



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3087 OF 2024

Devanand Venkatrao Bharati

... PETITIONER

VERSUS

1. State of Maharashtra,
through Secretary for
Sports and School Education
Mantralaya, Mumbai-32
 2. Divisional Deputy Director of Education,
Near Bhadkal Gate, Mipa Building,
Aurangabad
 3. Education Officer (Secondary),
Zilha Parishad, Parbhani
Tal. & Dist. Parbhani
 4. Superintendent of Salary & EPF
Squad (Secondary) Near Adhar Multistate Bank,
Vakil Colony, Parbhani, Tq. & Dist. Parbhani
 5. Shri Jagdamba Vidya Prasarak Mandal
Purna, Tq. & Dist. Parbhani
through its President
 6. Rajarshi Shahu Vidyalaya
Aherwadi Tq. Purna, Dist. Parbhani
through its Head Master
- ... RESPONDENTS

...

Advocate for the Petitioner : Mr. P.S. Mantri h/f. Mr. P.V. Barde
AGP for respondents No.1 to 4 : Mr. M.K. Goyanka
Advocate for respondent Nos.5 and 6 : Mr. S.S. Birajdar h/f.
Mr. S.K. Chavan

...

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

Reserved on : 08.09.2026

Pronounced on : 28.09.2026

JUDGMENT (PER: ABASAHEB D. SHINDE, J.) :

1. Rule. Rule made returnable forthwith, with the consent of the 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 main prayer:

“A] By issuing appropriate writ, order, direction or any other order in nature of writ, Hon'ble High Court may be pleased to quash and set aside the communication dated 22.02.2024 passed by respondent no. 4 and order dated 29.01.2024 passed by respondent no. 2.

FACTUAL MATRIX : -

3. It is the case of the petitioner that respondent No. 5- Educational Trust is running respondent No. 6-school. The said Educational Trust is a minority institution and, therefore, is conferred with all the rights and privileges enshrined under Article 30(1) of the Constitution of India.
4. Since two out of the nine sanctioned posts in respondent No.6 School have fallen vacant, respondent No. 5 on 15.04.2022 published an advertisement to fill up the said posts. The petitioner participated in the selection process and after being found eligible, respondent No. 5 on 16.05.2022 appointed him to the post of Shikshan Sevak. Respondent No. 3 - Education Officer (Secondary), Zilla Parishad, on 08.09.2022 granted approval to his appointment. His name was also included in the Shalarth ID by respondent No.2 – Divisional Deputy

Director of Education on 15.02.2023.

5. It is further case of the petitioner that, Respondent No. 2 decided to hold an inquiry in respect of the approval orders issued by the erstwhile Education Officers. On the basis of said inquiry, by the impugned order dated 29.01.2024 respondent No. 2 cancelled the approval dated 08.09.2022 granted by respondent No.3 to his appointment, on the ground that (i) The Respondent No. 5, had not obtained prior permission from respondent No.3 before publishing advertisement pursuant to which the petitioner was appointed (ii) There was a ban on recruitment of the teachers due to Covid-19 pandemic as per Government Resolution dated 04.05.2020. Besides cancelling the approval granted to his appointment, respondent No. 2 directed respondent No. 4 to stop the salary of the petitioner and further directed recovery of the amount of salary already paid to him. It is further contended by the petitioner that, by virtue of cancellation of the approval granted to his appointment, respondent No. 4 - Superintendent of Salary and EPF Squad (Secondary), by order dated 22.02.2024, directed respondents No. 5 and 6 not to forward his salary bills. The petitioner has, therefore, approached this Court.

SUBMISSIONS : -

6. Learned Counsel for the petitioner submits that, respondent No.5 being a minority institution, prior permission for filling up the posts of

teaching and non-teaching staff from the respondent No.3 is not required. Likewise even the Government Resolution dated 04.05.2020 imposing a ban on recruitment would also not be applicable to the respondent No. 5. He would submit that, the respondent No.2 has no power or authority to cancel the approval once granted by respondent No.3, unless it is shown that the same is obtained by practicing fraud, misrepresentation or suppression of facts. He therefore urged that the impugned order passed by respondent No.2 deserves to be quashed and set aside.

7. Per contra, learned AGP would submit that, there were several complaints received by respondent No.2 in respect of malpractices regarding approval orders issued by the erstwhile Education Officers at the relevant time. Respondent No. 2 therefore decided to hold an inquiry in that regard. In the said inquiry, respondent No. 2 found that since the appointment of the petitioner was not made through the Pavitra Portal as well as made during ban period, the respondent No.3 ought not to have approved the services of the petitioner. It is therefore held that the approval order issued by the erstwhile Education Officer approving the services of the petitioner was without following due procedure of law. He, therefore, urged that there is no illegality or irregularity committed by respondent No. 2 while passing the impugned order.

CONSIDERATION :-

8. We have heard learned Counsel for the petitioner, learned AGP for the State, learned Counsel appearing for respondents No. 5 and 6 and have perused the record.

9. Undisputedly, being a minority institution, respondent No. 5 enjoys all the rights and privileges enshrined under Article 30 (1) of the Constitution of India, which confers the right to administer the Educational Institution including making appointments of teaching staff of its own choice, provided that the said teachers are duly qualified, once the teachers possessing the requisite qualification are selected by the minority institution for their educational institution, the State would have no right to veto the selection of those teachers. A support can be drawn from the decision of coordinate bench of this Court in the case of ***Momin Education Society and Another Vs. Education Officer (Primary) Zilla Parishad, Nanded and others***, decided on 16.07.2012 in Writ Petition No.116/2012, wherein, this Court after considering various other judgments and the rulings of the the Hon'ble Apex Court held thus :

“13. Considering the law laid down by the Supreme Court in the judgments cited supra, it is clear that the law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution would be void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities

to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person, who is not selected by it as a teacher.

14. *The directions issued by the Grievance Committee to the Education Officer in respect of sending surplus teachers for being accommodated by the minority institution and mandate requiring the managements of minority institutions to absorb such teachers and prescription of consequences for breach of the directives issued by the Grievance Committee, is beyond the scope of interference in view of the rights guaranteed to the minority institutions under Article 30(1) of the Constitution.”*

10. In the light of aforesaid observations of this Court, we are of the considered view that the precondition of obtaining permission before publishing advertisement and making appointment of the teachers is not applicable to the respondent No.5. Similarly, the Government Resolution dated 04.05.2020, thereby imposing ban on the recruitment

of the teachers would also be not applicable to respondent No.5.

11. There is no dispute that the petitioner is duly qualified for being appointed to the post of Shikshan Sevak. Record depicts that, the petitioner has been appointed after following due procedure of law. That being the position, in our considered view, in the absence of any allegation that the petitioner was instrumental in any fraud, misrepresentation or suppression of facts while seeking appointment or approval thereto, the respondent No.2 has no power or authority to review or cancel the approval once granted by the respondent No.3 merely by asserting that, the same was granted without following due procedure of law.

12. It would be profitable to rely on the judgment of this Court in the case of *Abhijit Ashok Waje Vs. The State of Maharashtra, through Secretary School Education and Others*; decided on 21.01.2022 (Writ Petition No.8881/2021, along with other connected writ petitions), wherein, this Court while considering the aspect as to whether the Deputy Director of Education or the Director of Education as the case may be has power to review or cancel the approval once granted by the Education Officer, observed thus :

“9. However, it cannot be said that approval, once granted, cannot be reviewed at all. It is also not the contention of the learned Counsel for the Petitioners. Their objection is to the wholesale review of all approvals at the time of entering the data in Shalarth ID. This exercise cannot be

done solely on the basis of the Circular of 29 March 2019 as it is not a Government Resolution issued under the name of Governor of Maharashtra, but a circular by an officer of State Government which would not have a force of law as a Government Resolution. Therefore, unless and until a Government Resolution is issued, which at present is not being placed before us, the review of approvals will have to be done as per the Government Resolution placed on record that is 6 February 2012, read with corrigendum dated 23 August 2017, as interpreted by this Court to be done in the limited ambit. Also, this exercise is to be done in different circumstances and for which a different methodology is prescribed. If the State Government has to review the approval granted and set aside the same on the ground that it was based on misrepresentation or fraud, the separate Government Resolution and procedure for that purpose are contemplated. The power cannot be exercised at the stage when it was not conferred. Furthermore, the recent decisions of this Court referred to above, from where passages have been quoted, have also clarified the position.”

13. Similarly in the case of ***Amol Baban Sangar Vs. State of Maharashtra and Others; 2022 DGLS (Bom.) 1088***, this Court while expressing displeasure about the way in which the office of Education Department is passing orders of cancellation of approvals, in paragraph No.8 made following observations :

“8. Before parting with the judgment, we must place on record our displeasure to the way such an issue of inclusion of name of the school employees in Shalarth system is being dealt with by the Officers of Education Department of the State of Maharashtra. It must be borne in mind by all the concerned officers that the Shalarth system was brought into vogue as per the Government Resolution dated 7/11/2012 and the only object of the Government Resolution was to streamline the system of payment of salary to the school employees and to bring complete uniformity and transparency in payment of salary by all

schools. There is no other purpose which is sought to be achieved by Shalarth system of computerized payment of salary. Nowhere in the Government Resolution is there any clause which requires the Deputy Director, Education, for that matter any other Officer of the State, to reconsider the issue of grant of approval, nor does the Government Resolution vests any Officer with any authority to review the order of grant of approval to the appointment of any school employee by the Education Officer and then decide about inclusion or otherwise of the name of such school employee in the Shalarth system. Besides, the power of review of any administrative order, if at all it exists, must be expressly created in the applicable statute because it has the potential of taking away a right vested in a school employee. In such a case, the power of review cannot be conferred by any Government Resolution which is in the nature of executive instruction. Of course, here the Government Resolution in question dated 7/11/2012 does not create any such power of review in the Deputy Director, Education and therefore, the Deputy Director, Education in any case, cannot examine the legality or otherwise of the approval granted to the appointment of any school employee, on the pretext of deciding the question of inclusion of name of the employee in Shalarth system. Proper course for him is to confine himself to parameters of the said Government Resolution and satisfy himself as to whether or not the employee fulfills the conditions of the Government Resolution. If he sees that the employee fulfills the conditions, he must direct inclusion of name of such employee in the system. If he feels that employee does not fulfill them, he may reject the proposal. His rejection, if it is there, however, cannot be for any consideration other than the consideration arising from the conditions stipulated in the Government Resolution dated 7/11/2012.”

14. Similar view has been taken by this Court in the case of **Suresh Eknath Kudalkar Vs. The State of Maharashtra and Others; 2022 DGLS (Bom.) 785.**, wherein, this Court in paragraph No.10 held as under :-

“10. It is further pertinent to note that on receipt of the

proposal for including the name of the petitioner in the Shalarth system, respondent No.4 issued a show cause notice dated 20/8/2019. The show cause notice is conspicuously silent about the reason or the ground for cancellation of the approval. It has not been stated in the notice that any fraud or misrepresentation or suppression of fact was involved in the matter and therefore, the approval was required to be cancelled. Perusal of the order passed by respondent No.4 would show that irregularity sought to be relied upon to cancel approval is that there was no vacancy on the date of appointment. In our view since this issue was gone into by this Court and decided in favour of the petitioner it was not open to respondent No.4 to make it a ground for review. It is settled legal position that the power of review cannot be used arbitrarily. In order to invoke the power of review it must be established that either the petitioner or respondent Nos.6 or 7 were guilty of fraud, misrepresentation or suppression of facts. These grounds can equally be made applicable to the officials of the Department where there is allegation of connivance. In order to invoke the ground of fraud or misrepresentation or suppression of fact reference to the same must be made in the show cause notice and the party whose rights are sought to be taken away must be given a reasonable opportunity of dealing with the same. In this case the ground of fraud or misrepresentation or suppression of fact has not been invoked. In our view therefore relying upon the Government Resolution dated 23/8/2017 for the reason and ground stated in the impugned order the approval could not be revoked/cancelled. The issue involved in this case has been squarely covered in the case of Ansari Amina Muzhar Ali vs. The State of Maharashtra and Ors. in Writ Petition No.1380/2019 dated 30/3/2020.”

CONCLUSION : -

15. In the light of above legal exposition laid down by this Court in the cases of **Abhijit Ashok Waje** (supra), **Amol Baban Sangar** (supra) and **Suresh Eknath Kudalkar** (supra), and having regard to what we

have observed herein above, we find that the impugned order passed by respondent No. 2 as well as the consequential order passed by respondent No. 4 are unsustainable and, therefore, deserve to be quashed and set aside. In the result, we pass the following order:

ORDER

- I. The writ petition is allowed in terms of prayer clause (A).
- II. Rule is made absolute in the above terms.

(ABASAHEB D. SHINDE, J.)

(NITIN B. SURYAWANSHI, J.)