

Filed on - 12-03-2020  
 Order reserved on 30-10-2021  
 Order pronounced/ issued on - 04-12-2021

Duration-- 01Year, 08 Month,22 Days.



**Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur  
 BEFORE THE GRIEVANCES COMMITTEE.**

(Presided over by Shri. Arvind J. Rohee, former District Judge.)

**Grievance Petition No. 11/2020**

**Applicant :** Shri Mangesh S/o  
**Grievance** Ramchandrarao Girde  
**Petitioner** Aged - 40 years Occ-Service  
 R/o 48, Deshpande Lay Out,  
 Behind Charmalaya, Nalwadi,  
Wardha.

**- VERSUS -**

**Non-Applicant/**  
**Respondent :**

1. Shiksha Mandal, Wardha  
 through its Sabhapati,  
 Civil Lines, Wardha
2. Principal, Bajaj College of  
 Science, Wardha.  
 (Jankidevi Bajaj Science  
 College, Wardha)

**ORDER**

(Delivered on 04-12-2021)

1. The Applicant who is presently working as Laboratory Attendant in Bajaj College of Science Wardha under Non-Applicant No.2 established by the Non-Applicant No. 1 Society approached this forum under

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Section 79(1) of the Maharashtra Public Universities Act, 2016 for seeking the following reliefs:

- (i) Quash and set aside the communication dated 12.03.2018 issued by the Respondent No.2 (Annexure-XI) and further direct the Respondent Nos.1 and 2 to give appointment to the appellant on the post of full time Shikshan Sevak in the respondent No. 2 College as per GR dated 10.06.2005(Annexure-IV) with effect from 08.04.2015, in the interest of justice.
- (ii) Direct the Respondent Nos. 1 and 2 to implement the directions issued by the Deputy Director of Education, Nagpur dated 20.05.2017(Annexure-VI) and by the Joint Director of Higher Education, Nagpur dated 30.05.2018(Annexure-XIII), in the interest of justice.
- (iii) During the pendency of the present petition direct the Respondent Nos. 1 and not to fill up vacant post of Shikshan Sevak in Respondent No. 2 college, in the interest of justice.
- (iv) Grant ad-interim relief in terms of prayer clause-III, in the interest of justice.
- (v) Grant any other relief which this Hon'ble Grievance Committee may deem fit and proper in the facts and circumstances of the present case.

2. The Applicant qualified M.Sc. in Chemistry in the year 2013 and also secured B.Ed. Degree in the year 2010. He joined the service under Respondent No. 2 on the post of Laboratory Attendant on 10.11.2003 vide appointment order dated 05.11.2003. While in service he secured Post Graduate and Bachelor Degree as stated above.

3. The Non-Applicant No. 1 Society runs Senior and Junior College, for which there is composite staffing pattern as per the Govt. Resolution dated 26/8/1999. As such the Applicant is non-teaching staff in the college run by the Non-Applicants. Principal for both senior and junior college is common.

4. It is stated that the Department of School Education and Sports, Govt. of Maharashtra, Mumbai issued resolution dated 10.06.2005 (Annexure-IV) with the Grievance Petition) giving guidelines for appointment of Shikshan Sevak. In view of clause 8 thereof if the non-teaching employee acquired the qualification required for appointment of teacher on Secondary School or Junior College and if such post is available in Secondary School/Higher Secondary/Junior College in that event such employee shall be given the appointment of Shikshan Sevak on the prescribed honorarium as alleged by the Applicant. The Applicant was eligible for appointment on the said post of Shikshan Sevak on the basis of aforesaid G.R. dated 10.06.2005. However, in spite of his representation, he has not been appointed on the post of Shikshan Sevak in junior college run by the Non-Applicants. According to the Applicant, at present there is one full time vacant post of Shikshan Sevak in Chemistry Subject.

5. It is stated that the Applicant came across the provisions about aforesaid G.R. dated 10.06.2005 sometime in February-2017. Hence, on 13.02.2017, he submitted a representation (Annexure-V) to the Deputy Director of Education, Nagpur through the Non-Applicant

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No.2, thereby praying for his appointment on the post of Shikshan Sevak. It is stated that in response to the aforesaid request, the Deputy Director of Education vide communication dated 20.05.2017 (Annexure-VI) directed the Non-Applicant No. 2 to take appropriate steps as per clause 8 of the G.R. dated 10.06.2005 and give appointment to the Applicant on full time post of Shikshan Sevak in Chemistry Subject.

6. On 02.06.2017 the Applicant submitted a representation (Annexure-VII) to the Respondent No. 2 based on the communication dated 20.05.2017 (Annexure-VI) with a request to give him appointment on the full time post of Shikshan Sevak. However, no steps were taken by the others end in this behalf.
7. The Applicant again submitted another representation dated 01.07.2017 (Annexure-VIII) to the Non-Applicants to act upon the communication dated 20.05.2017 giving all details regarding position of vacant posts, however, no steps were taken. The Applicant submitted another representation dated 16.10.2017 (Annexure-IX) to the Special Officer, Commissionerate of Education, Pune. On its basis the said authority by communication dated 28.11.2017 (Annexure-X) forwarded it to the Deputy Director of Education, Nagpur for taking action as per law.
8. There-upon vide the impugned communication dated 12.03.2018 (Annexure-XI), the Non-Applicant No.2 informed the Applicant that the application submitted by him is rejected for the reason that he is presently working in Senior College. However, according to the Applicant, as

per his appointment order he was appointed in Junior College. This led the Applicant to submit another representation dated 19.03.2018 and 03.05.2018 (Annexure-XII collectively) to the Joint Director of Higher Education, Nagpur and Deputy Director of Education, Nagpur respectively with a request to issue directions to the Non-Applicants for his appointment on the post of Shikshan Sevak. In response to it, vide communication dated 30.05.2018 (Annexure-XIII), the Joint Director of Higher Education, Nagpur directed the Non-Applicant No.2 to take action as per G.R. dated 10.06.2005. The Applicant also submitted a representation to place the subject for decision in the College Development Committee/Local Managing Committee. However, no decision was taken.

9. Ultimately, the Applicant was constrained to approach the Hon'ble High Court of Bombay Bench at Nagpur in Writ Petition No. 1090/2019 for seeking the necessary redress. Vide order dated 10.02.2020 (Annexure-XVII), the Hon'ble High Court disposed of the said Writ Petition granting liberty to the Applicant to approach this forum, keeping all the questions open. Hence this petition.

10. On notice the Non-Applicants appeared and vide common reply dated 27.20.2021 resisted the claim, although it is not disputed that the Applicant is presently working as Laboratory Attendant in the college run by the Society. It appears that his educational qualification prior to his appointment and acquired by him while in service is also not seriously disputed except by making averment

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that he did not seek permission for acquiring subsequent qualification. Be that as it may, the Applicant happens to be M.Sc. B.Ed. and is working as non-teaching staff as Laboratory Attendant in a college run by Non-Applicants. His appointment Order dated 05.11.2003 clearly shows that he has been appointed in college and not in Junior College/Higher Secondary School run by Non-Applicants. The letter signed by Principal of J.B. College of Science means indeed Senior College and not Junior College. <sup>25</sup> alleged by the Applicant. The prayer clause is denied. According to Non-Applicants the G.R. dated 10.06.2005 relied upon by the Applicant cannot be taken into consideration, since it is issued by the Department of School Education and Sports, Govt. of Maharashtra and not by the Department of Higher Education, Govt. of Maharashtra, by which both the parties are presently governed. The Grievance Petition is, therefore, liable to be rejected on this ground.

11. The direction issued by the Deputy Director of Education, Nagpur and Joint Director of Higher Education, Nagpur Division, Nagpur in the form of communication is not disputed. However, it is stated that they simply directed to take steps in the matter of appointment of the Applicant as Shikshak Sevak in accordance with the rules i.e. G.R. It is also stated that there cannot be direct appointment without following the rules of selection i.e. holding interview and selection on merit. It is also stated that previously in pursuance of the advertisement dated 18.03.2015 issued by the Non-applicantNo.1, the Applicant alongwith few other candidates were interviewed for the post of Shikshan

Sevak in Junior college, however, he was not selected on merit and hence not appointed. The Applicant has, therefore, no right to seek the same appointment by taking recourse to the G.R. dated 10.06.2005. The Application is, therefore, liable to be rejected.

12. It is stated that there is nothing in the aforesaid G.R. dated 10.06.2005 to indicate that qualified candidate should be given direct appointment as Shikshan Sevak without giving advertisement or interviewing suitable candidates and without following proper protocol.
13. It is stated that as per Deputy Director of Education, Nagpur letter No. HSC/T/N/3/2019 dated 15.11.2019 received on 21.08.2021, the Department of Chemistry has 5 full time approved posts of Shikshan Sevak and at present there are 4 full time teachers one part-time and one clock hour basis teacher working in Chemistry Department in the Junior College run by Non-Applicants.
14. The Non-Applicants referred previous G.R. dated 13.10.2000 in respect of revised scheme for appointment of Shikshan Sevak in Secondary and Higher Secondary/Junior College in the State and it nowhere states that there can be direct appointment without following due process of selection. The Grievance Petition is, therefore, liable to be dismissed as without merit.
15. On 30.10.2021 when the matter was called out for final hearing, the Applicant appeared in person, whereas on behalf of Non-Applicants Dr. Om Mahodaya, Principal

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of the college remained present. Oral submissions of both the parties on merit were then heard by the six members of the Grievances Committee including the Chairman then present and it is concluded.

16. The members of the Grievances Committee present have carefully gone through the entire case record and also discussed the issues involved in the matter. On the basis of the submissions made by the parties and the material produced on record, the Grievances Committee came to unanimous conclusion. There upon the Chairman of the Grievances Committee dictated the order and it was circulated to the members present on their email for approval. After it is approved the matter is listed today for pronouncement of order in presence of the parties.

17. Considering the material on record, the following points arise for consideration of this forum and the findings recorded there on are given below, for the reasons that follow.

<u>Points</u>	<u>Findings</u>
(1) Whether the communication dated 12.03.2018 issued by the Non-Applicant No. 2 (Annexure-XI) is liable to be quashed and set aside on the grounds raised by the Applicant?	Yes.
(2) Whether the direction can be issued to the Non-Applicants to give direct appointment to the Applicant on the post of full time Shikshan Sevak under Respondent No. 2 in pursuance of the G.R. dated 10.06.2005 (Annexure-IV), w.e.f. 08.04.2005?	No



(3) Whether a direction can be issued to Non-Applicants to implement the directions issued by the Deputy Director of Education, Nagpur vide communication dated 20.05.2017 (Annexure-VI) and by the Joint director of Higher Education, Nagpur dated 30.05.2018 (Annexure-XIII)?

Yes but they have to implement it in accordance with the rules by following due procedure

(4) What order?

As per concluding para

### REASONS

18. As to Point No. 1:

It appears from record that the Applicant was unaware about the G.R. dated 10.06.2005 and the previous G.R. dated 13.10.2000, when he was interviewed on 10.04.2015 by the Non-Applicants. This is so because prior to his first representation in the light to the G.R. dated 10.06.2005, he never made any request to the Non-Applicants for his appointment as Shikshan Sevak based on the said G.R. However, although in the first attempt the Applicant did not succeed since not selected after interview based on the open advertisement dated 18.03.2015 and after following due procedure and one Dr. D.S. Ambadkar was selected, it cannot be said that there is any bar for the Applicant to apply again, particularly in the light of the G.R. dated 10.06.2005 which right he has exercised by calling upon Non-Applicants by his representation dated 13.02.2017. It is obvious that after due persuasion with the higher authorities, the two letters under reference were issued by the Deputy Director of Education, Nagpur and the Joint Director, Higher

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Education, Nagpur Division, Nagpur. It is obvious from contents of those letters that no blanket direction is issued to give appointment to the Applicant directly as Shikshan Sevak and it is rightly stated that he be considered in the light of the G.R. in question by following due procedure. Unfortunately, it is obvious from record that the same has not been done by the Non-Applicants and his request is rejected by the impugned communication dated 12.03.2018 (Annexure-XI).

19. In this respect, it may be stated that we are not impressed on the submission made on behalf of the Non-Applicants that simply because there is no G.R. issued by the Department of Higher Education, Govt. of Maharashtra, the Applicant who is presently working in a college run by the Non-Applicants as non-teaching staff, the provisions of the two relevant G.R.'s dated 10.06.2005 and 13.10.2000 issued by the Department of School Education and Sports, Maharashtra State, Mantralaya, Mumbai cannot be considered at all or those are not applicable in the present case or that the Applicant cannot seek its benefits and he cannot be considered thereunder. We, therefore, reject this contention because the G.R.'s issued by any department of Govt. will be applicable to all concerned.

20. Impugned communication dated 12.03.2018 (Annexure-XI) clearly states that the request of the Applicant was considered in a meeting dated 06.12.2017 of College Development Committee and it was unanimously resolved that since the Applicant's appointment is on the establishment of Senior College, the G.R. referred by the Applicant is not applicable to him. It

is also stated that two communications from the Govt. Officials and terms and conditions of his service do not permit applicability of the G.R. dated 10.06.2005 and hence his request is rejected.

21. As stated earlier, the request made by the Applicant has not been considered based on the provisions of G.R. dated 10.06.2005 and the previous G.R. dated 13.10.2000, which makes a specific provision to consider eligible candidates having acquired higher qualification while serving even as non-teaching faculty, are liable to be considered for appointment as Shikshan Sevak and the Secondary School / Higher Secondary School / Junior College run by the Society, if there is vacancy and after due consideration they can be so appointed.

22. It is not disputed that the Applicant fulfilled the eligibility criteria since he secured higher educational qualification while in service. Both the Senior college and the Junior College in which the Applicant seeks his appointment as Shikshan Sevak are run by the Non-Applicant No.1 Society and the Principal for both the aforesaid colleges is common i.e. Non-Applicant No. 2.

23. Now turning to the provisions of the G.R. dated 10.06.2005 and particularly clause 8 thereof, the Applicant seeks direct appointment as teaching faculty i.e. Shikshan Sevak, since the word used there in is "नियुक्ती" i.e. appointment and not "निवड" i.e. selection. It is true that bare look at the said provision may indicate that there can be direct appointment without following any procedure and considering higher educational qualification only. However, it is not so, since the said provisions will have to



be read in consonance with the provisions of the previous G.R. dated 13.10.2000 (Annexure-VIII) filed by the Non-Applicants. It is on the same subject and subsequent G.R. dated 10.06.2005 is nothing but continuation of the previous G.R. dated 13.10.2000, with a view to remove few difficulties faced by the concerned persons in implementation of the provisions of the previous G.R. It is obvious from record that the Applicant has deliberately avoided to make reference of the previous G.R. dated 13.10.2000 on the same subject. Its careful perusal clearly shows that a scheme by name "सर्व शिक्षा अभियान" is sponsored by the Central Govt. in consultation with all the State Govts. and with a view to grant relief to the non-teaching staff working in senior colleges to shift to the junior colleges as teaching faculty viz. Shikshan Sevak, based on acquisition of higher educational qualification by them while in service. The word used "नियुक्ती" (Appointment) is also used in Clause-I of the said G.R. dated 13.10.2000. There are other provisions made to which we are not concerned in this case, except the provisions of clause 10 which prescribed "निवडीसाठी कार्यपद्धती" (Procedure for Selection) and it is specifically stated therein that the procedure prescribed for selection in the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 framed under the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 will have to be adopted. Similarly service conditions are prescribed for Shikshan Sevak as provided under clause 14 of the aforesaid G.R. dated 13.10.2000, in which it is specifically mentioned that "गुणपत्र" (Guarantee Letter) should be obtained from the

selected candidates as Shikshan Sevak as mentioned in "जोडपत्र-क" (Annexure-C) of aforesaid G.R.. The "नियुक्ती पत्र" (Appointment Letter) as "जोडपत्र-ब" (Annexure-B) to the said G.R. also makes reference for selection as Shikshan Sevak for giving appointment and not by direct appointment by overcoming the prescribed procedure under the Rules of 1981 referred above.

24. From the above discussion and joint reading of the relevant provisions of both the G.R.'s dated 13.10.2000 and 10.06.2005, it clearly reveals that there cannot be direct appointment to the post of Shikshan Sevak by giving go by to the selection process as prescribed under rules. In view of above clear position, the impugned reply dated 12.03.2018 issued by the Non-Applicant No.2 straight way rejecting the request for appointment, without under taking due process cannot stand and hence it is liable to be set aside. Point No. 1 is, therefore, answered in the affirmative.

25. As to Point No. 2:

It is obvious from record that the Applicant seeks direct appointment to the post of Shikshan Sevak and during the course of argument he referred it as by way of promotion. However, it is obvious that promotion in the strict sense of the term can be granted in the same cadre to the higher post in hierarchy and not in different categories. In the present case, there is no question of promotion of the Applicant from non-teaching category to the teaching category in junior college as Shikshan Sevak. This is for the simple reason that the categories are totally different. However, from the scheme of two G.R.'s referred

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above, it can safely be said that the Govt. intends to give better opportunity to the employees acquiring higher qualification while serving in non-teaching faculty to become a teaching faculty as Shikshan Sevak. In other words, indirectly it may be stated that this is by way of promoting them although not in strict sense of the term. In this behalf the Applicant has also relied on the decision dated 30.09.2019 of the Hon'ble High Court of Bombay Bench at Aurangabad in Writ Petition No. 3167 of 2019 filed by one Usha Baliram Masal against Hind Seva Mandal through its Chairman and others, in which the G.R. dated 10.06.2005 clause 8 thereof is considered and in para 6 thereof it is stated as under-

"clause 8 read as it is, is in the nature of providing a promotional avenue to an employee of non-teaching staff. The clause 8 clarifies that earlier services shall be counted for the purpose of pensionary benefits. It would not be a case of appointment afresh but promoting a person from the non-teaching staff to teaching staff though as Shikshan Sevak".

26. In that case a direction is also issued to the Management in para No. 8 as under-


"The Management may consider the claim of the petitioner for appointment as Shikshan Sevak as per Clause 8 of the said Government Resolution dated 10.06.2005 on its own merit, expeditiously and preferably within a period of two months. The Education Officer shall consider the proposal in tune with Clause 8 of the said Government Resolution dated 10.06.2005. The same shall not be rejected on the ground of availability of surplus candidates."

27. Considering the aforesaid decision, it is obvious that it is in relation to giving benefits of previous service for the purpose of pension and in that case direction is also issued to make appointment of petitioner as Shikshan Sevak of its own merit, meaning thereby following due process of selection. In other words it is empathetically held that there cannot be direct appointment based on the higher qualification without following due procedure of selection. Same principle will be applicable to the Applicant also in this Grievance Petition.

28. From the above discussion, it is obvious that no direction can be issued to the Non-Applicants as prayed by the Applicant to give appointment to the Applicant without following due process of selection as per rules. Point No. 2 is, therefore, answered in the negative.

29. As to Point No. 3:

As stated and discussed above, both the aforesaid authorities have simply directed the Non-Applicants to implement the provisions of the G.R. dated 10.06.2005 by following due procedure and in accordance with the rules. The same direction will have to be issued by this forum to the Non-Applicants, since without considering the Applicant's claim on merit they have simply rejected his representation, wrongly holding that he is not covered under the aforesaid G.R. As such no direction can be issued to the Non-Applicants to implement the communication issued by the two authorities, without following due procedure and rules of selection, as stated and discussed above. Point No. 3 is, therefore, answered in the negative.



30. As to Point No. 4:

From the above discussion, it is obvious that the Applicant's prayer for giving direct appointment to him without following procedure of selection and by way of promotion in the strict sense of the term cannot be granted. However, since his claim has not been considered on merit in reference to the G.R.'s dated 20.06.2005 and 13.10.2000, the Grievance Petition is liable to be partly allowed. In view of above, the following operative order is passed:


- (a) The communication dated 12.03.2018 (Annexure(XI) issued by the Non-Applicant No.2 is hereby quashed and set aside.
- (b) Consequently, the Non-Applicants are directed to consider the Applicant's representation dated 13.02.2017 on merit for his appointment as Shikshan Sevak in junior college run by the Non-Applicants.
- (c) It is needless to say that the Applicant's claim shall be considered by a duly constituted Selection Committee as per relevant rules, by holding his personal interview and by referring other material /documents regarding his performance in the present cadre of Laboratory Attendant, if available and shall take a decision in accordance with the law, within a reasonable period.
- (d) It is declared that in the event the Applicant is found fit and selected by Selection Committee for the post of Shikshan Sevak, necessary appointment order be issued to him within the time framed above, in a full time vacant post of Shikshan Sevak.

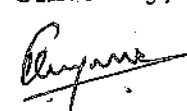



(e) It is made clear that in the event this order is not complied with by the Non-Applicants within the stipulated period as above the Applicant will be at liberty to take appropriate legal action against them under the provisions of relevant statute of R.T.M. Nagpur University, Nagpur.

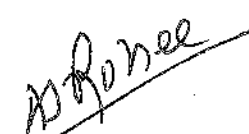
(f) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this petition.

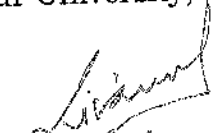
(g) The office is directed to issue authenticate copy of this order to both the parties at the earliest for taking appropriate steps in the matter.

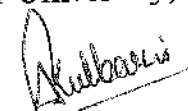
  
(Dr. Milind Barhate)  
Member, Grievances Committee,  
RTM Nagpur University, Nagpur

  
(Dr. Nitin Kongre)  
Member, Grievances Committee,  
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Member-Secretary  
Grievances Committee,  
RTM Nagpur University, Nagpur.

Nagpur.

Dated: 04.12.2021