

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15787 OF 2024

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Sangram Shankar Patil

...Petitioner

Versus

The State Of Maharashtra and Ors.

...Respondents

WITH

WRIT PETITION NO. 14848 OF 2024

Shri. Nikhil Shivaji Shivalangan

...Petitioner

Versus

The State Of Maharashtra and Ors.

...Respondents

.....

Adv. Adv. Prashant Bhavake, for Petitioners.

Mr. Ravi P. Kadam, 'B' Panel Counsel, for the Respondent-State in WP/14848/2024.

Mr. Vikas Mahadeo Mali, learned AGP for the Respondent-State in WP/15787/2024.

Adv. Utkarsh Desai, for Respondent Nos.6 and 7.

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**CORAM : MADHAV J. JAMDAR &
PRAVIN S. PATIL, JJ.**

DATE : 20th APRIL, 2026.

P.C. :

1. Heard Mr. Bhavake, learned counsel for the petitioners, Mr. Utkarsh Desai, learned counsel for the respondent Nos.6 and 7 and Mr. R. P. Kadam, 'B' Panel Counsel for the respondent-State.

2. In the present matters, after hearing the parties we are satisfied that since the reasons given in the impugned order by the Education Officer (Secondary), Zilla Parishad, Kolhapur for rejecting the individual approval of the Petitioners are identical. Hence, considering the submissions of the Petitioners on legal aspect being identical, there is no impediment to decide these Petitions by common order.

3. In the present petitions, the appointment of the Petitioners were made in a Class-IV category by the Management. In both the matters what we observe is that the Petitioner-Management without obtaining the permission of the Education Officer has made appointment against the Class-IV category. To justify the submission the contentions in both the matters of the Petitioner is that they have moved the application to the Education Officer to grant permission to appoint the candidate on the available vacant post but there was no response from the Education Officer and, therefore, they proceeded further to make appointment in the School.

4. It would be relevant to refer the fact of the Writ Petition No. 14848 of 2024, wherein according to the Management, the application was submitted to the Education Officer on 13th March 2013 but there was no response and thereafter immediately on 27th March 2014, an advertisement was issued and then by following the procedure, appointed the Petitioner in the School vide appointment order dated

14th April 2013.

5. In Writ Petition No. 15787 of 2024, the application for permission to fill up the post is of dated 4th November 2011. Surprisingly, the date of advertisement is also 4th November 2011 and immediately thereafter the appointment was made on 19th November 2011. In this petition, one more fact which is required to be noted is that the Resolution of the Management in pursuance of the advertisement is dated 26th November 2011 but the order of appointment is 19th November 2011.

6. In the light of this factual position, the learned AGP has strongly opposed the petition and pointed out that now a days, it is the pattern which is followed by the various Management and same is required to be deprecated in view of the judgment of this co-ordinate bench in the case of **Pooja Yogesh Singh & Anr. vs. State of Maharashtra, through the Secretary and Ors.**¹ wherein the co-ordinate bench in paragraph 28 has observed as under :-

“28. This Court in the case of Shreeya Nitin Sawant v. State of Maharashtra (WP No. 11093 of 2023) after taking note of the submission made in the said Petition and upon perusing the Judgment dated 03/07/2023 delivered by this Court in Writ Petition No. 1423 of 2021 (Rajan Sahadeo Ratul v. State of Maharashtra) observed that the pattern followed by the Managements, as also the conduct of the Education Officer in such matters, is an attempt to bypass the requirements/provisions of the MEPS Act and Rules. This Court in the said order has referred to the pattern followed by the Management/Education Officer in the matters of selection/appointment of teachers, which for the sake of convenience is transcribed herein under:

1 2024 SCC OnLine Bom 3677

2. This pattern is as follows:-

(a) Management informs the Education Officer that there are vacancies and the vacancies have to be filled in.

(b) The Education Officer is requested to grant permission to fill up such vacancies.

(c) The Education Officer conspicuously remains silent.

(d) When the Management sends a reminder to the Education Officer, again the Education Officer conspicuously remains silent.

(e) Thereafter, the Management writes to the Education Officer, informing the latter that the Management desires to proceed to fill up the posts by publishing an advertisement. Yet the Education Officer remains conspicuously silent.

(f) Thereafter, the Management publishes the advertisement in such newspapers or weekly or a fortnightly, which hardly has any circulation, like for example, Dainik Deshodhadi, Dainik Pol Khoi, Katraj Bhogdyatil Kahani, Pakshik Bhartiya Nagrik and, as like in the present case, Dainik Shri Rann Zungar.

(g) None of these newspapers are approved by the State Government vide their various Government Resolutions, the latest being 10th June, 2022.

(h) Thereafter, the Management appoints the candidate.

(i) The Education Officer then completes the formality of refusing the approval.

(j) As expected, the Management and the appointee approach the High Court as the Petitioners in a Writ Petition,

(k) We have always considered the hardships in favour of such appointees and we have granted approvals."

7. In the light of this submission, in our opinion this aspect needs consideration in the present matter because if such pattern is allowed on the part of Management, there are likely chances of making illegal appointments in the School and then approach before this Court and seek protection by claiming that the Education Officer was at fault for not granting the permission, therefore, appointment made by Management be treated as legal and valid.

8. The learned counsel for the Petitioner has stated that this aspect is considered by the various Courts and held that if the Education Officer is found to be at fault then, the employee who was appointed by following due procedure of law, should not be penalized in the matter. The Petitioner in support of his submission has heavily relied upon the judgment delivered by this Court in Writ Petition No.6812 of 2024 decided on 2nd February 2026 in the case of ***Vikas Shikshan Mandal & Ors. Vs. The State of Maharashtra & Ors.*** According to him, this aspect was elaborately considered by this Court and held that in such cases, approval cannot be rejected by the Education Officer. In view of the submission of the Petitioner, we have gone through the judgment of *Vikas Shikshan Mandal* (supra) and verified the factual position. In the said judgment, in paragraph 9.5 it is specifically observed that Education Officer has admitted the fact that the Management has applied for seeking data of suitable surplus candidate and same was not supplied. In the light of this factual position, the order came to be passed by the co-ordinate bench in the matter. The observations made in paragraph 9.5 of the said judgment reads as under:-

“9.5 The deliberate inaction on the part of the concerned Education Officer seriously frustrated the very object of the Government Resolution dated 06.02.2012 itself. The Education Officer has not disputed that the management applied for data of suitable surplus candidate and for publishing an advertisement if no such suitable surplus candidate is available. It is also a matter of fact the Education Officer has even not looked into the application, and yet in an absolute mechanical way raised the objection No.1.”

But in the present case, facts are otherwise. As such with due respect, we are of the opinion that Judgment delivered by this Court in case of *Vikas Shikshan Mandal* (supra) is not applicable in the matter.

9. In the present matter, once we have recorded that there are some doubtful fact about non-obtaining permission of Education Officer, we are of the opinion that in such cases, the Education Officer is required to be directed to make inquiry from his office as to why there was no response from his office to such communication received from the Management. It is also necessary for the Education Officer to verify who is the responsible person in his office for not taking cognizance of such application in the matter and impose the penalty for such misconduct on his part. So also, if Management or School is at fault to create bogus and fabricated documents, then take appropriate action in the matter.

10. In respect of another aspect which is recorded in the impugned order by the Education Officer that there was a ban imposed by the State Government vide its Government Resolution dated 10th June 2010 and subsequent Government Resolution, in our opinion, the Education Officer before relying upon such Resolution, is required to give an opportunity of hearing to the parties and if he is not satisfied after seeking explanation tendered by the Management, then can take

decision by recording cogent reasons to reach such conclusion. But in the present case, the Education Officer without granting any hearing opportunity to the Petitioners passed the impugned order and thereby rejected the proposal.

11. In our considered opinion, looking to the facts and circumstances of the matter, it would be justified to pass the following order:-

ORDER

- (i) The Writ Petitions are partly allowed.
- (ii) The order of Education Officer dated 24th November 2023 in both the petitions are hereby quashed and set aside.
- (iii) The Education Officer is directed to conduct an inquiry into the matter to verify why the applications submitted by respective Management for grant of permission to issue advertisement or seeking permission for Appointment were not decided immediately and submit the report before this Court within 12 weeks.
- (iv) In respect of the applicability of the Resolution of the Management in pursuance of the advertisement dated 26th November 2011, the Education Officer shall grant hearing opportunity to the Petitioners by issuing the show-cause notice and then by seeking their explanation and by conducting hearing, decide the issue of individual proposal of the Petitioners by

recording the cogent reasons.

(v) The Education Officer shall complete all this exercise within a period of 12 weeks from the date of receipt of this order.

(vi) List this matter for reporting compliance after 12 weeks along with Enquiry Report in terms of clause (iii).

12. Both the Writ Petitions stand disposed of in the above terms. No order as to costs.

[PRAVIN S. PATIL, J.]

[MADHAV J. JAMDAR, J.]