

2023 SCC OnLine Bom 1321 : (2023) 4 Bom CR 298

In the High Court of Bombay
(BEFORE G.S. PATEL AND NEELA K. GOKHALE, JJ.)

Rajan Sahadeo Ratul and Another ... Petitioners;

Versus

State of Maharashtra, Through the Secretary,
School Education Department and Another ...
Respondents.

Writ Petition No. 1423 of 2021

Decided on July 3, 2023, [Reserved on : 22nd June 2023]

Advocates who appeared in this case :

For the Petitioners: Mr. Narendra Bandiwadekar, for the Petitioners.

For the Respondents-State: Mr. VM Mali, AGP.

The Judgment of the Court was delivered by

NEELA K. GOKHALE, J.:— Rule. The respondent has filed its Affidavit in Reply. Heard. By consent of parties, rule made returnable forthwith.

2. The present matter is covered by a recent decision of this Court in the matter of *Gramvikas Shikshan Mandal v. State of Maharashtra*¹ What is most surprising is that the Deputy Director of Education, Kolhapur region, Respondent in the earlier matter is the very Respondent in the present matter. Our finding was that if the Government has failed to nominate any candidate out of the surplus candidates for filling up a vacancy and has also failed to communicate with the Management, the post cannot be allowed to remain vacant for an undetermined period. In terms of the said finding, the Education Officer was directed to grant the requisite approval to the employee in the earlier matter.

3. Despite the previous decision, the Education Department of the same region has persisted in continuing its inflexible approach and has repeated itself over again. This is unacceptable and we deprecate the lackadaisical attitude adopted by the Education Department of the Kolhapur region. We will deal with this later in the present judgment.

4. The 1st Petitioner is an employee of the 2nd Petitioner Management. The 2nd Respondent is the Deputy Director of Education, Kolhapur region of the 1st Respondent-State. The Petitioner assails the order dated 18th March 2020 of the 2nd Respondent refusing to grant approval to the appointment of the 1st Petitioner as 'Shikshan Sevak' in the junior college of the 2nd Petitioner. There is also a prayer for releasing the grant-in-aid for the payment of monthly honorarium to

the 1st Petitioner.

5. Facts leading to the challenge are that upon the superannuation of one permanent teacher Ramchandra Ramakant Khanolkar on 31st July 2018, a vacancy arose in the sanctioned post of a Full Time teacher for the subjects of Marathi and Political Science. In pursuance of the mandate of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act"), the school enquired about availability of surplus candidates from the 2nd Respondent. Receiving neither a reply nor a surplus candidate nominee for appointment, the school commenced the procedure to fill up the vacancy. An advertisement was issued, interviews were held, an examination was conducted and finally the 1st Petitioner, having secured highest marks amongst other candidates, was appointed on the post, pursuant to a resolution passed by the Management. The 1st Petitioner thus, joined service as 'Shikshan Sevak' and commenced the probation period on 18th June 2019.

6. The school then submitted the required proposal to the 2nd Respondent for approval of the Petitioner's appointment as 'Shikshan Sevak' on 10th January 2020. Not surprisingly the 2nd Respondent by order dated 18th March 2020 rejected the proposal on the ground that the procedure of obtaining prior approval was not followed. It is this refusal order that is assailed in the present petition.

7. Mr. Bandiwadekar, learned Senior Counsel appearing for the Petitioner, has brought to our attention several decisions of this Court on similar issues, in addition to the decision of this Court in matter of *Gramvikas Shikshan Mandal* (supra), to which we have referred in paragraph 1 of this judgment. The decisions relied upon by Mr. Bandiwadekar are as follows:

Sr. No.	Writ Petition No.	Name of Parties	Date of Decisions
1	WP 13485/2016	<i>Rekha Vithal Said v. The State of Maharashtra</i>	16 th July 2018 (SC Gupte J.)
2	WP 1312/2017 with WP 1313/2017 with WP 1314/2017 with WP 1315/2017 with WP 1316/2017 with	<i>Pallavi Shashikant Dhotre v. The State of Maharashtra Mangal Sarjerao Mali v. The State of Maharashtra. Nandu Baliram</i>	27 th June 2018 (SC Gupte J.)

	WP 1319/2017	<i>Sonawane v. The State of Maharashtra Swarupa Shantanu Joshi v. The State of Maharashtra Dhanashri Sudhakar Gujare v. The State of Maharashtra Sonali Shivaji Kshirsagar v. The State of Maharashtra</i>	
3	WP 1317/1017	<i>Chinmay Sadashiv Walwadkar v. The State of Maharashtra</i>	28 th June 2018 (SC Gupte J.)
4	WP 6744/2018	<i>Vikram Vilas Mane v. The State of Maharashtra</i>	14 th October 2020 (Prithviraj K. Chavan J.)
5	WP 4232/2016	<i>Anant Kamlakar Joshi v. The State of Maharashtra</i>	17 th October 2016 (SV Gangapurwala & KL Wadane JJ)

8. Mr. Bandiwadekar contends that even in the case of the present Petitioners, the 2nd Respondent failed to convey to the school that the permission for selection process cannot be granted or that it has been refused for any reason. Similarly, there was no communication at all from the 2nd Respondent regarding availability of surplus teacher of required qualifications and the required reserved category in the list of surplus teachers maintained by his office. He thus points out that it is only after expiry of more than seven months, in the absence of a response of any kind, that the Management proceeded with selection procedure. Thus, Mr. Bandiwadekar canvasses that there is nothing unlawful in the appointment of the 1st Petitioner and the impugned order of refusing approval cannot be sustained.

9. Mr. VM Mali, learned AGP for the State, endeavours to persuade us that the Management was in contravention of Government Resolution dated 6th February 2012 which mandated a 'No Objection' to be taken from the State Government prior to commencing of a selection procedure for filling up any post. He further relies upon a subsequent Government Resolution dated 23rd June 2017 by which according to Mr. Mali, the Government had introduced a transparent selection process for appointing teachers in all schools through a 'Pavitra Portal'. He thus, prays for dismissal of the Writ Petition.

10. Heard both sides and perused the documents on record. In the previous decisions relied upon by Mr. Bandiwadekar, this Court has reiterated time and again that when the school Management informs the Education Department about a vacancy in its school seeking the latter's permission for appointment, the Education Officer is expected to either forward names of suitable persons from the list of surplus teachers maintained by the Department or if no surplus teacher is available for absorption, permit the Management to appoint the teacher following regular appointment procedure. When the Education Officer does neither, the School Management is not expected to carry on with the vacancy awaiting a response from the Department indefinitely. This Court has thus directed the Education Department to grant approval to appointments made by the Management in such cases and disburse the honorarium as per Rules. The decisions of the learned Bench of coordinate strength of this Court are binding on us.

11. We have also gone through the Government Resolutions ("GRs") dated 6th February 2012 as well as 23rd June 2017, relied upon by Mr. Mali. The Department points to the duties cast upon the Management, as enumerated in the GR laying down the procedure to be followed by the Management in the selection process. Unfortunately, the Department omits to act in aid of its own obligations detailed in the very same GR. The GR specifically casts a duty on the Department to nominate a surplus candidate to fill up a vacant post as soon as the Management informs the Department of a vacancy required to be filled. The GR specifies that the Department must discharge its obligation promptly and immediately upon receiving a request from the Management. The Department cannot selectively point to the duties of the Management without first performing its own duty and refuse approval on that ground.

12. It is seen from the record of the present case that the Management has been prompt in processing the provisions of the MEPS Act and rules made thereunder. It is only when no surplus candidate was nominated by the Department that the Management proceeded to appoint the 1st Petitioner after following the selection process. Despite the settled legal position, consistent decisions of this Court on this

issue and directions in a recent matter to the Education Officer of the very same Kolhapur region, the Department has failed to respond with alacrity to act in conformation with the provisions of the MEPS Act and the decisions of this Court. It is necessary that the Department reconfigures its internal functioning to act in aid of the provisions of law, the various GRs issued from time to time to bring about the desired result and ensure that all stakeholders in the appointment mechanism work in tandem with each other.

13. The 1st Petitioner is working in the school since 17th June 2019. There is no blemish on his performance. The Management is well within its rights to commence the selection process in the absence of any response from the Respondents. No lapse has been pointed out by the Respondents in respect of the selection procedure.

14. In view of above, the rejection letter dated 18th March 2020 is quashed and set aside. The 2nd Respondent is directed to grant the requisite approval to the appointment of the 1st Petitioner as 'Shikshan Sevak' from the date of his appointment and include his name in the Shalarth ID within a period of two weeks from the date of this order.

15. Rule is made absolute in terms of prayer clause (b).

16. We have noted the earlier decision of this Court in the matter of *Gramvikas Shikshan Mandal* (supra) in which the Education Department of the very same Kolhapur region has already suffered an adverse decision on the same ground. The decisions of this Court have been ignored resulting in multiple litigations on the same issue. We make it clear that this is the last time we will refrain from making an order of costs. If officers of the government continue to brazenly ignore orders of this Court, we will, in future, start imposing costs personally on the officers concerned.

¹ Writ Petition (St) No. 4493 of 2022, decided on 26th April 2023.