IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8850 OF 2026

Seema Vasant Gole ...Petitioner
Versus
The State of Maharashtra & Ors. ...Respondents

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Mr Mujahid Ansari, for Petitioner.

Ms Pooja C. Patil, AGP for Respondents-State.

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CORAM: G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

DATE: 18th AUGUST 2026

P.C.

1. **Rule.** The rule is made returnable forthwith. With the consent of all the parties, the matter is taken up for final hearing.

2. By this Writ Petition, the Petitioner seeks the quashing and setting aside of the Order dated 10.04.2026 passed by Respondent No.4, Education Inspector (Secondary), refusing to approve the Petitioner's appointment as Junior Clerk and the Communication dated 28.05.2025 issued by Respondent No.2, Director of Education.

3. Respondent No.1 is the Secretary, Ministry of School Education Department, Maharashtra; Respondent No.2 is the Director of Education; Respondent No.3 is the Deputy Director of Education; Respondent No.4 is the Education Inspector (Secondary); Respondent No.5 is the Superintendent, Pay Unit; and Respondent No.6 is the N.E.S High School, Bhandup, a recognized

aided minority institution.

4. In brief, the facts of the case are that the Petitioner was appointed as a Junior Clerk in Respondent No.6-School w.e.f. 09.02.2026 against a clear and sanctioned vacant post, as per the revised *Sanchmanyata* dated 07.10.2024. Pursuant to the same, Respondent No. 6-School submitted a proposal dated 27.03.2026 to Respondent No.4-Education Inspector (Secondary), seeking approval for the Petitioner's appointment. By Order dated 10.04.2026, Respondent No.4-Education Inspector (Secondary) refused to process the proposal dated 27.03.2026 and to grant approval for the Petitioner's appointment, on the ground that Respondent No.2-Director of Education, vide its Communication dated 28.05.2025, has directed all the Deputy Directors of Education and Education Inspectors (Secondary) to not approve the appointment of any non-teaching staff nor grant related benefits unless and until a report on sanctioned, additional and vacant posts concerning Online *Sanchmanyata* for the year 2024-25 is submitted and the process of absorption of additional non-teaching staff is completed. It is this Order dated 10.04.2026 and Communication dated 28.05.2025 that are impugned in the present writ petition.

5. Mr Mujahid Ansari, learned Counsel, appeared for the Petitioner and Ms Pooja C. Patil, learned AGP, appeared for the Respondents.

6. Mr Ansari submitted that the present issue is squarely covered by the Judgment and Order dated 23.02.2023, passed by the Co-ordinate Bench of this Court in Writ Petition No. 8174 of 2025. That judgment involved identical facts and held that no such condition can be imposed on the petitioners as a prerequisite

for granting approval and Shalarth ID. He further submitted that executive instructions, such as those issued by Respondent No.2, cannot override statutory provisions governing the approval of appointments against sanctioned vacancies. He also submitted that Respondent No.4, Education Inspector (Secondary), passed the impugned Order without assigning any legal reasons for refusing to process the approval of the Petitioner's appointment, and that this refusal has adversely affected her service benefits and livelihood. Hence, he prays that the writ petition be allowed.

7. Ms Patil vehemently opposed the writ petition and endeavoured to justify the impugned Order. She prayed that the writ petition be dismissed.

8. We have heard both counsel for the respective parties and have perused the record with their assistance.

9. The controversy in the present petition is squarely covered by the authoritative pronouncement of this Court (Nagpur Bench) in the case of ***Vidarbha Minority Education Society and Ors. Vs. State of Maharashtra and Ors.*** in Writ Petition No. 8174 of 2025. In paragraph 7 of the said decision, this Court held as under:

> "7. . . . . The respondent-authorities have also failed to take into consideration the fact that the petitioners are minority institutions exercising their right under Article 30(1) of the Constitution of India. Consequence of the impugned order issued by the respondent no.2 is that the valid exercise of right by the petitioners-minority institutions to recruit non-teaching staff as per the Government Resolution dated 04.04.2025 is being interfered with, coupled with a consequence that such recruitment would be stalled indefinitely. In our considered opinion it is impermissible for respondent nos.

1 and 2 to resort to such an action of imposing condition of absorption of surplus staff on the petitioner-institutions as it directly infringes the fundamental right guaranteed under Article 30 (1) of the Constitution of India conferred on the petitioners-institutions to administer and establish their educational institutions. The State authorities cannot indirectly do an act which cannot directly be done. In other words, when the State has no authority to make appointment of teaching and non-teaching staff in respect of a minority institution, even if aid has been granted, such action of making an appointment cannot be taken by directing absorption of a surplus employee. This is nothing but, making appointment of a staff member in a minority institution. The law confers no such authority and power with the State Government to thrust an employee rendered surplus in other schools to be absorbed by a minority institution. Rule 25 A of the Maharashtra Employees of Private Schools (Conditions of Services) Rules cannot be made applicable to appoint surplus staff in a minority institution unless the minority institution is consulted and concurs for such an appointment. We, therefore have no hesitation to conclude that the impugned communication dated 28.05.2025 issued by respondent no.2 is wholly arbitrary and illegal as the same infringes on the petitioners right guaranteed under Article 30 (1) of the Constitution of India."

10. The above view is also followed in the case of **Young Boys Education and Industrial Circle vs. State of Maharashtra and Ors**.[1] In view of the aforesaid, we are of the considered view that the impugned Order and Communication are liable to be quashed and set aside. We, therefore, pass the following order:

ORDER

i. The Writ Petition is allowed.

ii. The impugned Order dated 10.04.2026 passed by Respondent No.4, Education Inspector (Secondary), is hereby quashed and set aside.

1 (2016) 2 Mh. L.J. 212

iii. The impugned Communication dated 28.05.2025 passed by Respondent No.2, Director of Education, is hereby quashed and set aside.

iv. It is hereby declared that the Respondent Authorities are not vested with the power to impose the condition of absorption of surplus non-teaching staff on the Respondent-School, while granting approval and also allotting Shalarth ID for appointments made in accordance with the Government resolution dated 04.04.2025.

v. The Respondent-Authorities are directed to grant approval to the Petitioner's appointment and allot her Shalarth ID, in accordance with the Government resolution dated 04.04.2025, and grant all consequential benefits ensuing therefrom.

vi. Rule is made absolute in the aforesaid terms.

vii. The Writ Petition is disposed of.

(DR. NEELA GOKHALE, J) **(G. S. KULKARNI, J.)**

SHAMBHAVI NILESH SHIVGAN

Digitally signed by SHAMBHAVI NILESH SHIVGAN
Date: 2026.08.20 16:57:14 +0530