

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

WRIT PETITION NO. 7914 OF 2024

Somshekhar Nagesh Horatti  
Versus

...Petitioner

The State Of Maharashtra Through  
The Secretary And Ors

...Respondents

---

Mr. P. R. Yadav, (Through VC), Advocate for petitioner.

Mr. Akshay Shinde (Through VC), Advocate for respondent no.3.

Mr. Vikas Mahadeo Mali, AGP for respondents-State.

---

**Coram :** Madhav J. Jamdar &  
Pravin S. Patil, JJ.

**Date :** April 9, 2026.

**JUDGMENT (PER PRAVIN S. PATIL, J.) :**

**1.** Petitioner approaches this Court with following prayer :

*(b) This Hon'ble Court may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction to Respondent No. 1 and Respondent No. 2 to allow the preference locked by the Petitioner and declare the Petitioner as the Recommended Applicant for the vacant aided post for the subject "Ardhamagadhi" available with Respondent No. 3 and issue necessary circular/direction in this regard within 30 (thirty) days;*

*(c) This Hon'ble Court be pleased to direct Respondent No. 1 and 2 to issue necessary directions to Respondent No. 3 for the appointment of the Petitioner to the vacant aided post of Assistant Teacher for the subject "Ardhamagadhi" available with Respondent No. 3 within (thirty) days;*

**2.** In the present petition, the undisputed facts are that the petitioner has appeared for the Teacher Aptitude and Intelligence Test (for short “TAIT”) 2022 which was conducted on 3<sup>rd</sup> March 2023 for online recruitment of Teachers and secured 78 marks in the said examination. On 25<sup>th</sup> February 2024, respondent no.1 published subject wise advertisement. As per the advertisement except subject Ardhamagadhi (language) the cut off marks were prescribed.

**3.** Petitioner to seek permanent appointment for the subject “Ardhamagadhi”, applied for the post in pursuance of advertisement by respondents under Pavitra Portal scheme. According to him, he being a single person applied and qualified for the post, respondent no.2 ought to have recommended his name to respondent no.3-institute to appoint him on permanent vacant post. But no steps were taken therefore, the petitioner filed the present petition.

**4.** Learned AGP has strongly opposed the petition. According to him, the petitioner’s candidature was considered from the open category, for which a cut-off was prescribed. As the petitioner did not secure the required cut-off marks, he is not eligible for the post. It is further stated that though in the reply affidavit it is stated that petitioner was the only candidate for subject but during the pendency of petition it is revealed that there was one other candidate namely Jitendra Vijay Chougule, who

also appeared in pursuance of advertisement and secured 99 marks. But he being aware that he did not obtain prescribed cut of marks, not raised any grievance in the matter. Therefore, in any case petitioner is not entitled for the relief claimed in the petition.

**5.** In light of the rival submissions, Rules 6 and 9 require consideration. Rule 6 deals with qualification for the post of teachers and details fo Eligibility Test and Aptitude Test for appointment. Rule 9 prescribes procedure for Appointment of staff. The same being relevant is reproduced as under :-

#### **6. Qualifications of teachers and non-teaching staff**

*(1) The minimum qualifications for the posts of teachers and the non-teaching staff in the primary schools, secondary schools, higher secondary schools, junior colleges and junior colleges of education shall be as specified in Schedule 'B'.*

*(2) The Government or the agency authorized by the Government shall conduct the Teachers Eligibility Test for the appointment of teachers or Shikshan Sevaks, for standard I to VIII in the private aided schools, partially aided schools, un-aided schools and schools eligible for grant-in-aid, from time to time.*

*(2A) The Government or the agency authorized by the Government shall conduct the Aptitude Test for the appointment of teachers or Shikshan Sevaks, for standard I to VIII in the private aided schools, partially aided schools, un-aided schools and schools eligible for grant-in-aid, from time to time.*

*(2B) The Government or the agency authorized by the Government shall conduct the Aptitude Test for the appointments of teachers or Shikshan Sevaks, for*

*standard IX to XII, in private aided schools, partially aided schools, un-aided schools and schools eligible for grant-in-aid (excluding self-finance schools), from time to time.]*

*(3) For the appointment of the teachers for standard I to VIII, the candidate who has passed the Eligibility Test shall be eligible to appear for Aptitude Test.*

*(4) The candidate can appear five times for the Aptitude Test for betterment of marks within the age limit prescribed for the post.*

*(5) The marks obtained in the Aptitude Test shall be valid up to the age limit prescribed for the post including relaxation in age limit for the candidates belonging to the Specific Category.*

*(6) The Government shall specify the syllabus and provide the procedure to be followed for conducting the Eligibility Test and Aptitude Test, from time to time.]*

### ***9.Appointment of staff***

*(1) The teaching staff of the school shall be adequate having regard to the number of classes in the school and the curriculum including alternative courses provided and the optional subjects taught therein.*

*(2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee:*

*Provided that, appointments in leave vacancies of a short duration not exceeding three months, may be made by the Head, if so authorised by the School Committee.*

*[(2-A) The management of the private school shall advertise the vacancies for the post of teacher in details of subjects, with Bindunamavali on the online software programme developed by the Government or an agency authorized by the Government in at*

*least one local newspaper having wide circulation in the region, and also notify the vacancies to the Employment Exchange Centre of the District and District Social Welfare Officer.]*

*[(2-B) The advertisement shall be kept open for at least fifteen days before filling of the concerned post. The candidate may apply for vacant post in response to the said advertisement through online process or by making an application in writing giving details regarding name, address, date of birth, educational and professional qualifications, experience with the marks secured in the Aptitude Test.*

*(2C) After completion of the period mentioned in the advertisement, the Education Officer or Deputy Director, as the case may be, shall communicate the names of the candidates, who have passed the Aptitude Test, to the Management through online process in proportion 1:10 for one vacant post. The selection of the candidate shall be made by the school committee on the basis of interview. If the school committee does not select candidate having higher marks in the Aptitude Test, the Management shall record the reasons for the same:*

*Provided that, the Management may also select the candidates who have passed the Aptitude Test directly from the online merit list maintained by the Education Director, without taking interview.*

*(2D) The Management shall publish the names of the selected candidates within five names of the selected candidates to the concerned Education Officer or Deputy Director, as the case may be.]*

*(3) Unless otherwise provided in these rules for every appointment to be made in a school, for [\*\*\*] a non teaching post, the candidates eligible for appointment and desirous of applying for such post shall make an application in writing giving full details regarding name, address, date of birth, educational and professional qualifications, experience, etc., attaching true copies of the original certificates. It shall not be necessary for candidates other than those belonging to the various sections of backward communities for*

*whom posts are reserved under sub-rule (7) to state their castes in their applications.*

*(4) The age limit for appointment to any post in a school shall be as follows, namely:*

*(a) for an appointment to be made to any post in a primary school, a candidate shall not be less than 18 years of age and more than [28] years of age, and in the case of candidate belonging to Backward Classes he shall not be more than [33] years of age:*

*Provided that, upper age-limit may be relaxed in case of women, ex-servicemen and persons having previous experience with the previous permission of the Deputy Director.*

*(b) for an appointment to be made to any post in any school other than primary school, a candidate shall not be below the age of 18 years.*

*(5) A letter of appointment order in the Form in Schedule "D" shall be issued to a candidate appointed to the post. A receipt in token of having received the appointment order shall be obtained from the candidate appointed.*

*(6) Every employee shall within three months of his appointment, undergo medical examination by a registered medical practitioner named, if any, by the Management or otherwise by any registered medical practitioner. The expenses of medical examination shall be borne by the Management. The appointment shall be conditional pending certificate that he is free from any communicable disease and that he is physically fit to be so appointed.*

*[(7) The Management shall reserve 52 per cent, of the total number of posts of the teaching and non-teaching staff for the persons belonging to the Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes as follows, namely:-*

|     |                           |               |
|-----|---------------------------|---------------|
| (a) | Scheduled Castes          | 13 per cent;  |
| (b) | Scheduled Tribes          | 7 per cent;   |
| (c) | De-notified Tribes (A)    | 3 per cent;   |
| (d) | Nomadic Tribes (B)        | 2.5 per cent; |
| (e) | Nomadic Tribes (C)        | 3 per cent;   |
| (f) | Nomadic Tribes (D)        | 2 per cent;   |
| (g) | Special Backward Category | 2 per cent;   |
| (h) | Other Backward Classes    | 19 per cent;  |
|     | Total                     | 52 per cent.] |

*[(7A) to fill up the posts by nomination, as specified in sub-rule (7), the management shall follow the category-wise and percent-wise reservation as provided in sub-section (2) of section 4 of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (Mah. VIII of 2014), and the Bindunamawali specified in Schedule D-1:*

*Provided that, to fill up the post by direct recruitment in Group C and Group D for district-wise cadre in the districts as specified in Schedule D-6, an additional reservation shall be applicable for Schedule Tribe as specified in Schedule D-5:*

*Provided further that, the post of teachers in the Schedule Areas as specified in Schedule D-6 of Thane, Nashik, Nandurbar, Dhule, Jalgaon, Ahmednagar, Pune, Nanded, Amravati, Yavatmal, Gadchiroli and Chandrapur districts shall be fill up from local candidates belonging to the Scheduled Tribes, possessing necessary educational qualifications, as decided by the State Government, from time to time.]*

*[(8) If the posts specified in sub-rule (7) remain vacant after following the procedure specified in sub-rule (2A), the management shall adopt the procedure laid down in sub-rule (9) to fill up the said vacancies.]*

*[(9) the posts specified in sub-rule (7) and clause (a) of sub-rule (10), shall not be filled in by the*

*candidates belonging to the other castes, tribes, categories or classes, than the castes, tribes, categories or class for which the posts are reserved.]*

*[(10) (a) The Management shall reserve 33 per cent of the total number of posts (or vacancies) of Heads and Assistant Heads for the members of Scheduled Castes, Scheduled Castes converts to Buddhism, Scheduled Tribes, Denotified Tribes (Vimukta Jatis), Nomadic Tribes and Special Backward Category as follows, namely:-*

|       |                                                                     |              |
|-------|---------------------------------------------------------------------|--------------|
| (i)   | Scheduled Castes and Scheduled Castes converts to Buddhism          | 13 per cent  |
| (ii)  | Scheduled Tribes including those living outside the specified areas | 7 per cent   |
| (iii) | Denotified Tribes (A)                                               | 3 per cent   |
| (iv)  | Nomadic Tribes (B)                                                  | 2.5 per cent |
| (v)   | Nomadic Tribes (C)                                                  | 3 per cent   |
| (vi)  | Nomadic Tribes (D)                                                  | 2 per cent   |
| (vii) | Special Backward Category                                           | 2 per cent   |
|       | Total                                                               | 33 per cent] |

*(b) [\*\*\*]*

*[(10A) To fill up the posts by promotion, as specified in clause (a) of sub-rule (10), the management shall follow the Bindunamawali as specified in Schedule D-2.*

*(106) To fill up the posts by nomination in smaller cadre, the management shall follow the Bindunamawali as specified in Schedule D-3:*

*Provided that, to fill up the post by direct recruitment in Group C and Group D for district-wise cadre, an additional reservation shall be applicable for the Schedule Tribes as specified in Schedule D-5.*

*(10C) To fill up the post by promotion in smaller cadre, the management shall follow the Bindunamawali as specified in Schedule D-4.]*

**6.** As per Rule 6 of the MEPS Rules, the candidate who is to be appointed as a teacher must possess the minimum qualifications prescribed in Schedule 'B' of the Rules. Such a person is required to appear for an aptitude test, i.e., Teachers Eligibility Test (TET) or Teacher Aptitude and Intelligence Test (TAIT). The Rules also provide that the Government or an agency authorized by the Government may conduct such aptitude tests, and candidates who pass the eligibility test are entitled to participate in the recruitment process.

**7.** Perusal of this Rule shows that it nowhere provides for minimum or maximum qualifying marks for a candidate to be successful in such examination. On the contrary, the Rule permits the candidate to appear five times for the Aptitude Test for improvement of marks within the prescribed age limit, and the marks obtained remain valid upto the age limit prescribed for post.

**8.** Rule 9 of the MEPS Rules, particularly clauses (2-A), (2-B), and (2-C), prescribes the procedure to be followed by the management for appointment of candidate under Pavitra Portal scheme which includes advertisement of post, the manner in which selection is to be done from amongst candidates appeared through advertisement. Ratio of candidates to be forwarded to management who appeared and passed Aptitude Test.

**9.** In the present petition it is not in dispute that on 21st January 2024, the education authorities initiated the recruitment process through the “Pavitra Portal”. As per the advertisement, total 808 posts were notified. It is also not disputed that the post for subject “Ardhamagadhi” was included in the advertisement as vacancy is available in respondent no.3–institution.

**10.** In pursuance of the said advertisement, the petitioner who was possessing the requisite qualification and having passed the TAIT, applied for the post. After completion of the prescribed period, the list of successful candidates was published on 25th February 2024. The subject-wise list shows that post for subject “Ardhamagadhi” is kept vacant by not communicating the name of petitioner to respondent no.3-institute.

**11.** The petitioner therefore addressed a communication dated 26th February 2024 stating that he was the only candidate for the subject and, being qualified, ought to have been appointed. However, there was no response from the respondents.

**12.** Respondent nos. 1, 2 and 4 opposed the petition by stating that the post of petitioner for subject “Ardhamagadhi” was treated from open category. They also relied upon categorical details of number of posts advertised and candidates eligible for recommendation with cut off marks. According to them under category “General-NA”, for 115

advertised post cut off marks were prescribed as “131” marks. Petitioner did not secure minimum marks as required under open category. Secondly, it is stated that MEPS Rules and Regulations do not prescribe a particular reservation for a particular subject. Candidates concerned are recommended for a selection based on the comprehensive consideration of available roster position, availability of subject, marks secured in TAIT examination. According to them recruitment exercise is legally correct as per existing government resolution.

**13.** In our considered opinion, for recruitment of staff in the school, MEPS Act and Rules framed thereunder is a complete code in itself. Government Resolutions and the procedure adopted by Respondent Nos. 1, 2 and 4 cannot override the to Rule 6 and 9 of MEPS Rules. In that view of matter, it will be relevant to verify whether petitioner possess requisite qualification for the post. Whether the post advertised by respondent no.3-Institute was permanent vacant post. And lastly whether the recruitment exercise adopted by Respondent No.1, 2 and 4 was in consonance with Rule 6 and 9 of MEPS Rules.

**14.** The perusal of the record clearly established the fact that petitioner is possessing qualification fo MA (Jainology and Prakrit) and B.Ed. He has passed Teachers Aptitude and Intelligence Test (TAIT), 2022 by securing 78 marks out of 200.

**15.** Respondents on 21st January 2024 issued advertisement of total 808 posts. The advertisement specifically earmarked the vertical and horizontal reservation. In the advertisement at serial No.33, one post was specifically shown for subject Ardhmagadhi (language) prescribing requisite qualification.

**16.** Petitioner who possessed the requisite qualification and appeared in TAIT-2022 applied for the post in response to the advertisement through online process. Petitioner submitted his full details regarding name, address, education and professional qualification, experience, etc. with marks secured in the Aptitude Test.

**17.** It is pertinent to note that his application was accepted through online mode. Petitioner was never communicated that he is not eligible for the post to which he has applied on the basis of marks secured by him in TAIT. Thereafter, subject-wise details of number of posts advertised and candidates eligible for recommendation with cut-off marks for respondent no.3 - Rayat Shikshan Sanstha was published on 25th February 2024. In the said list for subject Ardhmagadhi though it is stated that one post was advertised, no candidate was found eligible for recommendation. So also no cut off marks were prescribed for the said subject.

**18.** In our opinion under the MEPS Rules it is nowhere prescribed cut-

off marks for the post so advertised by management. So also in the advertisement there is no where mentioned that for appointment, candidate should have obtained certain cut-off marks. Therefore, criteria of cut-off marks is totally foreign to the procedure undertaken by Respondents for appointment of candidates in pursuance to advertisement dated 21<sup>st</sup> January 2024.

**19.** Perusal of record shows General merit list (as per TAIT marks) published by respondents. The said list includes the names of 639 candidates applied for various posts. In front of their names, preference number is shown for the subject which they have applied, in light of Rule 9 (2-C) of MEPS Rules. But for subject Ardhmagadhi, there is no selection of any candidate though same was included in the advertisement.

**20.** Respondents did not come with a case that they have conducted Aptitude Test in a particular manner and allotted marks to the candidate on their performance. On other hand it is clear that on the basis of marks obtained by candidates in Eligibility Test (TAIT) selected their candidature for the post.

**21.** Petitioner as per record seems to be only single candidate applied for subject Ardhmagadhi in recruitment exercise. Respondent No.3-Management admitted that one post of Ardhmagadhi subject is lying vacant and having required work load for one post. So also the

advertisement issued by respondent no.3 seems to be in consonance with Rule 9 (2A) which mandates that management shall advertise the vacancies in details of subject.

**22.** In the circumstances respondent nos. 1, 2 and 4 were required to recommend the name of petitioner for subject Ardhmagathi as there was no other candidate applied for post more particularly when no criteria of minimum marks is prescribed for the post in advertisement.

**23.** In respect of contentions of respondent nos. 1, 2 and 4 regarding another candidate, namely Jitendra Vijay Chougule has participated in recruitment exercise and obtained higher marks than petitioner, cannot be accepted as there is no material on record to show any such person applied for the post. So also in reply of respondent nos. 1, 2 and 4 there is no such averment. Moreover same is not reason to reject the selection of petitioner for the post. In the circumstances, it would be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Mohinder Singh Gill & Anr. vs. Chief Election Commissioner, New Delhi & Ors.*, reported in AIR 1978 SC 851, wherein the Hon'ble Supreme Court has held that the validity of an order must be judged on the basis of the reasons stated therein and cannot be supplemented by fresh reasons. Paragraph 8 of the said judgment reads as under:

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16] :*

*“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”*

*Orders are not like old wine becoming better as they grow older.”*

**24.** Accordingly, we pass the following order:

- (i) The petitioner is declared entitled to be considered for appointment to the vacant aided post of Assistant Teacher for the subject “Ardhamagadhi” in respondent no.3–institution.
- (ii) The respondents are directed to comply necessary procedure and communicate the name of the petitioner against the post of Ardhmagadhi in respondent no.3-institute within a period of 15 days from the date of this order.
- (iii) Respondent No.3 is directed to appoint petitioner against the post of junior college teacher on regular post for subject - Ardhmagadhi.
- (iv) Petitioner will be held entitled for all consequential benefits of

service and accordingly his name be included in Shalarth Pranali from the date of appointment order issued by the management.

**25.** Accordingly, the Writ Petition is disposed of in the aforesaid terms.

There shall be no order as to costs.

**[Pravin S. Patil, J.]**

**[Madhav J. Jamdar, J.]**