

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

WRIT PETITION NO. 19465 OF 2024

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Vishal Tanaji Dhas and Ors.

... Petitioners

Versus

The State Of Maharashtra Thr. Department of
Education and Ors.

... Respondents

.....
Mr. Chetan Patil i/b Mandar G. Bagkar for the Petitioners.

Mr. V.M. Mali, AGP for the Respondent - State.
.....

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

DATE : 22nd APRIL, 2026.

ORAL JUDGMENT : (Per Pravin S. Patil, J.)

1. Heard.
2. Rule. Rule made returnable forthwith with the consent of the parties.
3. By way of present petition, the Petitioner-employee along with the Management, challenged the order dated 27th September 2023, by which the individual approval of the Petitioner against the post of Assistant Teacher has been rejected. It would be relevant to record certain facts in the present matter to decide the controversy in right perspective.

4. In the Petitioner No.3-School one Mr. Sandeep Ramchandra Dhumal, who was working on the post of Assistant Teacher was promoted against the post of Head Master. As a consequence of the same, one post become vacant in the School. The post which falls vacant was/is not receiving any grant-in-aid from the State Government.

5. The Petitioner Nos. 2 and 3 considering the fact that the post on which the appointment is to be made being run on non grant-in-aid basis, without obtaining permission from the Education Officer, issued an advertisement in daily newspaper on 28th July 2015 and called the eligible candidate for the post.

6. The Petitioner No.1 in pursuance of the advertisement applied for the post. The Petitioner Nos. 2 and 3 then by following the procedure as contemplated under the provisions of law, issued the appointment order dated 13th August 2016.

7. It is the submission of the Petitioner Nos. 2 and 3 that initially on 22nd December 2017 the proposal was forwarded for grant of approval to the services of the Petitioner. However, there was no response from the Respondent – Education Office and same remained undecided. The Petitioner No.3 further stated that thereafter on 17th April 2018 and 11th

June 2019, the efforts were made by forwarding the proposal to get approval to the appointment of Petitioner No.1. However, those proposals again remained undecided by the Education Officer.

8. According to the Petitioner No.3, the last proposal which was forwarded and decided by the Education Officer is dated 6th September 2023. By the impugned order, the Education Officer rejected the proposal on the following grounds.

- (i) The Management did not obtain permission as per the guidelines laid down in the Government Resolution dated 6th February 2012.
- (ii) As per Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act), unless the Management verify whether there is any surplus Teacher is available on the list maintained by the Education Officer should not have appointed the candidate. However without verifying this aspect, the appointment of Petitioner No.1 was made in the School.
- (iii) The Management did not follow the guidelines prescribed by the State Government dated 23rd June 2017 i.e. Pavitra Portal.
- (iv) The proposal is not forwarded within a reasonable time. There is a delay of near about 8 years to submit the proposal, and
- (v) Copy of duly approved roster is not enclosed with the proposal.

9. The Petitioner assailed the order of approval on various grounds. The submission of the Petitioner is that the post on which the Petitioner No.1 was appointed was on non-grant in aid class. Therefore, according to him, Section 5, sub-clause (1) and its proviso is not applicable in the matter. According to him, only in the cases where the appointment is made on the post which is receiving grant-in-aid, in that case only the permission of the Education Officer is required to ascertain whether there is any surplus teacher available on the list of the Education Officer.

10. In respect of the scheme of Pavitra Portal which was introduced on 23rd June 2017, the Petitioner stated that appointment of the Petitioner being dated 30th August 2015, the same is not applicable to his appointment. In respect of delay in submitting the proposal, he has pointed out that time and again, the proposal was forwarded to the Education Officer but same was not at all considered by the Education Officer and in respect of the roster, the Petitioner has placed on record the copy of roster which was duly approved by the Assistant Commissioner (Reservation Cell), Pune Division, Pune whereby it is seen that two posts of Scheduled Caste category and two posts of Open category are available in the School and the Petitioner was appointed from Open category.

11. The learned AGP has strongly opposed the present petition. According to him, the mandate of Section 5 and the Government Resolution dated 6th February 2012 are applicable in the matter and making appointment in violation of the same, the order passed by the Education Officer is justified in the peculiar facts and circumstances. Therefore, the learned AGP states that there is no merit in the present petition and the same should be dismissed.

12. In the light of the submissions made by the parties, it would be relevant to refer to Section 5, sub-clause (1) of the MEPS Act, which reads as under:-

“5. Certain obligations of Management of private schools

(1) The Management shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:

[**Provided** that, unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.]”

13. Perusal of this provision clearly states that the permission from the Education Officer is required to ascertain as to whether any suitable person is available as surplus on the list maintained by him for absorption

in the School. However, this provision is applicable only in the cases where the School is receiving grant-in-aid. Because normally the person who is surplus and available in every case is the employee of a School receiving grant-in-aid and because of closure of the School or any other reason, his name is taken up on the list maintained by the Education Officer. Therefore, this obligation is not applicable to the post where no grant is received by the School.

14. This aspect would be cleared by considering the Rule 26 of the MEPS Rules. Rule 26(1) and (2) reads as under :-

“26. Retrenchment on account of abolition of posts

(1) A permanent employee may be retrenched from service by the Management after giving him 3 months' notice, on any of the following grounds, namely:

- (i) reduction of establishment owing to reduction in the number of classes or divisions;
- (ii) fall in the number of pupils resulting in reduction of establishments;
- (iii) change in the curriculum affecting the number of certain category of employees;
- (iv) closure of a course of studies;
- (v) any other bona fide reason of similar nature.

(2) The retrenchment from service under sub-rule (1) shall be subject to the following conditions, namely:-

- (i) The principle of seniority shall ordinarily be observed;
- (ii) Prior approval of the Education Officer in the case of Primary and Secondary Schools or, of the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education shall be obtained by the Management in each case of retrenchment including such cases in which the principle of seniority as proposed to be departed from and a senior member of the staff is proposed to be retrenched when a junior member should have been retrenched, stating the special reasons

therefor;

(iii) The employees from aided schools, whose services are proposed to be retrenched shall be absorbed by the Education Officer in the case of Primary and Secondary Schools or by the Deputy Director in the case of Higher Secondary Schools and Junior Colleges of Education. The order of absorption of such employees shall be issued by registered post acknowledgement due letter, and till they are absorbed, the Management shall not be permitted to effect retrenchment on account of any reasons mentioned in sub-rule (1).”

(emphasis supplied)

Rule 2(iii) made it clear that the employees from aided School whose services are proposed to be retrenched, shall be absorbed by the Education Officer and for that purpose, he has to maintain the list. As such, only the employee from the aided Schools who are declared surplus, only those Teachers are required to be taken on list maintained by the Education Officer.

15. In the light of this legal position, in our considered opinion, by reading Section 5 with Rule 26 of the MEPS Rules, it is crystal clear that while appointing a candidate against the post which is not receiving grant-in-aid, the proviso of Rule 5, sub-clause (1) is not applicable in the matter.

16. It is further pertinent to note that the Government Resolution dated 6th February 2012 which is relied upon by the learned AGP is also for the same purpose i.e. first to absorb the surplus Teacher from the list

of surplus Teacher maintained by the Education Officer. Therefore, the Government Resolution dated 6th February 2012 is not applicable in the matter.

17. In respect of applicability of scheme of Pavitra Portal which was introduced by the State Government vide its Government Resolution dated 23rd June 2017, it would be relevant to mention that the validity of this Government Resolution was challenged before this Court at Nagpur Bench in Writ Petition No.5059 of 2017. This Court has upheld the validity of the Government Resolution dated 23rd June 2017. But the State Government subsequent to the judgment of the co-ordinate Bench, has issued the Government Resolution dated 7th February 2019 by which earlier Government Resolutions dated 23rd June 2017 and 24th August 2018 have been superseded. Therefore, in any case, the Government Resolution dated 23rd June 2017 cannot be made applicable retrospectively in the matter. In this regard, it will be relevant to refer the Judgment of **Suman Shriram Kakad Vs. State of Maharashtra, reported in 2011 Suppl. Bom. C.R. 943**, wherein the co-ordinate bench has observed in para 15 as under :-

“15. It is necessary to note that it is a cardinal principle of construction of statute that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute

sufficient to show the intention of the Legislature to effect existing rights, it is deemed to be prospective. As a logical corollary of general rule, that retrospective operation is not taken to be intended unless that intention was manifested by express words or necessary implication. Another principle flowing from presumption against retrospectivity is that one does not expect rights conferred by the statute to be destroyed by events which took place before it was passed.”

As such, the co-ordinate bench has held by applying the above said principle, that unless the Resolution expressly states that it would apply retrospectively, the same are required to be considered as a prospective effect. In view of this legal position, the Government Resolution dated 23rd June 2017 cannot be made applicable retrospectively in the present matter.

18. In respect of delay, the Petitioner has specifically placed on record, the copies of the proposals which time and against submitted by the Petitioners to the office of Education Officer. The same were duly acknowledged by the Education Office. Hence, the Petitioner No.1 cannot be deprived from his legal right, merely because of non-consideration of the proposals at the relevant time by the concerned Education Officer.

19. In addition to above, it is pertinent to note that the appointment against the non-grant-in-aid post, the entire responsibility of payment of

salary is of the Management. The Education Office is not burdened to pay the salary of such employees. Therefore, considering the fact that Petitioner being appointed in the year 2015 and working on the same post since the date of appointment has become deemed confirm employee of the School as per the provisions of the MEPS Act. Therefore, his appointment cannot be held illegal because of the observation made by the Education Officer in the impugned order.

20. In our opinion, the Education Officer considering the fact that the post on which the Petitioner was appointed is not receiving grant-in-aid, ought to have granted approval to his appointment in the peculiar facts and circumstances of the case.

21. In view of the above, we pass the following order.

ORDER

- (i) This Writ Petition is allowed.
- (ii) The impugned order dated 27th September 2023 passed by the Education Officer (Secondary), Zilla Parishad, Sangli is hereby quashed and set aside.
- (iii) The Education Officer (Secondary), Zilla Parishad, Sangli is directed to grant approval to the appointment of the Petitioner against the non-grant-in-aid post from the date of his appointment

i.e. 13th August 2015.

22. The Writ Petition stands disposed of in the above terms. No order as to costs.

[PRAVIN S. PATIL, J.]

[MADHAV J. JAMDAR, J.]