



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No.4841 OF 2024

1. Amar Prakashrao Dahane,
Aged : 40 years,
Occupation : Teacher,
residing at Aadgoan,
Taluka : Morshi, District: Amravati.

2. Kiran Prakashrao Kale,
Aged : 49 years,
Occupation : Teacher,
residing at 233, Ramnagar
Ward 30 S.T. Depot Road,
Wardha District : Wardha.

: PETITIONERS

...VERSUS...

1. The State of Maharashtra,
through its Under Secretary,
Department of School Education and Sports,
having address at Mantralaya,
Mumbai: 400 032.

2. The Director of (Secondary and
Higher Secondary Education),
State of Maharashtra,
Central Building Pune.

3. The Deputy Director of Education,
Nagpur Division, Nagpur.

4. Yashwant Gramin Shikshan Sanstha,
Wardha Mahadevapura,
District, Wardha-442 001.

: RESPONDENTS

Amendment carried out as
per Court;s order dated
27.3.2025

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Mr. Vipul Bhise with Ms. Sakshi Tiwari, Advocate for Petitioners.
Mrs. Mrunal Naik, Assistant Government Pleader for Respondent
Nos.1 to 3.
Mr. S.K. Bhoyar, Advocate for Respondent No.4.

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CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.
RESERVED ON : **12th JANUARY, 2026.**
PRONOUNCED ON : **21st JANUARY, 2026.**

JUDGMENT : (Per : NANDESH S. DESHPANDE, J.)

1. Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioners by this petition are challenging the communication dated 08.12.2023 issued by respondent No.3, Deputy Director of Education, Nagpur Division, Nagpur, thereby rejecting to approve the appointment of the petitioners working with aided private schools on the ground that the appointments were not made in accordance with the Government Resolution dated 23.06.2017 without conducting the appointment through the Pavitra Portal.

3. The petitioners submitted that they are Teachers appointed and continuously working at Yashwant Mahavidyalaya (Junior College), Wardha, a 100% grant-in-aid institution. The petitioner No.1 completed M.A. and B.Ed. in Economics in 2010, thereafter obtained B.Ed. in Hindi in 2018, and acquired M.A. in Hindi as a second subject in 2021. The petitioner No.2 completed B.A. and M.P.Ed., thereafter obtained B.A. in Sociology in 2018, and completed M.A. in Sociology in 2021. The petitioners

contended that both petitioners acquired the requisite qualification in the second subject within the prescribed period of four years from the date of appointment, strictly in accordance with the Government Resolution dated 01.12.2005.

4. The petitioners submitted that they were appointed as teachers pursuant to an advertisement issued by Yashwant Rural Education Society, Wardha, for filling clear and vacant posts in the Junior College. Prior approval for filling the posts of Economics–Hindi and Sociology–Physical Education was granted by the Deputy Director of Education on 25.02.2016. The petitioners applied for the respective posts, were duly interviewed, selected, and appointment letters were issued in November 2017. The petitioners joined services in November 2017 and have been continuously working since then.

5. The petitioners contended that despite continuous service from 2017, approval to their appointments was not granted. The respondent No.1, by communication dated 12.05.2023, clarified that the appointments were made prior to implementation of the Pavitra Portal and directed the respondent Nos.2 and 3 to consider and grant approval in accordance with the Government Resolution dated 13.03.2018.

6. It is further submitted that, by communication dated

12.10.2023, the Desk Officer, State of Maharashtra, referred to the letter dated 12.05.2023 and called upon the respondent No.3 to take appropriate action in accordance therewith.

7. The petitioners contended that thereafter, respondent No.3, by impugned order dated 08.12.2023, rejected approval to their appointments solely on the ground that the appointments were not made through the Pavitra Portal pursuant to the Government Resolution dated 23.06.2017, despite a clarification and direction issued by the respondent No.1 on 12.05.2023 that the petitioners' appointments were made prior to implementation of the Pavitra Portal and were not governed by the said Government Resolution.

8. It is contended by the petitioners that the present issue is not *res-integra* and has been addressed by this Court in ***Writ Petition No.5245 of 2018 (Shikshan Prasarak Mandal & Ors. v. Director of Education)***, where it was held that approvals cannot be denied solely for not using the Pavitra Portal when it was non-functional. On this ground alone, the impugned order dated 08.12.2023 deserves to be quashed.

9. The petitioners submit that the impugned order mentions incomplete qualifications for the second subject at the time of appointment. However, as per G.R. dated 01.12.2005,

candidates may complete the degree within four years of appointment. In this case, the petitioners completed the second degree within this period and have possessed all required qualifications since 2021. Hence, this remark is baseless and irrelevant.

10. It is further contention of the petitioners that the impugned order also states that the reserved post was filled from the 'Open Category'. The petitioners' posts were from Open Category, and among six other posts, one reserved post was filled from the open category. Despite this, the respondents cancelled the appointments, leaving the seats vacant, as reflected in respondent No.1's letter dated 12.05.2023.

11. The petitioners rely on the judgment in ***Shailesh Deepak Amhare v. State of Maharashtra (Writ Petition No.4097 of 2019***, dated 02.12.2021), wherein this Court held that restrictions on recruitment under G.R. did not apply where no surplus teachers were available and directed initial approval with arrears.

12. Per Contra, the respondent No.3 contends that the Management and School are not parties, and the petition is liable to be dismissed for non-joinder. Learned A.G.P. further contends that permission dated 25.02.2016 was conditional for filling backlog within two months from the date of permission but the process of

appointment started after lapse of 19 months and petitioners were appointed in 2017, over a year later. Also the Deputy Director of Education rejected the proposal for approval on 04.06.2020 on the ground that appointments must be made through Pavitra Portal. Further, it is also noteworthy that Communications dated 29.08.2017 and 27.09.2017 directed management to seek approval through the Director of Education and to use Pavitra Portal. The management appointed the Petitioners directly, contrary to policy.

13. Furthermore, despite repeated re-submissions by the management, approvals for the Petitioners were finally rejected through multiple orders (29.08.2017, 27.09.2017, 26.03.2018, 27.04.2018, and 04.06.2020). Government policy requires all appointments to be made via Pavitra Portal to prevent backdoor entry. This the management and not the Petitioners, is responsible for non-compliance.

14. The respondent No.3 in its additional affidavit has further contended that the petitioners' appointment itself is under cloud with contradictory statements - petitioners claim that appointment was based on permission dated 25.02.2016, while Management's communication dated 19.04.2023 states that 8 posts became vacant in 2015-17 and appointments were made after advertisement published on 04-05.10.2017 without prior

permission.

15. The advertisement published on 04-05.10.2017 failed to mention the permission/NOC, did not specify reserved and Open Category posts, and incorrectly referenced letters dated 31.05.2017 and 09.06.2017 (actual date being 16.05.2017). Neither the Government nor Deputy Director of Education granted permission to fill these posts, confirming appointments were made without proper authorization. Most critically, the approved point roster dated 16.05.2015 and 30.06.2016 reveals that there was a backlog of reserved category posts - 2 SC posts, 6 ST posts, 3 NT(D) posts were vacant as of 31.03.2014. By 30.06.2016, 10 ST posts and 2 NT(D) posts remained vacant. Additionally, the management had already made 16 excess appointments (420 persons against 404 sanctioned posts). The permission dated 25.02.2016 specifically mandated filling backlog on priority basis, yet the management appointed petitioners from open category, bypassing reserved posts.

16. Lastly, the respondent No.3 submits that the judgment in Writ Petition No.5245/2018 is not applicable to the petitioners as those appointments were made on ad-hoc basis pursuant to interim orders during the pendency of Writ Petition No.5059/2017, whereas petitioners' appointments were not made on any such basis. Moreover, the rejection was not solely for non-use of Pavitra

Portal but other factors regarding the appointment which were neglected.

17. Per Contra, the respondent No.4 in its reply has vehemently denied the contentions raised by the respondent No.3 and submits that two posts of full-time Teachers for Physical Education & Sociology and Economics & Hindi at Yeshwant Junior College became vacant due to superannuation. The Society applied for 'No Objection' on 01.09.2015, and permission was duly granted by the respondent No.3 vide communication dated 25.02.2016 for appointment of two Teachers on vacant and permanent basis, thereby contradicting the assertion that appointments were made without permission.

18. Contrary to the allegations of backlog violation, as per the approved Roster for academic year 2015-2016, 7 posts from Open Category in junior college were vacant. Since no Scheduled Tribe candidate was available in response to the advertisement, the respondent No.4 filled all posts from Open Category. The petitioners were appointed on these two vacant and sanctioned posts as per appointment letters dated 03.11.2017 and 20.11.2017 and have been working continuously since then.

19. The respondent No.4 subsequently registered in the PAVITRA PORTAL system and appointed 7 Scheduled Tribe

candidates through the Portal, thereby completing the backlog of Scheduled Tribe candidates. Thus, refuting the allegation of non-compliance with reservation policy, the petitioners' appointments were made on purely vacant and sanctioned posts with due permission from the respondent No.3, and as no Scheduled Tribe candidates were available, the posts were legitimately filled from open category in accordance with law.

20. The controversy in the present matter is to be adjudicated in the backdrop of these facts. The order impugned dated 8.12.2023 primarily gives two reasons for rejection of approval to the appointment of the petitioners. The first reason being that the appointments are made after coming into force of the Pavitra Portal. It is noteworthy to mention that admittedly petitioners were appointed on 28.11.2017 and 3.11.2017. As has been observed earlier by this Court in **Writ Petition No.5245/2018 (Shikshan Prasarak Mandal and others Vs. Deputy Director of Education)**, and other companion Writ Petitions vide its judgment has categorically observed in para 30 as under :

“30. By now, it appears to be incontrovertible that the Pavitra Portal was not functional at least till 20-6-2018. In all fairness, we note that the petitioners are not conceding that the Pavitra Portal was activated on 20-6-2018 and would submit, as was also submitted before the Aurangabad Bench, that it was only in January,

2019, that the Pavitra Portal became operational.”

21. Therefore, in view of this finding, a Co-ordinate Bench of this Court held that during the said period the Pavitra Portal was not functional. No fault can be found with appointments made *de hors* the Pavitra Portal and approvals to the said appointments made could not be rejected on the ground that they were not made through the said Pavitra Portal. The Bench thereafter went on to issue a direction that the proposals shall not be rejected on the said ground when the Pavitra Portal was not functional. Thus, in our view, clinches the first reason for rejection of approval.

22. The second reason as can be spelt out from the impugned order that the Management has advertised the post to be filled from Scheduled Tribes, but has appointed candidates from Open Category and, therefore, there is a backlog of the roster. In this regard, the response of the Management in their reply para 6 reproduced as under is noteworthy.

“6. The respondent no. 4 registered itself in the PAVITRA PORTAL system of State Government. It is specifically submitted that since advertisement filed at page no. 156, the answering respondent no. 4 has not appointed any ST candidates with due approval of respondent no.3. That the answering respondent no. 4 appointed 7 ST candidates through PAVITRA PORTAL system and has completed backlog of ST candidates.....”

23. In that view of the matter, the backlog issue also loses its significance. Thus, the petitioners have made out a case for quashing and setting aside the order impugned.

24. We therefore, pass the following order :

ORDER

(i) Writ Petition is allowed.

(ii) The order/communication dated 8.12.2023 issued by the Deputy Director of Education, Nagpur Division, Nagpur thereby rejecting to approve the appointment of the petitioners is quashed and set aside.

(iii) The respondent No.3 Deputy Director of Education, Nagpur Division, Nagpur is hereby directed to grant approval to the appointments of the petitioners within four weeks from the date of order.

(iv) Rule is made absolute in the above terms.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)