

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14102 OF 2025

Avinash Rajendra Aiwale,
Age: 34 years, Occ. Service,
R/o Room No. 2/2, Suraksha Nagar,
Near kashivishveshwar Mahadev Mandir,
Ghatkopar (West), Mumbai.

....Petitioner

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Versus

1. The State of Maharashtra
Through the Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai – 400 032.
2. The Commissioner of Education,
School Education Department,
Maharashtra State, Pune.
3. The Director of Education,
(Secondary and Higher Secondary),
Maharashtra State, Pune-1.
4. The Deputy Director of Education,
Mumbai Region, Mumbai,
Having Office at, Jawahar Balbhavan,
Netaji Subhash Road, Charni Road,
Mumbai - 400 004.]
5. The Education Inspector (West Zone),
Brihanmumbai, Having office at,
Ismail Yusuf College Compound,
Jogeshwari (East), Mumbai.
6. Society of Franciscan Brothers,
Mount Poinsur, S.V.P. Road,

Borivali (West), Mumbai -400103,
Through President/Secretary/Trustee.

7. St. Francis D'Assisi High School,
Mount Painsur, S.V.P. Road,
Borivali (West), Mumbai -400 103,
Through its Principal/Head Mistress.Respondents

Mr. Prashant Bhavake, Advocate for Petitioner.
Mr. Akhil Kupade i/b Mr. Utkarsh Desai, Advocate for Respondent
No. 6.
Mrs. P. N. Diwan, AGP for the Respondent -State.

**CORAM : RAVINDRA V. GHUGE &
ABHAY J. MANTRI, JJ.
DATE : 20th JANUARY, 2026**

ORAL JUDGMENT (*Per: Ravindra V. Ghuge, J.*)

1. By the present Petition, the Petitioner assails the order dated 27.07.2020 passed by the Respondent No. 5 Education Officer, rejecting the proposal for individual approval to the appointment of the Petitioner on the post of Laboratory Assistant made by Respondent No. 6 Educational Institution, at the Respondent No. 7 Secondary School.

2. The Petitioner has completed his graduation (B.Sc.) and has also passed MS-CIT Examination. Respondent No. 6, is a Christian Minority Educational Institution. Vacancy to the post of Laboratory Assistant arose on account of retirement of the then

Laboratory Assistant Leena Joly on 31.07.2017. The said post of Laboratory Assistant was continuously sanctioned by the office of Respondent No. 5 for the Academic Year 2018-2019. Respondent No. 6 issued an advertisement on 11.12.2019 in the daily newspapers 'The Indian Express' and 'Loksatta', inviting applications from eligible candidates for the post of Laboratory Assistant in the Respondent No. 7 School.

3. The Petitioner applied for the said post. In the interviews held on 23.12.2019, he was selected upon being found to be eligible and meritorious. He was appointed as Laboratory Assistant by Respondent No. 7 School, on 27.12.2019.

4. On 01.02.2020, the Head Master of the Respondent No. 7 School submitted a proposal along with requisite documents to the office of Respondent No. 5, seeking individual approval to the appointment of the Petitioner on the post of Laboratory Assistant. By the impugned order dated 27.07.2020, Respondent No. 5 has rejected the said proposal. Ground for rejection of the proposal is that the appointment of the Petitioner was made before the allotment of post by the Education Officer, as per the Government Resolution dated 07.03.2019.

5. The Petitioner is before this Court challenging the order dated 27.07.2020 passed by Respondent No. 5, and for a further direction to Respondent No. 5 to grant individual approval to the appointment of the Petitioner on the post of Laboratory Assistant and for allotment of Shalarth ID.

6. Respondent No. 5 has opposed the Petition by filing an Affidavit-in-Reply dated 15.09.2025. Respondent No. 5 has reiterated the grounds of rejection as recorded in the order dated 27.07.2020. Reliance is placed on the Government Resolution dated 07.03.2019 and Circulars dated 06.02.2012 & 27.03.2024.

7. Mr. Prashant Bhavake, learned Advocate for the Petitioner has canvassed the following arguments :-

- (a) Respondent No. 6 is a minority institution.
- (b) Appointment of the Petitioner was on a post, which was sanctioned and fell vacant due to the retirement of the then Laboratory Assistant on 31.07.2017.
- (c) Said post of Laboratory Assistant in the staff schedule was continuously sanctioned by Respondent No. 5 for the Academic Year 2018-2019. Reliance is placed on

“Private Secondary School: Non-Teaching Staff: Sanchmanyata Year 2018-2019”, which indicates two sanctioned posts of Laboratory Assistant.

- (d) Reliance is placed on the order dated 10.05.2021 of Respondent No. 5, wherein two sanctioned posts of Laboratory Assistant are shown.
- (e) Recruitment of the Petitioner was after complying with the prescribed procedure. A proposal, complete in all respects, was submitted to Respondent No. 5 for approval.
- (f) Ban imposed on recruitment during COVID-19 pandemic by the Circular dated 04.05.2020, relied upon by Respondent No. 5 in the Affidavit-in-Reply, would not apply to the appointment being prior to 04.05.2020.

8. Per contra, the learned AGP for the State/Respondent relies on the Affidavit-in-Reply dated 15.09.2025 and the reasons given in the order dated 27.07.2020, to oppose the Petition.

9. Records placed before us and more particularly, the letter dated 30.08.2019 at Page No. 38 of the paper-book, read with

the order dated 10.05.2021 at Page No. 72 of the paper-book, issued by Respondent No. 5, indicate that four posts of Laboratory Assistant were sanctioned by Respondent No. 5, along with other posts in so far as the Respondent No. 7 School is concerned.

10. Impugned Order dated 27.07.2020 rejects the approval to the appointment of the Petitioner on the post of Laboratory Assistant on the sole ground of the Petitioner's appointment being made prior to sanctioning of the non teaching posts as required by the Government Resolution dated 27.03.2019. Respondent No. 5 had granted approval to the post of Laboratory Assistant (two posts), which is evident from the letter dated 30.08.2019 of Respondent No. 5 read with the order dated 10.05.2021. Therefore, the impugned order is required to be set aside.

11. The order dated 27.07.2020 is passed on the sole ground that the appointment was prior to the sanctioning of the post. Respondent No.5, by the Affidavit-in-Reply, has made an attempt to supply further reasons for passing the order dated 27.07.2020. The Respondents cannot be permitted to supplant reasons by way of an Affidavit to support the order impugned (See **Mohinder Singh Gill**

& Another v/s. Chief Election Commissioner, New Delhi and Others).¹

12. For the aforesaid reasons, **this Petition is partly allowed.** The impugned order dated 27.07.2020 passed by Respondent No. 5, is quashed and set aside.

13. Respondent No. 5 is directed to grant approval to the appointment of the Petitioner on the post of Laboratory Assistant under the Shikshan Sevak Scheme from the date of sanction of the said post and three years thereafter, as permanent Junior Clerk by issuing a formal order within a period of 45 days. Respondent No. 4 Deputy Director is further directed to grant the Shalarth ID to the Petitioner within 15 days of granting the approval.

14. There shall be no order as to costs.

(ABHAY J. MANTRI, J.)

(RAVINDRA V. GHUGE, J.)

¹ 1978 (1) SCC 405