective effect and therefore the said ground is devoid of any substance. Admittedly at no point of time the Respondent No.2- Education Officer called upon Respondent No.3- Management to intimate about the vacancy, or communicating to absorb the surplus teacher nor have sent the surplus teacher to be absorbed in Respondent No.4- School therefore it cannot be said that Respondent No.3 has flouted any direction of Respondent No.2 regarding absorption of surplus teacher.

CONCLUSION:

15. Recently, this Court in similar set of facts in the matters of Sumedha Sushil Sawal and Ors. Vs. State of Maharashtra reported in 2024 SCC Online Bom. 975, Vaishali Balkrushna Pawar Vs. State of Maharashtra reported in 2025 SCC Online Bom 1502, Nitin Bhanudas Waghmare Vs. State of Maharashtra & Ors. reported in 2023 3 MhLJ 556 has taken a view that once it is found that the management sought permission to fill up the post and the Education Officer do not communicate either granting or rejecting the said permission within reasonable time, the management cannot be faulted with. This Court has also held that once it is found that the Education Officer failed to inform the Management about the number of surplus teachers waiting for appointments when the petitioner is appointed and the impugned order do not depict that the management was informed about availability of any surplus teacher, in that case it cannot be said that the management have committed any error in issuing an advertisement and filling up the posts.”

7. It is fairly conceded by Mr. Kadam, learned “B” Panel Counsel, that the Government Resolution introduced after the petitioner’s appointment cannot be applied retrospectively to the appointment in question. It is trite and well-settled law that Government Resolutions and the conditions stipulated therein, which are brought into force subsequent to the date of appointment of an employee, shall not be applicable with retrospective effect. Accordingly, the impugned order needs to be quashed and set aside. Hence, we allow the writ petition and pass the following order;

: ORDER :

- (a) Rule is made absolute.
- (b) The impugned order dated 5th January, 2023 passed by the Education Officer (Secondary), Zilla Parishad, Kolhapur is quashed and set aside.
- (c) Respondent No.5 – The Education officer shall grant approval to the petitioner's appointment dated 15th June, 2015.
- (d) Respondent No.5 – The Education Officer shall release salary arrears payable to the petitioner within a period of eight months from the date of communication of this order.
- (e) The petitioner shall not claim interest on the arrears.

8. Writ Petition stands disposed of in the aforesaid terms.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT J.]