
(2026) 02 BOM CK 1586

In the Bombay High Court, Kolhapur Bench

Case No : Writ Petition No. 12288 Of 2022

Mahadev Balkrishna Dhamange

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-02-2026

Acts Referred:

Maharashtra Employees of Private Schools (Considerations of Service) Regulation Act, 1977 — Section 5(1)

Citation : (2026) 02 BOM CK 1586

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. SUBJECT MATTER:

The Petitioner - a Junior Clerk working in a private school received Education Officer's approval to his appointment dated 16th November 2013. But the approval is made effective only from the date

of new staing pattern dated 7th March 2019. The exclusion of approval period is citing a ban on appointments imposed in 2015 owing to change in staing pattern.

2. Heard Mr. Bhavake, learned counsel for the Petitioner, Ms. Kapre, learned Assistant Government Pleader. for the Respondent Nos.1 to 5-State and Mr. Desai, learned counsel for the Respondent Nos.6 & 7-School Management.

3. Rule. Rule made returnable forthwith. Considering the subject matter of the Petition, we heard the respective parties for inal disposal of the Writ Petition with their consent.

4. Facts in brief:-

4.1 The facts in the case are almost uncontroverted. The only issue that arises for consideration is the interpretation of some Government Resolutions, applicability of staing patterns and the ban imposed by the Government Resolution dated 12th February 2015.

4.2 The Petitioner holds the qualiication of B.Com, M.B.A. As such he is it to be appointed as Junior Clerk. In the year 2013, a sanctioned post of Junior Clerk in the Respondent No.7-School run by the Respondent No.6-Management had fallen vacant on account of promotion of one Mr. R.D. Taralekar (hereinafter referred as the (subject-matter post"). Here, it is pertinent to note that the post on which Mr. R.D. Taralekwar was working, happened to be a sanctioned post as per the staing pattern of 2005 which was operational.

4.3 Accordingly, the School Management conducted a selection procedure and the Petitioner came to be appointed on the subject matter post by the Respondent No.6-Management vide Order dated

16th November 2013.

4.4 These facts are not in dispute. In due course, the school Management submitted a proposal to the Education Oicer (Secondary), Zilla Parishad, Kolhapur seeking approval to Petitioner's appointment on the subject-matter post of Junior Clerk.

4.5 On 9th August 2021, the Education Oicer granted approval to the Petitioner's appointment. However, the approval is made effective with efect from 7th March 2019. As such, the stipulation in order dated 9th August 2021 which excluded approval period 'with efect of from the date of appointment till 7th March 2019' is the cause of action for the Petitioner to ile the present Writ Petition.

5. Petitioner's arguments:

5.1 Mr. Bhavake, learned Counsel for the Petitioner would make following submissions in brief:

(i) There is no illegality in the Petitioner's appointment.

(ii) There is no dispute as regards to the status of the subject matter post i.e. whether it was sanctioned in the staing pattern or not. It was admittedly sanctioned already as per staing pattern introduced by Government Resolution dated 25th November 2005. (hereinafter referred as "staing pattern of 2005" for the sake of convenience).

(iii) The Education Oicer is in agreement that the Petitioner's appointment is as per the law and the procedure. Objection is not raised by the Education Oicer to the appointment dated 16th November 2013, but the reference is given to ban imposed by the Government Resolution of 2015 which is subsequent to Petitioner's appointment.

(iv) Refusal to the approval during the period of 18th November 2013 (date of

his joining) till 7th March 2019 (new staing pattern) cannot be sustained for the reason that at the time of Petitioner's appointment, there was no ban on the appointment.

(v) To concluded, Mr. Prashant Bhavake submits that the staing pattern sought to be applied in 2013, was never implemented. Hence also it can not be said that the ban applied by Government Resolution of 2015 was applicable to Petitioner's appointment which was made subsequent to publication of Government Resolution dated 23rd October 2013. As such, the reason for the impugned exclusion rests on such facts which didn't exist anytime.

5.2 As such, Mr. Bhavake prayed to allow the Writ Petition and requests to issue appropriate directions to the Respondents-Authorities.

6. Respondent's arguments:-

6.1 Mr. Desai, learned counsel for Respondent Nos.6 & 7, i.e. the School Management and the School, echoes the contentions of the Petitioner and prays for appropriate directions to the Respondents-Authorities. He submits that the subject-matter post Mr. Taralekar held was already a sanctioned post as per the then prevailing staing pattern of 2005, and that in no case the said sanctioned was disturbed. 6.2 Ms. Kapre, learned Assistant Government Pleader would submit that the approach of the Education Oicer may not be taken as adversary to the Petitioner's appointment. She would fairly agree that the Education Oicer (Secondary), Zilla Parishad has not objected Petitioner's appointment, but the objection is about the ban imposed by Government Resolution of 2015. She continues to submit that the subject-matter appointment was made after introduction of the Government Resolution dated 23rd October 2013.

6.3 Ms. Kapre would submit that in 2013 the State Government sought to introduce new staing pattern, following which in 2015 ban on any appointment was imposed by the State Government. She submits that the Education Oicer is justiied in granting the approval from the date of new staing pattern, as there was ban in the mean period. As such, she prays to dismiss the Petition.

7. Discussion and consideration:

7.1 With the able assistance of the Ld. Counsel for the parties and the Ld. Assistant Government Pleader, we have gone through the pleadings and the annexures that are relied by them. During the courses of arguments, the Ld. Counsel for the parties and the Ld. Assistant Government Pleader submitted that the issue is only in respect of the applicable staing pattern. Accordingly, we deal with the matter.

7.2 We note that the Petitioner was appointed on 16th November 2013, and joined the post w.e.f. 18th November 2013. Mr. Bhavake, submits that the selection process had in fact been initiated even prior to 23rd October 2013. That, the Management accordingly published an advertisement on 1st November 2013. He submitted that since the selection process has begun prior to issuance

of the G.R. dated 23rd October 2013, Petitioner's appointment must not be questioned as has been held by this court in number of matters.

7.3 Since there is nothing before us to show when the Management has approached to the Education Officer under Section 5(1) of the Maharashtra Employees of Private Schools (Considerations of Service) Regulation Act, 1977 prior to 23rd October 2013, we refrain ourselves from dealing on that aspect as to whether Government Resolution dated 23rd October 2013 affects the selection procedure that started before its issuance.

7.4 We have gone through the reply affidavit tendered by the Shri Ravindranath Ghaugale, the Education Officer(Secondary), Zilla Parishad Kolhapur. Paragraph Nos. 4 and 5 of the reply affidavit doesn't not depict any objection as to process u/s 5(1) of the MEPS Act 1977. It candidly says that since the existing pattern was made applicable to the subject-matter post vide Government Resolution of 2019, and hence from the date of new existing pattern, the approval is granted.

7.5 The last existing pattern that was holding field was of 2005 which was introduced by Government Resolution dated 25th November 2005. By Government Resolution dated 23rd October 2013, the State Government sought to introduce a new existing pattern for employees of private schools. However, by a subsequent Government Resolution dated 12th February 2015 the implementation and operation of the said existing pattern were kept in abeyance ab initio owing to heavy protest and objection raised by educational institutions, School employees' associations, objections raised people's representatives. It was resolved that a Committee of experts shall be appointed for formation of new existing pattern and till then everything concerning Government Resolution of 2013 was kept in abeyance. In view of proposed formation of Expert Committee, a ban on fresh appointments was imposed by Government Resolution of 2015 until new existing pattern comes into existence.

7.6 Ultimately, by Government Resolution dated 28th January 2019, the State Government introduced a revised existing pattern for employees of private schools in the State, excluding the Class IV

category. Thereafter, by a separate Government Resolution dated 11th December 2020, a new existing pattern was introduced for the Class IV category as well.

7.7 It is pertinent to note that the approvals as per the new existing pattern introduced vide Government Resolution of 2019 were brought into force vide Government Resolution dated 7th March 2019.

7.8 The effect and consequences of the Government Resolutions dated 23rd October 2013 and 12th February 2015, as well as the subsequent Government Resolutions introducing new existing patterns in the years 2019 and 2020, has been extensively considered and discussed by this Court in the case of *Vikas Shikshan Mandal Savarde (Budruk) Vs. The State of Maharashtra & Ors.*¹. The relevant

paragraphs, being Nos. 12.3 to 12.15, are reproduced hereinbelow for ready reference:

“12.3. We now take up for discussion, the most crucial issue of applicability of the Government Resolution dated 23.10.2013 and the applicability of the staing pattern. For the sake of ready reference, the text of the Government Resolution dated 23.10.2013 is reproduced:-

12.4. The Government Resolution dated 23.10.2013 can not be read in isolation without referring to subsequent Government Resolution dated 12.02.2015 which reads as follows:

12.5. The Government Resolution of 2015 at the outset records that there had been huge demurs by individuals, various organizations of Teaching and Non-teaching employees in the private schools against the Government Resolution of 2013. As such the efect of the Government Resolution of 2013 was freezed. A committee was constituted to reform and improve the contents of the Government Resolution of 2013. Ban was ordered for appointments until further orders of the State Government.

12.6. Now we must see the further developments in respect of the reforms in the staing pattern in the private schools post Government Resolution of 2015. Consequent to the 2015 Government Resolution, the Committee advanced some suggestions for a new policy.

12.7. Accordingly, the State Government introduced another Government Resolution on 28.01.2019 by which new staing pattern was introduced in view of the suggestions advanced by the Committee constituted under the Government Resolution of 2015. However, this Government Resolution dated 28.01.2019 speciically excluded staing pattern for Class IV category employees in the private schools. It was further stated in the Government Resolution of 2019, that the staing pattern for Class IV was to be separately provided. For the sake of convenience, the Government Resolution dated 28.01.2019 is reproduced as follows:

12.8. Accordingly, the staing pattern for Class IV category was introduced vide subsequent Government Resolution dated 11.12.2020, which is reproduced as follows for ready reference:

12.9. The plain reading of the Government Resolution of 2020 unequivocally clariies that it is operational w.e.f. the date of its issuance i.e. w.e.f. 11.12.2020. The staing pattern for Class IV introduced substantial changes in the previous staing patterns, and it was issued only after approval by Finance Department that was accorded on 22.05.2019. It is expressly mentioned therein the new policy is brought into operation superseding the all-earlier policies and directions. The Government Resolution of 2015 has expressly kept Government Resolution of 2013 in abeyance ab initio.

12.10. Learned Assistant Government Pleader made every sincere attempt to

convince us that the status quo imposed by the Government Resolution of 2015 meant that the staing pattern of 2013 shall remain in operation till new staing pattern was introduced. That's why it is her foremost contention that the subject-matter appointment post issuance of 2013 Government Resolution cannot be approved.

12.11. For reasons to express, we do not approve this argument anymore. The preface of the 2015 Government Resolution itself shows that due to heavy protest, objections and dissatisfaction recorded by the stakeholders, the State Government kept in abeyance everything in respect to the staing pattern introduced by Government Resolution of 2013. It goes without saying that basic cause to issue the 2015 Government Resolution, i.e. the efect and operation of the 2013 policy was clearly and expressly was not to be acted upon. The government resolved to appoint a committee to rethink on improving the parameters of new staing pattern. A committee of experts was appointed and it was directed that until the State government applies new policy in the light of the proposed recommendations of the Committee, no appointments were to be made on new or vacant posts. The new staing patterns were introduced in 2019 and 2020 (Class-IV) which clearly superseded the earlier policies.

12.12 It is not at acceptable that the word “जैसेथे” used in 2015 Government Resolution in respect of Government Resolution of 2013, preordained that the staing pattern sought to be introduced by the Government Resolution of 2013 holds ield until new policy comes in force. Paragraph No.1 of the 2015 Government Resolution must be read following its preface. We have no room for doubt in our minds that the directions “जैसेथे” used in 2015 Government Resolution mean and operate to keep the staing pattern 2013 in abeyance ab initio till new policy is framed in the light of the Committee recommendations.

12.13. Under these circumstances, holding that the policy of 2013 Government Resolution remained in force since its inception till issuance of 2019 and 2020 policies or at least till issuance of the Government Resolution of 2015, would be absolutely illogical. Rather we have reservations on keeping an absolute ban on appointments in the schools for ive years i.e. 2015 to 2020. The appointments of teaching staf in schools are only and only for the educational career of the students. Appointments of non-teaching staf are in the sense at par, for the reason that it's the most required support staf without whom the schools can not function. Employees in services are bound to superannuate during this period. Posts are bound to become vacant. While keeping in abeyance the staing policy of 2013 and waiting for new one, the State Government ought to have applied rational and coherent mind while imposing such ban.

12.14. We are of considered view to hold that until the new staing patters were introduced in 2019 and 2020, the last staing policy introduced vide Government Resolution dated 25.11.2005 was holding ield. Thus, the conundrum created by the various Government Resolutions from 2013 to 2019 & 2020 (IV category)

over the staing pattern and the fate of the appointments made in the mean period, stands solved. Staing pattern sought to be introduced by Government Resolution of 2013 lost its effect ab initio in view of Government Resolution of 2015. Meaning thereby, the earlier staing pattern of 2005 stood superseded by the staing pattern of 2019 (for all categories excluding Class IV) and by the staing pattern of 2020 (for Class IV category), both operational prospectively from their respective dates of issuance.

12.15. The new staing pattern for Class IV employees is operational only w.e.f. 11.12.2020. It is trite law that a Government Resolution, a statute, an amendment is not retrospectively applicable unless expressly provided. Hence we reject the contention of the learned Assistant Government Pleader based on the objection recorded by the Education Oicer that Government Resolution of 2013 i.e. dated 23.10.2013 disqualifies the proposal for approval to the appointment of Petitioner No.3 which is made on 31.08.2014."

7.9 This Court has after considering all the G.R.s concerning staing patterns in the private schools in Vikas Shikshan Mandal Savarde (Budruk) (supra) has held as follows :

"14.5. Government Resolution dated 23.10.2013 does not disqualify Petitioner No.3's approval proposal pursuant to his appointment dated 31.08.2014, which is governed by the Government Resolution dated 25.11.2005."

7.10 The staing pattern in operation pursuant to the Government Resolution dated 25th November 2005 continued to hold the ield and remained the only governing staing pattern until the introduction of the staing patterns of 2019 and 2020 (for class IV).

7.11 As such, this Petition deserves to be allowed. We hold that the Petitioner's appointment cannot be termed as under any ban or prohibited by virtue of any Government Resolution. We reiterate that the status quo terminology used in the Government Resolution of 2015, doesn't mean that the Government Resolution of 2013 governed and afected the appointments and approvals processed and issued during 23-10-2013 till 12-02-2015. (Emph. Para 12.12 in Vikas Mandal case [supra]).

7.12 Before parting, we deem it appropriate to record our inding that the Education Oicer has granted approval to the Petitioner's appointment since 2019, i.e. in accordance with the new staing pattern. The Petitioner's appointment of 2013 is not invalidated by the Education Oicer for any other reason. Education Oicer's objection is regarding the ban imposed by Government Resolution of 2015. Prima facie it may appear to be a bit obscure. But then it requires no further elaboration to hold that the post never lost its status as a 'sanctioned post' even under the subsequent staing pattern of 2019, and that's why the Education Oicer granted approval at least from 2019 without invalidating the appointment.

7.13 As such the impugned refusal to give approval to the Petitioner's appointment from the date of his appointment, as ordered in the impugned order dated 9th August 2021 passed by the Education Oicer cannot be sustained. As such the Education Oicer needs to modify the approval order.

7.14 Hence, we pass the following order:-

:: ORDER ::

A) The Writ Petition stands allowed.

B) The impugned Order dated 9th August 2021 is quashed and set-aside to the extent that it excludes approval to the Petitioner's appointment with efect from 18th November 2013 (joining date) till 7th March 2019.

C) The Education Oicer is directed to issue a modiied approval order to the Petitioner's appointment w.e.f. Petitioner's date of appointment i.e. w.e.f. 18th November 2019 on the subject-matter post; and to issue honorarium and salary grants as are applicable, in the light of the indings rendered supra.

D) Rule made absolute in above terms. Writ Petition stands disposed of.