



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7130 OF 2023

1. Mohammad Shabir Abdul Aziz,
Aged about 44 years, Occ.- Service,
R/o Shirpur (Jain), Tq. Malegaon,
District - Washim

... **PETITIONER**

...VERSUS...

1. Shahid Abdul Hameed Bahu Udeshiya
Sanstha, Mehkar, District – Buldhan.
Through its President,
2. Pir Mohammad Urdu High School,
Shirpur (Jain), Tq. Malegaon,
District – Washim.
Through its Headmaster,
3. Education Officer (Secondary),
Zilla Parishad, Washim.
4. Shahid Abdul Hamid Bahuddeshiya
Shikshan Sanstha, Shirpur Jain Tq,
Malegaon, Distt. Washim, through its
Secretary C/o. Phir Mohammad Urdu
Secondary an Higher Secondary
School, Shirpur Jain, Tah. Malegaon,
District Washim.

... **RESPONDENTS**

Mr. H.A. Deshpande, Advocate for petitioner.
Ms. H.N. Jaipurkar, AGP for respondent No. 3/State.
Ms. Preeti Gwalani h/f Shri J.B. Gandhi, Advocate for respondent No. 2.
Mr. U.J. Deshpande, Advocate for respondent No. 4

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

**RESERVED ON : 17th APRIL, 2026.
PRONOUNCED ON : 08th 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 challenges the order dated 22.11.2022 passed by respondent No. 3 - the Education Officer, by which the said authority has rejected the request of the petitioner for absorption and salary. It further seeks a direction to respondent Nos. 1 and 2 to forward a correct proposal seeking approval to the appointment and service of the petitioner.

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

a) The petitioner was in employment with the respondent No. 2, and his services came to be terminated on 05.11.2007. The

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petitioner approached the School Tribunal, wherein a compromise was arrived at between the parties, resulting in disposal of the appeal on 03.10.2019 in terms of the said compromise. As per the said compromise, the petitioner was reinstated in service and he gave up the claim of back wages. Thereafter, steps were taken to seek approval to the petitioner's appointment. The petitioner himself, on 24.11.2019, issued a communication to the Education Officer and sought grant of approval to his appointment. However, the Education Officer, vide order dated 28.10.2020, refused to grant approval by assigning various reasons.

b) This prompted the petitioner to approach this Court by filing Writ Petition No. 4989 of 2021, which was disposed of by this Court vide order dated 11.10.2022. This Court, on a ground that the petitioner was not heard while passing the impugned order, relegated the matter to the Education Officer with a direction that the petitioner would be entitled to file all relevant documents, and the Education Officer would decide the entitlement within four weeks.

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c) After passing of the said order, the Deputy Education Officer conducted a hearing on 18.11.2022, and submitted all the documents in support of his claim. However, it is submitted by the petitioner that only a farce of a hearing was conducted, and no sufficient or reasonable opportunity was granted to the petitioner. Thereafter, the Education Officer vide order dated 22.11.2022, passed the impugned order, thereby rejecting the claim of the petitioner. It is this order which is impugned in the petition on various grounds, amongst others.

4. We have heard Mr. H. A. Deshpande, learned counsel for the petitioner, Ms. H.N. Jaipurkar, learned AGP appearing for the respondent No. 3/State, Ms. Preeti Gwalani h/f Shri J.B. Gandhi, learned counsel for the respondent No. 2, and Shri U.J. Deshpande, learned counsel for the respondent No. 4.

5. The learned counsel for the petitioner, by taking us through the record of the matter, submits that the order of this Court passed earlier was not complied with in its letter and spirit, and only a show of hearing was done. He further submits that the said exercise

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has resulted in a breach of principles of natural justice and depicts non-application of mind. He further submits that, in the present case, the hearing was granted before the Deputy Education Officer, and the impugned order passed by the Education Officer, and therefore the same is also in violation of the principles of administrative law. It is his submission that the petitioner was neither supplied with the documents submitted by the respondent management nor permitted to peruse the said documents during the course of the hearing. He, therefore, submits that the order of the Education Officer cannot be sustained in law and therefore is liable to be set aside.

6. Per contra, the counsel for the respondents as also the learned AGP opposes the contentions of the learned counsel for the petitioner. They submit that the order itself speaks that the hearing was granted and the documents filed by the parties were pursued. He further submits that the appointment of the petitioner was totally illegal from its inception, and therefore there is no question of granting approval to him. The learned AGP also states that whatever compromise was reached between the parties before the Shubham

School Tribunal is not binding on the Education Officer, since admittedly the Education Officer is not a party thereto.

7. We have considered the contentions canvassed by the learned counsels for the respective parties and also gone through the record, which includes the impugned order dated 22.11.2022. As can be seen from the impugned order, and as is observed therein, no documents have been filed by the respondent - Management regarding the appointment of the petitioner. The said order also observes that the compromise reached between the parties is not binding on the Education Officer since it is not a party to the said compromise. It is also seen that approval is never granted to the appointment of the petitioner by the Education Officer. It, therefore, concludes that there is a conflict between the Management and the petitioner regarding his appointment. It has, therefore, went on to record a finding that the request of the petitioner cannot be entertained and has proceeded to the reject the same.

8. However, from the documents filed by the petitioner in the present petition, it is seen that he has filed various documents,

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which includes staff approval for the academic session 2000-2001, which show that there was one sanctioned post of Peon. Furthermore, the name of the petitioner appears in the list of employees of the school from the year 2002 onwards. Furthermore, there are documents to show that the petitioner was appointed in pursuance of the advertisement dated 01.06.2004. Additionally, there are documents to show the name of the petitioner in the list of employees till 2005-2006. However, his name seems to be missing thereafter. An experience certificate issued to the petitioner by the respondent school on 13.10.2006, stating that he is working on a permanent post of Peon from 20.06.2000, is also filed on record.

9. All these documents and the alike documents showing that the petitioner was appointed by following the due process of law have not been considered by the respondent - Education Officer, nor are they reflected in the impugned order. We are, therefore, of the considered opinion that only on the basis of a fact that the Education Officer was not a party to the compromise cannot be a reason to deny the claim, if the petitioner can otherwise establish his claim on the basis of other documents.

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10. We, therefore, think it fit to direct the respondent - Education Officer to consider all these documents filed by the petitioner along with the present writ petition, as also any other documents supporting to his claim. In that we have to matter, following orders are passed:

ORDER

- i) Writ Petition is partly allowed.
- ii) The order dated 22.11.2022 passed by the Education Officer (Secondary) is set aside.
- iii) The Education Officer (Secondary) shall reconsider the grant of approval to the petitioner.
- iv) We further direct the respondent No. 1, 2 and 4 to cooperate with the petitioner in the said exercise and place before the Education Officer all relevant documents as sought by the Education Officer. If the respondent Management fails to submit those documents, the petitioner would be at liberty to produce those

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documents in they are in his custody and/or seek those documents from the Management by making a request to the Education Officer accordingly.

v) The aforesaid exercise of submission of relevant documents shall be done within four weeks from today and the Education Officer is directed to decide the rival claim within four weeks thereafter.

vi) All rival contentions are kept open to be raised before the Education Officer.

11. Writ Petition is disposed of.

12. Rule accordingly.

(NANDESH S. DESHPANDE, J.)

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

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