

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

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7973 OF 2025

District : Sindhudurg

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|----|-----------------------------------|---|-----------------|
| 1. | Vaibhav Shivram Gawas |] | |
| | Aged 33 Years, Occ. Service, |] | |
| | R/at. Sonwal, Post Tervanmedhe |] | |
| | Tal. Dodamarg, |] | |
| | Dist. Sindhudurg – 416 549. |] | |
| 2. | Kasai – Dodamarg Shikshan |] | |
| | Prasarak Mandal, Dodamarg, |] | |
| | Tal. Dodamarg, |] | |
| | Dist. Sindhudurg – 416 549, |] | |
| | Through its Chairman / Secretary. |] | ... Petitioners |

VERSUS

- | | | | |
|----|------------------------------------|---|----------------|
| 1. | The State Of Maharashtra |] | |
| | Through the Secretary, |] | |
| | School Education Department, |] | |
| | Mantralaya, Mumbai – 400 032. |] | |
| 2. | The Education Officer (Secondary), |] | |
| | Zilla Parishad, Sindhudurg. |] | |
| 3. | The Deputy Director of Education, |] | |
| | Kolhapur Region, Kolhapur. |] | ...Respondents |

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Mr. Narendra V. Bandiwadekar, Senior Advocate (Through VC) a/w.
Mr. Sagar Mane & Mr. Rushikesh Jagdale i/b. Mrs. Ashwini
Bandiwadekar, Advocate for the petitioners.

Ms. T. J. Kapre, AGP for respondents-State.

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

DATE : 16th FEBRUARY, 2026.

Oral Judgment (Per J Ajit B Kadethankar)

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, the Writ Petition is taken up for final hearing and disposal.
2. The inaction on the part of the Education Officer, Zilla Parishad, Sindhudurg, has resulted in the second round of litigation to the prejudice of the Petitioners.
3. Mr. Narendra Bandiwadekar, learned Senior Advocate appearing for the Petitioners, submits that the post of Junior Clerk in Petitioner No. 2-School had fallen vacant due to the superannuation of earlier employee namely Mr. Shankar Vasudeo Kesarkar. He submits that the said post was a sanctioned post under the General Category and that Mr. Kesarkar was appointed through the said category. Anticipating the vacancy, the Petitioner-Management approached the Education Officer on 20th February 2014 seeking permission to publish an advertisement inviting applications for filling up the said post. The said application is

annexed at page No. 23 of the Petition and refers to an earlier communication dated 20th December 2013.

4. Learned Senior Advocate submits that despite repeated follow-up, the Education Officer neither responded to the communication dated 20th December 2013 nor rejected the application dated 20th February 2014. In the absence of any response, the Petitioner-Management was constrained to publish an advertisement in the daily “Sindhudurg Samachar.” A copy of the advertisement is annexed at page 24 of the Petition, which clearly indicates that the post was under the General Category.

5. Pursuant thereto, a selection process was conducted in which nine candidates participated. The record of the selection process, i.e., attendance of the participants, their performance etc. are on record. The School Management found Petitioner No. 1 to be the most suitable candidate; and accordingly, it passed a resolution appointing him on the said post. The appointment order dated 1st March 2014 is annexed at page No. 28 of the Petition.

6. Thereafter, on 22nd June 2015, the School Management submitted a proposal to the Education Officer seeking approval to the appointment of Petitioner No. 1.

7. However, vide the impugned order dated 30th June 2023 (annexed at page 35), the Education Officer rejected the proposal on the sole ground that there was a backlog of reservation category and that the appointment was made under the General Category without clearing the said backlog.
8. Learned Senior Advocate for the Petitioners submits that it is a matter of record that the post in question was a sanctioned post under the General Category and that the Petitioner-Management had, well in advance sought permission from the Education Officer to fill up the said post. He submits that the Education Officer never responded to the said application.
9. Learned AGP invites our attention to the affidavit-in-reply filed by Respondent No. 2.
10. We have perused the said affidavit-in-reply. Paragraph No. 4 of the said reply reads thus:

“I say and submit that, one Mr. Shankar Vasudeo Kesarkar was retired on 31.01.2014 and the Head Master had sought permission to fill up the said post but since there was ban on recruitment during the said period he was not entitled for recruitment and without obtaining permission, the Petitioner No.2 published the advertisement in daily newspaper “Daily Ratnagiri Times” and invited the qualified candidates for the said vacant post of Clerk from open category. As Mr. Kesarkar being

retired from his services, candidates invited to fill up the open category post. After following the process of examination and interview, the Petitioner came to be appointed as a Clerk in the Petitioner School from 01.04.2014 in the vacancy which occurred due to retirement of post of open category.” It is clear that the dependent authority has not disputed that the subject matter post belonged to General Category.

11. It is thus clear that the post in question was a sanctioned post under the General Category and that the Petitioner-Management had followed due procedure while filling up the vacancy. The process is demonstrated in the Writ Petition sequentially.

12. The inaction on the part of the Education Officer in not responding to the request for permission cannot be used to defeat the approval proposal. The authority cannot take advantage of its own inaction to raise objections belatedly. No illegality or irregularity in the selection process has been pointed out.

13. Ms. Kapre, learned Assistant Government Pleader, submits that the School Management runs three schools and that there was a backlog of BCC category candidates. She attempts to justify the impugned order by submitting that before making the appointment of Petitioner No. 1, the Management ought to have first cleared the backlog.

14. Ms. Kapre further submits that the insistence on clearing the backlog before filling up a General Category post cannot be said to be erroneous, and therefore the action of the Education Officer in rejecting the proposal is justified. She accordingly prays for dismissal of the Writ Petition.

15. We find that the Education Officer has not disputed that the post in question was a sanctioned post under the General Category and was occupied by Mr. Kesarkar until it felt vacant on account of his superannuation.

16. It is further not in dispute that as early as 20th December 2013, the School Management had approached the Education Officer seeking permission to fill up the said post. Repeated requests were made by the Management.

17. However, for reasons best known to the concerned Education Officer, no decision was taken on the application nor were any objections communicated to the School Management. It is well settled that in such circumstances, if the School Management proceeds to undertake the selection process, such action cannot be invalidated unless fraud, manipulation of record, or misrepresentation of facts is established by the authority.

Admittedly, the present case does not involve any such element.

18. The requirement of seeking prior permission from the Education Officer before filling up vacancies is intended to enable the authority to verify the availability of suitable surplus candidates, status of the post, and to ensure proper implementation of reservation policy. The Education Officer is under an obligation to promptly scrutinize such applications filed by the Managements and communicate necessary directions, including any requirement of clearing backlog, if applicable.

19. In the present case, the concerned Education Officer failed to discharge his statutory duty by not responding to the applications submitted by the School Management. Had the authority responded in a timely manner, the controversy would not have arisen.

20. Such inaction on the part of officers of the Zilha Parishad and the Government not only results in unnecessary litigation but also causes prejudice to the employees, including those who is appointed and also who could have been appointed. The disappointing inaction on the part of such officials in fact in cases even defeat the purpose of reservation policy. We are constrained to observe that failure to act in a timely and responsible manner

undermines the very purpose of the regulatory framework.

21. Having regard to the peculiar facts of the case, particularly that the Petitioner was appointed as far back as in the year 2014 after following a due selection process, we are of the considered view that the Writ Petition deserves to be allowed.

22. We also observe that the superior authorities shall examine cases where Education Officers fail to respond to applications seeking permission to initiate the selection process and take appropriate action against defaulting officers.

23. In view of the above discussion, the objection raised in the impugned order cannot be sustained. Accordingly, the Writ Petition deserves to be allowed and is disposed of with the following directions:

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 30th June 2023 passed by the Education Officer is hereby quashed and set aside.
- (iii) The Education Officer is directed to grant approval to the appointment of Petitioner No. 1 with effect from the date of his appointment and to release the consequential honorarium/salary grants within a period of six weeks from today, in accordance with law.

24. Rule is made absolute in the above terms.
25. The Writ Petition stands disposed of accordingly.

[AJIT B. KADETHANKAR, J.]

[R.G. AVACHAT J.]