



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 8216 OF 2025

1. Vakil Nabi Sheikh,
Aged about 45 years,
Assistant Teacher, Girjabai Kanya
High School, Tirora, Tah. Tirora,
District – Gondia.

... **PETITIONER**

...VERSUS...

1. State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. Education Officer (Secondary),
Zilla Parishad, Gondia, Tah. And
District – Gondia.
3. Tarachand Khadse Magsvargiya
Shikshan Prasarak sanstha,
Nagpur, Through its President,
R/o. Priyadarshani Colony, Near
R.T.O., Nagpur, Tah. and District
- Nagpur.
4. Girjabai Kanya High School,
Tirora, Through its Head Mistress,
Near Govt. Sub District Hospital,
Tirora, Tah. Tirora, District -
Gondia.

...**RESPONDENTS**

Mr. I.N. Choudhary, Advocate for petitioner.
Mrs. H.S. Dhande, AGP for respondent Nod.1 and 2/State.
Mr. S.S. Tambulkar, Advocate for respondent Nos. 3 and 4.

**CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.**

RESERVED ON : 21st APRIL, 2026.
PRONOUNCED ON : 04th MAY, 2026.

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

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

2. The present petition seeks a direction to the respondent No. 2 - Education Officer (Secondary), Zilla Parishad, Gondia, to modify the approval order dated 20.01.2021, as it was issued in a phase-wise manner instead of granting 100% grant-in-aid. It further seeks a direction to the said respondent to release 100% salary on a grant-in-aid basis to the petitioner w.e.f. 16.12.2019 to 15.12.2023 for the post of Assistant Teacher and to making necessary corrections in the Shalarth Pranali in the interest of justice.

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3. The facts as can be stated from the petition are as under:

a) That, the petitioner is a duly qualified person having degree of B.A., M.S.W., and B.Ed, and, being so qualified, he applied for the post of Assistant Teacher with the Respondent No. 4 and was accordingly appointed on 09.10.2012. Thereafter, on 31.12.2012, respondent No. 2 granted approval to his appointment, and on 23.12.2014, granted approval to the continuation of the petitioner.

b) On 30.08.2019, the petitioner made an application to respondent No. 2 through the respondent No. 4, thereby requesting that he be appointed in the aided section as one of the Assistant Teachers in place of a teacher who had superannuated. Even after the Government Resolution dated 28.06.2016 and, more particularly, Condition No. 3 of Clause 3, it is obligatory upon the Management to appoint the senior-most teacher working in the unaided school by transfer to the said school run by the same Management on a vacant post arising due to superannuation. Since the same was not done, the petitioner filed a writ petition before this Court bearing Writ Petition No. 6685/2019, seeking a direction

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to respondent Nos. 3 and 4 to appoint the petitioner on vacant post of Assistant Teacher in aided section by transfer.

c) Vide order dated 01.10.2019, this Court directed the respondent Management to forward the proposal of the petitioner in terms of Government Resolution. Finally, on 02.01.2020, respondent No. 2 granted approval to the transfer of the petitioner from the unaided section to the aided section of the respondent – school. However, since the approval was cancelled without any legal basis, the petitioner was again constrained to approach this Court by filing a Writ Petition No. 5180/2021, which was allowed by this Court on 07.09.2022. In pursuance to the said order, the Deputy Director of Education conducted a hearing on 12.10.2022, whereby the earlier approval orders dated 02.01.2020 and 20.01.2021 were maintained. It is the contention of the petitioner that he is working in aided section of respondent No. 4 school since 16.12.2019, but due to phase-wise approval of grant-in-aid, he is being put to serious financial hardship.

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4. We have heard Mr.I.N. Choudhary, learned counsel for the petitioner, Mrs. H.S. Dhande, learned AGP for the respondent Nos. 1 and 2, and Mr. S.S. Tambulkar, learned counsel for the respondent Nos. 3 and 4.

5. It is the contention of the learned counsel for the petitioner that the action of the respondent No. 2, to the extent of releasing the salary of the petitioner on a grant-in-aid basis in a phase-wise manner, is totally dehors the judgment of this Court passed from time to time. The contention of learned counsel for the petitioner is that respondent No. 2 ought to have appreciated that the appointment of petitioner in aided school came to be granted in phase-wise manner by respondent No. 2 relying upon circular dated 28.06.2016, but this Court held that such an approval in a phase-wise manner cannot be granted. It is, therefore, his submission that, in view of the settled legal position, the phase-wise approval is totally unsustainable in law.

6. The learned counsel for the petitioner relies on judgments of this Court in the case of *Shri Bhupendra Harishchandra Bhusari and*

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Anr. Vs. The State of Maharashtra and Ors. in Writ Petition No. 2779 of 2021, in the case of *Vivek Jyoti Shikshan Sanstha, Ranera, Through its Secretary and Ors. Vs. State of Maharashtra and Anr.* in Writ Petition No. 7651 of 2023 and in the case of *Ashish Kuwarlal Bisen Vs. State of Maharashtra and Ors.* in *Writ Petition No. 5971 of 2024.*

7. Per contra, the learned AGP for the respondent/State, supports the impugned order. It is the submission of the learned AGP that the issue regarding grant of 100% salary at the time of transfer was not raised by the petitioner at the time of issuance of modified approval order dated 20.01.2021, and therefore he cannot be permitted to agitate the issue now. As far as the judgments of this Court referred to by the learned counsel for the petitioner, the submission of the learned AGP is that the said judgments were delivered subsequently to the issuance of the modified transfer order, and therefore the ratio laid down in the said judgments is not applicable to the petitioner's casem as the transfer of approval was accorded to the petitioner w.e.f. 16.12.2019. In nutshell, the learned AGP supports the impugned order.

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8. We have considered the contentions canvassed by the learned counsels for the respective parties. We have also gone through the impugned order dated 20.01.2021. An identical controversy fell for consideration of this Court in Writ Petition No. 2779 of 2021, wherein, by relying on earlier judgments of this Court in ***Sandhya D/o. Balkrushna Teli and Ors. Vs. State of Maharashtra and Ors.***, reported in 2021 (4) Mh.L.J. 465 and ***Sandip S/o. Dilip Thorat Vs. The State of Maharashtra and Ors.***, reported in 2022 (1) ALL MR 322, this court held that approval in a phase-wise manner cannot be granted. The subject matter in the present case is also identical, it is an admitted fact on record that the transfer of the petitioner has been approved by the Deputy Director of Education, which is indicative of the fact that the said authority had no doubt about the qualifications of the petitioner, roster, and seniority. Despite having satisfied, the authority granted the approval on grant-in-aid post in a phase-wise manner, which cannot be countenanced. The said judgment has also been relied by this Court in Writ Petition No.7651 of 2023, as also in the case of ***Ashish Bise*** referred to supra. All these judgments have been considered, and the earlier ratio has been followed. Therefore, it can safely be inferred that

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grant of phase-wise approval by relying upon the Government Circular dated 28.06.2016 is not permissible. In that view of the matter, the action of the respondent cannot be sustained. We, therefore, pass the following order:

ORDER

- i) Writ Petition is allowed.
 - ii) Respondent No. 2 – Education Officer (Secondary), Zilla Parishad, Gondia, is directed to modify the approval order dated 20.01.2021,
 - iii) We further direct the said respondent to release 100% salary on grant-in-aid basis to the petitioner w.e.f. 16.12.2019 to 15.12.2023, for the post of Assistant Teacher and also to make necessary correction in Shalarth Pranali.
9. Rule is made absolute in the aforesaid terms, and the Writ Petition is disposed of.

(NANDESH S. DESHPANDE, J.)

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

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