

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8774 OF 2018
WITH
INTERIM APPLICATION NO. 15001 OF 2024

Shri Nitin Jagannath Tarmale & Anr.

... Petitioners

Versus

The State of Maharashtra & Anr.

... Respondents

Mr. Vinayak R. Kumbhar a/w. Mr. Rajendra B. Khaire, Mr. Aniket S. Phapale i/b Ms. Ashwini N. Bandiwadekar for the Petitioners.
Ms. Reena A. Salunkhe, AGP for the Respondent-State.

CORAM : **M. S. KARNIK AND**
S. M. MODAK, JJ.

DATED : **24th FEBRUARY, 2026.**

ORAL JUDGMENT (PER M. S. KARNIK, J.)

1. The challenge in this petition is to the refusal to grant approval to the appointment of petitioner No.1 as Shikshan-Sevak in the aided school of petitioner No.2. It is prayed that respondent No.2-Education Officer be directed to grant approval to petitioner as Shikshan Sevak for 3 years w.e.f. 16th June, 2014 and to release the grant-in-aid for payment of monthly honorarium, together with arrears and the further approval as full time Assistant Teacher w.e.f. 16th June, 2017 and release the grant-in-aid for payment of monthly salary in pay scale applicable to the said post, together with arrears.

2. The brief facts which led to the filing of the petition are as under:-

The petitioner No.2 is the management. It is running aided secondary school by name Shei Vibhag High School, Shei, Post Shere, Taluka - Shahapur, District -Thane (Standard 5 to 10). The Headmaster of said school i.e. Shri Appasaheb Waman Shete retired from service. Hence, senior teacher Shri Chaudhari was promoted to the post of Headmaster. Thus, the post of teacher became vacant.

3. As per the roster of the school, there was a backlog/deficit under the open category as well as the ST category. Petitioner No.2, therefore, made an application on 5th May, 2014 to respondent No.2 informing about the said vacancy with a request to grant NOC to publish advertisement to fill up the said vacancy. On 6th May, 2014 petitioner No.2 made another application to respondent No.2 and requested for surplus teachers to be deputed for absorption in the above vacancy or otherwise to grant permission to publish advertisement in newspaper for filling the said vacancy. There was no response received from respondent No.2, nor any surplus teacher was sent to school.

4. Petitioner No.2 published an advertisement on 16th May, 2014 inviting applications for one post of teacher (Open) with B.A.B.Ed. The interview was to be held on 26th May, 2014. Total 6 candidates appeared for interview, including petitioner No.1. On merits, petitioner No.1 was selected for appointment. Hence, the Managing Committee passed a

Resolution on 10th June, 2014 to appoint petitioner No.1 as Shikshan Sevak from 16th June, 2014. Appointment Order dated 10th June, 2014 was issued to petitioner No.1 appointing him as a Shikshan Sevak w.e.f. 16th June, 2014 for 3 years. Petitioner No.1 joined the school on 16th June, 2014.

5. The Headmaster of school submitted a proposal on 24th October, 2016 to respondent No.2, seeking approval to the said appointment. Respondent No.2 passed the impugned order on 21st February, 2018 and refused to grant approval to the appointment, on the ground that surplus teachers were available at the time of appointment.

6. We have heard learned AGP. Learned AGP supported the impugned order. The stand of the respondents in Affidavit-in-Reply is brought to our notice. It is submitted that the appointment made is not uploaded on the Pavitra Portal. Further, it is submitted that the though surplus teachers which are available, without absorbing the surplus teacher, petitioner No.2 proceeded to appoint petitioner No.1 and therefore the respondent No.2 has rightly rejected the proposal for granting approval to the appointment.

7. We have heard learned counsel for the parties. We have perused the memo of the petition, the impugned order and the Affidavit-in-Reply filed by the respondents.

8. The reason for rejecting the petitioner's proposal for grant of

approval is in paragraph Nos.8 and 10 (wrongly numbered as 10 instead of 9) read thus: -

“8. I say and submit that as per the orders dated 17.6.2016 passed by Hon’ble High Court, Nagpur bench passed in writ petition No. 6606/2015, 6607/2016, the Hon’ble Commissioner Education, Maharashtra State, Pune directed by letter dated 16.01.2017 not to make appointments till 100% absorption of surplus teachers.

10. I say and submit that now all the appointments of teaching staff in all Aided and Unaided schools (Except Minority institutions) are online basis (Pavitra portal) as per the Government Resolution dated 20.6.2018. I say that this is applicable for the post which are vacant (old posts) and post to be vacant in future.”

9. So far as the impugned order is concerned, perusal thereof indicates that the impugned order is only on the ground that despite availability of surplus teachers, the management proceeded to appoint petitioner No.1 and therefore the approval is rejected. There is no reason in the impugned order that the same is rejected as the appointment made by petitioner No.2 is not through the Pavitra portal. In such view of the matter, it is not open for the petitioners to raise the ground of petitioner No.1’s appointment not having been made through Pavitra portal in the Affidavit-in-Reply, when the same is not a reason assigned in the impugned order. Nonetheless, it is pertinent to note that the petitioner was appointed on 5th May, 2014

whereas the GR pertaining to the appointment through the Pavitra portal is dated 20th June, 2018. Said GR dated 20th June, 2018 cannot be made applicable retrospectively as the petitioner's appointment was much prior to the issuance of the said GR. The reason of Pavitra portal is unsustainable.

10. So far as the reason of rejection of the proposal on the ground of availability of surplus teachers is concerned, it is pertinent to note that the management had made an application to respondent No.2-Education Officer to send the surplus teachers for appointment to the said vacant post or otherwise for permission to be granted to advertise the said vacant post. The said post in question was that of an Assistant Teacher. It cannot be expected from the management to keep the post vacant indefinitely. There is no denial by the Education Officer of having received the request made by petitioner No.2 for sending the surplus teachers or publishing the advertisement.

11. In such view of the matter, an application seeking permission to issue an advertisement was made by the management. The advertisement was published. As many as 5 candidates were called from which the petitioner was selected for appointment.

12. It is seen from the Affidavit-in-Reply that the Commissioner of Education, Pune had, by letter dated 16th January, 2017, directed not to

make appointments till 100% absorption of surplus teachers. Again, such a direction could not have been made applicable retrospectively. The proposal, though submitted on 24th October, 2016, the same must relate back to the date of appointment. The petitioner was appointed on a clear vacant post. The appointment of the petitioner was made after publication of an advertisement and seeking permission to fill up the vacant post. The petitioner was duly qualified to be appointed to the said post. In such view of the matter, we have no hesitation in setting aside the impugned order and allowing the petition in terms of prayer clause (b) which reads thus:-

“b) By a suitable writ, order or direction, this Hon'ble Court be pleased to quash and set aside the impugned order [EXHIBIT-F] dated 21.2.2018 issued by the Respondent No. 2 refusing approval to appointment of the Petitioner No. 1 as Shikshan Sevak in the aided Secondary School of the Petitioner No. 2, and accordingly the Respondent No. 2 may be directed to grant approval as Shikshan of Sevak for 3 years w.e.f. 16.6.2014, and to release the grant-in-aid for payment monthly honorarium, together with arrears and the further approval as Full Time Assistant Teacher w.e.f. 16.6.2017 and release the grant-in-aid for payment monthly salary in pay scale applicable to the said post, together with arrears.”

13. The Writ Petition is disposed of.

14. Interim Application is also disposed of.

(S. M. MODAK, J.)

(M. S. KARNIK, J.)