



2026 INSC 883

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2026
(Arising out of SLP(C) No.11757 of 2021)

THE STATE OF MAHARASHTRA & ORS.

APPELLANTS

A1 : THE STATE OF MAHARASHTRA, THROUGH THE SECRETARY,
HIGHER AND TECHNICAL EDUCATION DEPARTMENT

A2 : DIRECTOR OF TECHNICAL EDUCATION

A3 : THE JOINT DIRECTOR OF TECHNICAL EDUCATION

VERSUS

SUDHAKAR SHIVARAM TEKE & ORS.

RESPONDENTS

R1 : SUDHAKAR SHIVARAM TEKE

R2 : MOUNI VIDYAPETH

R3 : INSTITUTE OF CIVIL AND RURAL ENGINEERING,
GARGOTI, DISTRICT KOLHAPUR, THROUGH THE PRINCIPAL

O R D E R

Heard learned counsel appearing for the parties.

2. Leave granted.

3. The present appeal arises out of the impugned order dated 27.09.2019 passed by the High Court of Judicature at Bombay in Writ Petition No.1841 of 2013 along with Civil Application No.395 of 2019, whereby the Writ Petition filed by respondent no.1 seeking his absorption on the post of Head of Department (Civil Engineering) in respondent no.3-Institute of Civil and Rural

Engineering, Gargoti, has been allowed.

4. Learned counsel appearing for the appellants submitted that pursuant to the Government Resolution dated 10.09.2001, respondent no.1-Writ Petitioner was declared surplus and disengaged from service. Under the policy of the State Government, surplus employees who had been disengaged were liable to be absorbed against equivalent posts available in any other Institution/College of the same category. It was contended that at the relevant point of time, respondent no.1 was entitled to be absorbed on the post of Lecturer, being the post from which he had been disengaged upon being declared surplus. Thus, according to the learned counsel, the claim of respondent no.1 could only have been for absorption on the post of Lecturer or an equivalent or lower post, in accordance with the applicable policy.

4.1. It was further submitted that there is no dispute with regard to absorption of respondent no.1 as Lecturer, as he joined the post of Lecturer and subsequently superannuated in the year 2024. His grievance, however, was that he ought to have been absorbed directly on the post of Head of Department (Civil Engineering), on the ground that the pay scale attached to the posts of Lecturer and Head of Department was equivalent. The Institute after considering his claim, rejected the same *vide* order dated 18.02.2011. Respondent no.1 thereafter approached the High Court, which by the impugned order, allowed his claim primarily on the reasoning that under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the "MEPS Act"), the post of Head of Department was required to be filled by the senior-most

Lecturer available in the Institute and since respondent no.1 fulfilled that criterion, he was entitled to be absorbed on the post of Head of Department.

4.2. Learned counsel for the appellants submitted that the High Court fell into error in treating the statutory mode of appointment to the post of Head of Department as determining the post on which a surplus employee was to be absorbed. According to him, the MEPS Act merely prescribed the manner in which the post of Head of Department was to be filled. Prior to the amendment made pursuant to the directions of the All India Council for Technical Education (for short, "AICTE"), the senior-most Lecturer could be elevated to the post of Head of Department. However, after the amended provision, communicated on 30.12.1999 pursuant to the AICTE recommendations, recruitment to all cadre posts, including the post of Head of Department, was required to be made strictly on merit through open selection pursuant to an open advertisement at the national level. Learned counsel ultimately submitted that the original claim of respondent no.1 was for absorption as a surplus Lecturer. Any subsequent claim for appointment or promotion to a higher post would constitute a distinct cause of action and could not be treated as forming part of the question of absorption.

5. *Per contra*, learned counsel appearing for respondent no.1 submitted that the High Court correctly held that the MEPS Act prescribed seniority as the relevant criterion for appointment to the post of Head of Department and that the pay scale attached to the posts of Lecturer and Head of Department was the same. It was, therefore, contended that once respondent no.1 fulfilled the

requisite criterion, his absorption ought to have been made directly on the post of Head of Department.

6. At this stage, on a query put by the Court as to whether, under the policy of the State Government, absorption could be made against a post which was admittedly not held by respondent no.1 at the time when he was disengaged, learned counsel appearing for respondent no.1 fairly conceded that respondent no.1 was holding the post of Lecturer when he was disengaged and that he was not holding the post of Head of Department at that time.

7. Having considered the matter in its entirety and upon perusing the material placed on record, we are of the view that the impugned order cannot be sustained.

8. The High Court proceeded on the erroneous premise that merely because respondent no.1 fulfilled the criteria for appointment as Head of Department, he was consequently entitled to be absorbed against that post. In our considered opinion, this is the fundamental error in the impugned order.

9. The position emerging from the facts of the present case is crystal clear. Under the policy of the State Government, a surplus employee who had been disengaged was required to be absorbed against the post from which he had been declared surplus, or an equivalent post, or, depending upon availability, a lower post. The policy governing absorption could not, therefore, be invoked to confer upon such an employee, at the stage of absorption, a post higher than the post which he was holding when he was declared surplus.

10. In the present case, respondent no. 1 was holding the post of Lecturer when he was declared surplus and disengaged. He was therefore entitled to be considered for absorption against the post of Lecturer, or an equivalent or lower post, in accordance with the applicable policy. Admittedly, the post of Lecturer was available and respondent no. 1 was absorbed against that post. Any claim thereafter for appointment, promotion or elevation to a higher post, including the post of Head of Department, would stand on an entirely different footing and would constitute a separate cause of action. Such claim, if otherwise available in law, would have to be considered in accordance with the statutory rules and the procedure governing appointment to the post in question.

11. The High Court, in our view, also erred in proceeding on the basis that the equivalence of the pay scales attached to the posts of Lecturer and Head of Department entitled respondent no.1 to direct absorption on the latter post. Equivalence of pay scales, by itself, cannot alter the nature of the post against which an employee is to be absorbed under a policy governing surplus employees.

12. Similarly, the mere fact that the post of Head of Department may have been vacant at the relevant point of time could not confer upon respondent no.1 an entitlement to direct absorption against that post. The question of filling up a vacant post and the question of absorption of a surplus employee are governed by distinct considerations and cannot be conflated.

13. For the reasons aforesaid, the appeal is allowed. The impugned order dated 27.09.2019 passed by the High Court of Judicature at

Bombay in Writ Petition No.1841 of 2013 along with Civil Application No.395 of 2019 is set aside.

13.1. Respondent no.1 shall be treated as having been entitled to absorption on the post of Lecturer in accordance with the applicable policy. However, we express no opinion on any independent claim that respondent no.1 may have had, or may otherwise be entitled to raise, in respect of any subsequent appointment, promotion or other benefit concerning the post of Head of Department. Since respondent no.1 has already superannuated, any such claim, if made, shall be considered and decided in accordance with law by the appropriate forum.

14. Pending application(s), if any, shall stand disposed of.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[R. MAHADEVAN]

NEW DELHI
AUGUST 11, 2026

ITEM NO.7

COURT NO.9

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).11757/2021

[Arising out of impugned final judgment and order dated 27-09-2019 in WP No.1841/2013 passed by the High Court of Judicature at Bombay]

THE STATE OF MAHARASHTRA & ORS.

Petitioner(s)

VERSUS

SUDHAKAR SHIVARAM TEKE & ORS.

Respondent(s)

(IA No. 89162/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 89163/2020 - EXEMPTION FROM FILING O.T.)

Date : 11-08-2026 This matter was called for hearing today.

CORAM :

HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) Mr. Aniruddha Deshmukh, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AoR
Mr. Shrirang B. Varma, Adv.

For Respondent(s) Ms. Pranjal Chapalgaonkar, Adv.
Mr. Vatsalya Vigya, AOR

O R D E R

Heard learned counsel for the parties.

2. Leave granted.
3. The appeal is allowed in terms of the signed reportable order.
4. Pending application(s), if any, shall stand disposed of.

(SAPNA BISHT)

COURT MASTER (SH)

(POOJA KOHLI)

COURT MASTER (NSH)

(Signed reportable order is placed on the file)