

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1633 of 2023

Joshana Dilip Patil

Age : 37 years, Occu : Service,

R/o : At Post Pathare, Tq. Sindkheda,

District : Dhule

...Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32
2. The Director of Education,
(Secondary and Higher Secondary),
Directorate of Education, Maharashtra State, Pune.
3. The Deputy Director of Education,
Nashik Division, Nashik.
4. Ranale Education Society, Ranale
Tq. And District Nandurbar.
Through its Secretary/President
5. The Head Master,
N. K. Tamboli Secondary and Jr. College,
Tq. and District : Nandurbar
6. Shri Sharadbhai Narayanbhai Tamboli,
Age : 70 years, Occ.:Agriculturist
R/o : Bhramangalli, Near Ram Mandir,
Ranale, Tq and District : Nandurbar ...Respondents

...

Mr. V. S. Panpatte, Advocate for the petitioner.

Mr. V. M. Kagne, AGP for Respondent Nos.1 to 3.

Mr. Sneha Patil, Advocate for Respondent Nos.4 and 5

Mr. L. V. Sangit, Advocate for Respondent No.6

...

**CORAM : NITIN B. SURYAWANSHI &
ABASAHEB D. SHINDE, JJ.**

RESERVED ON : 24.08.2026
PRONOUNCED ON : 23.09.2026

FINAL ORDER (Per Abasaheb D. Shinde J.) :-

1. Rule. Rule made returnable forthwith. With the consent of parties the Writ Petition is heard finally at the stage of admission.

2. By this Writ Petition, filed under Article 226 of the Constitution of India, the petitioner has put forth the following prayer :

B. By way of appropriate writ, order or directions in the like nature, this Hon'ble High Court may kindly quash and set aside the impugned order issued by the Deputy Director of Education, Nashik Division, Nashik thereby declaring that the approval granted to petitioner as illegal and further directing the education officer to submit proposal for cancellation of approval.

3. It is the case of the petitioner that she is duly qualified for being appointed on the post of Assistant Teacher. Since some of the teachers stood superannuated, Respondent No.4 published an advertisement on 26.07.2017 for filling up the said vacancies. Accordingly, she participated in the selection process pursuant to the said advertisement on 13.08.2017. After finding her eligible Respondent No.4 on 29.08.2017 appointed her on the post of Assistant Teacher. On 02.06.2018, a proposal

was forwarded to Respondent No.3-Deputy Director of Education, seeking approval to her appointment. On 07.01.2019, Respondent No.3 approved her services.

4. It is further case of the petitioner that Respondent No.6, who claims to be one of the trustees, made a complaint with Respondent No.3, *inter alia*, contending that the appointments of teaching and non-teaching staff made by Respondent No.4 were contrary to the directions issued by the Joint Charity Commissioner, Nashik, and there are several illegalities committed while making the said appointments. Respondent No.6 simultaneously, approached this Court by filing Writ Petition No.6303 of 2019, challenging the approval granted to the appointment of the petitioner by making same allegations. By order dated 06.06.2019, this Court disposed of the said Writ Petition by permitting Respondent No.6 to pursue his complaint filed before Respondent No.3. On the basis of said complaint Respondent No.3 has passed the impugned order, thereby holding the approval granted to the appointment of the petitioner being illegal on the following grounds:-

- i. As per order dated 13.07.2017 passed by the Joint Charity Commissioner, the appointment of the

petitioner is made without seeking prior permission;

ii. The appointment of the petitioner is not made through the Pavitra Portal;

iii. The record pertaining to petitioner's approval order dated 07.01.2019 is not traceable, which creates doubt about the said approval order.

5. The petitioner therefore, has challenged this order

6. Learned Counsel for the petitioner submits that the petitioner is duly qualified and has been appointed after following due procedure of law to the post of Assistant Teacher. He submits that due to dispute in the management of Respondent No.4, Respondent No.6 *mala fide* made complaint in respect of petitioner's appointment and approval. He further submits that it is a settled position of law that the approval once granted, cannot be cancelled unless the authority cancelling such approval has the power or authority to do so. He, therefore, urged that the impugned order deserves to be quashed and set aside.

7. Per contra, learned AGP submits that the appointment of the petitioner is de hors the directions of Joint Charity Commissioner and, therefore, the same could not have been approved. The approval granted to the petitioner's appointment itself is under a cloud, therefore,

Respondent No.3 was justified in cancelling the said approval.

8. Learned Counsel for Respondent No.6 would submit that the proceedings before the Joint Charity Commissioner were filed at his behest. The Joint Charity Commissioner by order dated 13.07.2017, restrained Respondent No.4 from taking any policy decision including the appointments of the teaching and non-teaching staff. Since, Respondent No.4 flouted the said order and appointed the petitioner as such, her appointment and approval is illegal. He further submits that the appointment of the petitioner is without following the due procedure of law. He, therefore, urged to dismiss the Writ Petition.

9. We have heard learned Counsel for the petitioner, learned AGP for Respondent/State and learned Counsel appearing for Respondent No.6 at length and perused the record.

10. As far as, first reason assigned in the impugned order is concerned, indisputably, the Joint Charity Commissioner, Nashik passed an order on 13.07.2017 under Section 41 A of the Maharashtra Public Trust Act, 1950. The operative order passed by Joint Charity Commissioner reads thus :-

:: ORDER ::

- 1. Both applications are partly allowed.*
- 2. The Care Taker managing committee is permitted to issue increment orders of teaching and non-teaching staff.*
- 3. They are further permitted to issue transfer orders of teaching and non-teaching staff who are due for transfer but after submissions of the list of the proposed transfer before this Authority.*
- 4. The Care Taker managing committee is authorised to operate the bank account with joint signatures of the President and Headmaster only in respect of expenditure pertaining the administration of school.*
- 5. They are further permitted to fill the post of teacher as per prescribed procedure and on fulfilment of directions of Education Department.*
- 6. Inform the concerned accordingly.*
- 7. The original order be kept in Application No. 13 of 2016 and its copy be kept in Application No. 09 of 2017.”*

11. Bare perusal of aforesaid order would show that there was no prohibition for recruitment of teaching or non teaching staff. On the contrary, Clause-5 of the aforesaid order permitted Respondent No.4 to fill the post of teacher as per prescribed procedure and on fulfillment of directions of Education Department.

12. As regards second reason is concerned, this Court has taken a consistent view that, the Pavitra Portal was not in operation during the relevant period, therefore, non-compliance with such requirement cannot be held against the petitioner.

13. So far as third reason about non-availability of record pertaining to grant of approval to the petitioner's appointment is concerned, we find that the petitioner cannot be held responsible for the non-traceability of such

Narwade/Ajay

record.

14. We are of the view that the approval once granted cannot be cancelled unless it is found that the same is obtained by playing fraud or misrepresentation. Perusal of record reveals that, the appointment of the petitioner is made after following due procedure of law. We thus find that Respondent No.3 has passed the impugned order on the basis of complaint made by Respondent No.6, thereby declaring the approval granted to the petitioner's appointment to be illegal and directing the Education Officer to submit proposal for cancellation of approval.

15. In our considered view, the reasons assigned in the impugned order are unsustainable and therefore, the impugned order is liable to be quashed and set aside. In view of the above discussion, we pass the following order :-

:: ORDER ::

i. Writ Petition is allowed in terms of prayer clause (B).

(ABASAHEB D. SHINDE, J.) (N. B. SURYAWANSHI, J.)