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(2026) 01 BOM CK 1359

In the Bombay High Court, Kolhapur Bench

Case No : Writ Petition No. 2556 Of 2020

Dinkar Ananda Patil APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 28-01-2026

Acts Referred:

Citation : (2026) 01 BOM CK 1359

Hon'ble Judges : R.G. Avachat, J;Ajit B. Kadethankar, J

Bench : Division Bench

Advocate : Prashant Bhavake, T.J. Kapre, Utkarsh Desai

Final Decision : Allowed

Judgement

Ajit B. Kadethankar, J

1. The challenge in the present Petition is to the Order dated 28th December 2018 issued by the Respondent No.5-the Education Officer, whereby despite granting approval to the Petitioner's appointment from the date of appointment, grant-in-aid is ordered only from the date of approval. Considering the nature of prayers in the Petition, we have heard the parties at length for final disposal.

2. Rule. Rule made returnable forthwith.

3. Facts in brief:-

3.1 In the year 2012, there was a clear vacant post of Shikshan Sevak in the Respondent No.7 – Secondary School run by the Respondent No.6 – Education Institution.

3.2 By following due process of law, the School Management appointed the Petitioner as Shikshan Sevak vide Order dated 5th July 2012.

3.3 Consequent to the appointment, a proposal was moved by the School Management to the Education Officer seeking approval to the Petitioner's appointment.

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3.4 On 28th December 2018 the Education Officer granted approval to the Petitioner's appointment as Shikshan Sevak.

3.5 Upon confirmation of the Petitioner's services, the Education Officer approved the Petitioner's appointment as Assistant Teacher in the pay-scale of Rs.9300-34800 with Grade Pay 4300, vide Order dated 29th May 2019.

3.6 Suffice to note that, the Shalarth Identity number is already granted to the Petitioner and his name is also incorporated in the Shalarth system.

3.7 The facts recorded herein are not disputed by the Respondents-Authorities.

3.8 The Petitioner is however aggrieved by the condition Nos.4 & 6, which are incorporated in the approval Order dated 28th December 2018, which read as follows:

3.9 The substance of those condition is that, the liability of remuneration/salary to be paid to the Petitioner is to be born by the School Management. Hence, the Petitioner has preferred this Petition.

4. Petitioner's arguments:

4.1 Mr. Bhavake, learned counsel for the Petitioner would submit that once the Education Officer has approved Petitioner's services from the date of his appointment, the exclusion of certain period i.e. from the date of appointment till date of approval for grant-in-aid is not at all permissible nor could be justified. He would submit that it is not the case of the Respondents or the Education Officer that there was any misrepresentation of fact or any rider on the appointment of the Petitioner. He submits that if the Petitioner's case is otherwise clear, there is no justification for enabling the salary grant only with effect from the date of approval.

4.1.1 As such Mr. Bhavake, learned counsel for the Petitioner seeks directions to the Respondent-Education Officer to make payable the salary grant for the Petitioner's post with effect from the date of his appointment as Assistant Teacher.

4.1.2 Mr. Bhavake, learned counsel for the Petitioner places reliance on the following decisions.

(i) Smt. Varsha Kamlesh Parab Vs. The State of Maharashtra Writ Petition No. 12494 of 2025, dated 12th December 2025 (Circuit Bench at Kolhapur)

(ii) Santosh Suresh Jadhav Vs. The Deputy Director of Education (Secondary) & Ors. Writ Petition No. 10502 of 2022, dated 22nd January 2025 (Principal Seat at Bombay)

5. Respondent's arguments:-

5.1 Per contra Ms. Kapre, learned Assistant Government Pleader, in order to assist this court, invites our attention to the fact that the Education Officer has referred to one indemnity bond executed by the School Management, thereby

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undertaking the liability to pay the Petitioner's salary till the date of approval.

5.2 Ms. Kapre would strenuously submit that in fact neither the Petitioner has any locus to seek the direction as are prayed in the Petition nor even the School Management can question the liability imposed by the Education Officer for payment of salary to the Petitioner for a specified period. She would sincerely submit that once the School Management has executed the indemnity bond undertaking liability of remuneration to the Petitioner for a specified period, the directions to the Education Officer to pay the salary for entire period will be loss to the public exchequer.

5.3 Ms. Kapre, learned Assistant Government Pleader thus would pray to dismiss the Writ Petition.

6. Response of School Management :-

Mr. Utkarsh Desai, learned counsel for the Respondent Nos.6 & 7– School and Management supports Petitioner's prayers. He would submit that the indemnity bond can be said to have been executed in duress. Mr. Desai echoes the arguments advanced by Mr. Bhavake, learned counsel for the Petitioner. He submits that in any event, such undertaking by the School management is only to ensure the authorities that if the approval stands rejected, the school management undertakes liability to pay the concerned employee. He would further submit that, since the approval has already been granted and there is no adversity in the entire process, an indemnity bond or undertaking would serve no purpose, nor is there any occasion to insist upon its execution. Thus, he supports Petitioner for the reliefs prayed herein.

7. Consideration and discussion:

7.1 We have heard the counsel for the parties at length. With their able assistance, we have gone through the record of the case as also the decisions cited by the parties.

7.2 It is absolutely not disputed that the Petitioner was appointed on the subject matter post by due process of law. His appointment, initially as Shikshan Sevak and subsequently as Assistant Teacher is absolutely not in question by the Education Officer or by anybody.

7.3 The Education Officer has even approved the Petitioner's appointment initially as Shikshan Sevak and subsequently, as Assistant Teacher. Ms. Kapre, learned Assistant Government Pleader is fair enough to submit that it was clear case and there are no objections recorded by the Education Officer in respect of the selection process and petitioner's appointment.

7.4 It seems that the Education Officer has taken recourse to some indemnity bond that was purportedly executed by the School Management undertaking liability of Petitioner's remuneration for certain period.

7.5 We find no logic in requisitioning the School Management to submit an

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undertaking / indemnity bond thereby undertaking liability to pay remuneration of an employee from the date of appointment till the date of approval. At the most it could be said that vide an undertaking or even otherwise the Management can be responsible for remuneration of an employee in case of rejection of approval at the hands of the Education Officer. In the instant case, there is absolutely nothing on record to justify the exclusion of the said period for salary grant to be paid by the Zilla Parishad to the Petitioner, except the so called indemnity bond.

7.6 In the case of Santosh Suresh Jadhav (supra), this Court in the similar circumstances quashed the condition in the approval order, wherein for specified period the salary grants were not paid. In that case, this Court made payable the salary grant to the Petitioner therein from the date of his appointment.

7.7 In the case of Smt. Varsha Kamlesh Parab (supra), this Court observed thus:

"9.1 We have thoroughly heard both the learned Counsels for the respective parties.

9.2 It is absolutely no more in dispute that the Petitioner No.1 was appointed through proper procedure.

9.3 It is only upon finding that the Petitioner No.1 is appointed through proper channel by completing each formality, and her recruitment as also the appointment order was perfectly within the four corners of law, the Education Officer granted the approvals.

9.4 A fact which can not be overlooked is that the Petitioner No.1 was appointed on the subject matter post which has fallen vacant due to voluntary retirement of the earlier Junior Clerk.

9.5 As such, it was not a creation of any new post, therefore, the status of the subject matter post was an approved post as per the then prevailing staffing pattern.

10. We accept the argument of Mr. Bhavake, learned Counsel for the Petitioners that in the given facts and circumstances, where the subject matter post was vacant due to voluntary retirement of earlier Employee, new staffing pattern or the imposition of any condition/ ban would not be applicable to the subject matter post.

11. Furthermore, we do not comprehend with the logic applied by the Education Officer thereby bifurcating the responsibility of honorarium/ salary for the given periods and for the given reasons.

12. Once the approval is granted from the date of appointment, the Education Officer and the Deputy Director of Education are under obligation to pay the honorarium/ salary to the Petitioner No.1 from the grant-in-aid of the Petitioner No.3- School."

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7.8 It is not the case that the Petitioner has executed any indemnity bond or has given any undertaking. Even if given, such undertaking / indemnity bond cannot be used for restricting the salary grant for excluding the salary grant for a specified period i.e. from the date of appointment till the date of approval, if the approval is to the clear appointment.

7.9 In view of the aforesaid discussion, we have no doubt in our mind that the condition Nos.4 & 6 in the approval Order dated 28th December 2018 lack of any legal sanctity. As such the Petition deserves to be allowed. Hence, we pass the following Order:-

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned Condition Nos. 4 and 6, imposed by Respondent No. 5 – the Education Officer, vide Order dated 28th December 2018, are hereby quashed and set aside.

(iii) The Respondents-Authorities to release all the salary arrears payable to the Petitioner with effect from 5th July 2012 till 28th December 2018, within a period of eight weeks from today.

(iv) Issue writ accordingly.

(v) Rule is made absolute in above terms.

(vi) No order as to costs.

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