

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5863 OF 2019

Shri. Abhijit Baban Thotam, B.Sc., B.Ed.]
 Age 35 years, Residing at 2/13,]
 Jagdish Dave Compound, Meghwadi,]
 Shyamnagar, Jogeshwari (E),]
 Mumbai- 400 060].....Petitioner

Versus

1. State of Maharashtra,]
 through the Secretary,]
 School Education Department, 4th Floor]
 Mantralaya, Mumbai- 400 032.]
]
2. The Director of Education,]
 State of Maharashtra,]
 Central Building, Pune- 411 001.]
]
3. Dy. Director of Education,]
 Mumbai Region, Mumbai]
 Jawahar Bal Bhavan, Charni Road,]
 Mumbai- 400 004.]
]
4. The Education Inspector (N.Z.)]
 Gr. Mumbai, New Administrative]
 Building, R.C. Marg, Chembur,]
 Mumbai - 400 071.]
]
5. Lalbahadur Shastri Shikshan Prasarak Mandal,]
 Through the General Secretary,]
 Office at: Munshi Mahal,]
 Pratapnagar, Bhandup - 400 078.]
]
6. Head Master,]
 Amar Kor Vidyalaya,]
 Munshi Mahal, Chowdhari Compound,]
 Pratapnagar, Bhandup - 400 078.]....Respondents

.....

Mr. Sachin Punde a/w Mr. Atharva Unde, for the Petitioner.

Mr. Yatin Shashikant Khochare “B” Panel Counsel, for the Respondent-State.

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CORAM	: M. S. KARNIK & SANDESH D. PATIL, JJ.
RESERVED ON	: 22 nd SEPTEMBER 2026
PRONOUNCED ON	: 8 th OCTOBER 2026

JUDGMENT [PER SANDESH D. PATIL, J.] :-

1. Heard learned Counsel for the parties. **Rule.** Rule is made returnable forthwith and with the consent of the parties the matter is taken up for final hearing.

2. By the present Writ Petition, the Petitioner is challenging the impugned Order dated 13.11.2018 passed by the Respondent No.3. There is also a direction sought against the Respondent Nos.1 to 4 not to act upon the impugned Order and that his salaries be released on regular basis.

3. The Petitioner is a qualified B.Sc., B.Ed. teacher. One Smt. Harshada Vijay Barve, Assistant Teacher in Respondent No.6- School

applied for voluntary retirement on 30.09.2011 with effect from 31.12.2011, and same was accepted through Resolution passed by the Respondent No.5- Management. Upon the voluntary retirement, vacancy was created in the Respondent No.6- School. The Petitioner, upon learning about the said vacancy, made an application to the Respondent No.6- School for the post on 02.01.2012. After lesson observation and interview, he was appointed as a Shikshan Sevak with effect from 01.02.2012 in Respondent No.6- School, and appointment letter dated 01.02.2012 was issued in favour of the Petitioner. The service of the Petitioner in the said School was duly approved by the Respondent No.4 *vide* letter dated 27.08.2013. The Petitioner on successful completion of 3 years as Shikshan Sevak, was appointed as an Assistant Teacher in Respondent No.6- School with effect from 01.02.2015 on regular pay-scale of Assistant Teacher, and appointment letter dated 31.01.2015 to that effect was issued by said School. The approval, to the appointment of the Petitioner as an Assistant Teacher in the said school, was granted by the Respondent No.4, *vide* letter dated 20.03.2015. The appointment was in the regular scale of Rs.9300-34800/- (Grade Pay 4300/-). The Respondent No.4, *vide* its letter dated 10.03.2017 sought clarifications regarding irregularity in appointment

of the Petitioner and other teachers from Respondent No.5. The Respondent No.5 had sent the clarifications to the Respondent No.4 clarifying the appointment of the Petitioner and his position, and personal hearing was granted to the Petitioner on 07.04.2017 where query of no advertisement being issued by the Respondent No.6 for the appointment was raised.

4. The Respondent No.4, thereafter *vide* its letter, dated 30.04.2017, addressed to the Respondent No.5 that approval granted to the appointment of the Petitioner is cancelled owing to the irregularities in the appointment of the Petitioner. The Respondent No.4 *vide* letter dated 01.06.2017 cancelled the approvals to the appointment. Writ Petitions were filed before this Court challenging the cancellation of approvals granted by the Respondent No.4. This Court (Coram: Anoop V. Mohta & Bharati H. Dangre, JJ.), *vide* its Order dated 14.08.2017 in WP No.8818 of 2017, taking into consideration the statement by the learned AGP appearing for the Respondent- State that the State Authorities had recalled all the orders cancelling the approvals granted, and further directed that the services of the Petitioner and other

teachers shall be continued as before with all consequential benefits, had disposed of the Writ Petition.

5. The Respondent No.4, *vide* its letter dated 15.09.2017 informed Respondent No.6-School and other Aided Schools regarding the decision of this Court dated 14.08.2017 and withdrawal of the cancellation orders.

6. In spite of this, the Respondent No.3 once again, *vide* its show cause notice dated 26.07.2018 raised issues regarding irregularities in granting approval to appointment of teachers and sought presence of the Petitioner at the hearing on 04.08.2018 at 11 am. The Petitioner attended hearings on 04.08.2018, 11.09.2018 and 20.10.2018 before the Respondent No.3. The Respondent No.3, *vide* its impugned Order dated 13.11.2018 cancelled the approval granted to appointment of the Petitioner on the grounds that at the time of appointment no advertisement was issued by the Respondent No.5, the Petitioner was appointed from open category post and that Rule 9(8) of the Maharashtra Employees of the Private School (Conditions of Service) Rules, 1981 (for short “**MEPS Rules, 1981**”) had not been followed at

the time of appointment of the Petitioner with Respondent No.6-School. The Petitioner was apprised of the impugned Order only on 12.04.2019 when informed of it by the Respondent No.5- Management; and since February 2019, the salaries of the Petitioner were not released. Being aggrieved by the said impugned Order, the Petitioner has filed the present Petition.

7. The learned Counsel appearing for the Petitioner submitted that the Petitioner was appointed in a duly sanctioned post. The vacancy was created due to the voluntary retirement taken by the previous teacher with effect from 31.12.2011. He was appointed as a Shikshan Sevak for 3 years and after successful completion of the same, he was appointed as an Assistant Teacher as per the provisions of the Section 5(2) of the Maharashtra Employees of the Private School (Conditions of Service) Act, 1978 (for short “**MEPS Act, 1978**”) He submitted that the Petitioner was appointed after following due selection procedure by the Respondent No.5- Management.

8. The learned Counsel submitted that the primary contention of the Petitioner is that Respondent Nos.3 and 4 are not vested with powers to review their own decisions and overturn/recall the approval after lapse

of more than 7 years. He has relied upon the judgment dated 01.08.2017 of this Court (Coram: B. R. Gavai & Riyaz I. Chagla, JJ.) in the matter of *Mrs. Shivaneer Prasanna Deshpande v. The State of Maharashtra & Ors.*¹.

9. Learned Counsel further submitted that the Petitioner has performed all his duties as regular Assistant Teacher and other assigned work to the best of his ability; and that despite two cancellations the Petitioner's status as a permanent Assistant Teacher has remained undisturbed. He also pointed out that it was never the case of the Respondents that post held by the Petitioner in Respondent No.6 did not exist or he was not qualified to hold the same. The learned Counsel appearing for the Petitioner submitted that the Government Resolution (for short "**G.R.**") dated 02.05.2012 is not applicable to the Petitioner as Petitioner was appointed with the Respondent No.6- School on 01.02.2012.

10. The learned Counsel heavily relied on the judgment dated 14.08.2017 of this Court (Coram: Anoop Mohta & Bharati Dangre, JJ.) in the matter of *Shishir Liladhar Lele & Ors. v. Satish Pradhan*

¹ Writ Petition No.10133 of 2016, High Court of Bombay at Bombay.

Dnyanasadhana College of Arts, Commerce & Science & Ors.² along with a group of petitions.

11. Learned Counsel in support of his submission has also relied upon the judgment dated 30.03.2021 of this Court (Coram: Nitin Jamdar & C.V. Bhadang, JJ.) in the matter of ***Ansari Amina Muzhar Ali v. The State of Maharashtra & Ors.***³ along with a group of petitions.

12. On the other hand, learned A.G.P. appearing for the Respondent supported the impugned Order passed by the Respondent No.3 and stated that it is a reasoned and justified Order. He submitted that the Respondent No.5- Management had not published any advertisement in the prescribed manner and had appointed the Petitioner unilaterally and in violation of Rule 9(8) of the the Maharashtra Employees of the Private School (Conditions of Service) Rules, 1981. He further submitted that the appointment of the Petitioner is illegal, back door entry and unconstitutional; and is in the teeth of the judgment of the Hon'ble Supreme Court in the matter of ***Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.***⁴.

² Writ Petition No.8818 of 2017, High Court of Bombay at Bombay.

³ Writ Petition No.1380 of 2019, High Court of Bombay at Bombay.

⁴ (2006) 4 SCC 1

13. Learned A.G.P submitted that the State Government pursuant to Order dated 01.08.2017 passed by this Court in Writ Petition No.10133 of 2016 and G.R. dated 06.02.2012, issued a new G.R. dated 23.08.2017 wherein it was decided that if approval granted earlier to the teaching or non-teaching is to be cancelled for whatsoever reason, the senior officer to the authority granting the said approval shall issue show cause notice to the concerned employee / institution and shall give them an opportunity to present their case. He further submitted that the after inspection of files, the Commissioner of Education, Maharashtra State, Pune, after coming across irregularities and misconduct, even in case of approvals granted in violation of MEPS Act, 1977 read with MEPS Rules, 1981 and G.R., vide its letter dated 24.08.2017 directed the Regional Deputy Directors of Education to conduct enquiry through hearings regarding said irregularities. Learned A.G.P vehemently opposed the petition and prayed for dismissal of the present Petition.

14. We have heard learned Counsel for the parties. We have perused the materials with the documents on record. The Petitioner has been working as a Teacher in the said school since 2012. As of date, he has

been working for 14 years. Relevant in the factual context is a decision of this Court in *Mrs. Shivaneesh Prasanna Deshpande v. The State of Maharashtra & Ors. (supra)*. Their Lordships observed thus:

6. By now, it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. No doubt, if an order is obtained by exercising fraud, it would stand vitiated. However, it is not the case of the Respondent- Education Officer that Petitioners have obtained their initial orders by fraudulent means. If the earlier Education Officer had granted approval to the Petitioners' appointment, may be erroneously, the same cannot be made a ground to recall the same and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out. Particularly when most of the Petitioners have already put in their services for 11 years, the impugned orders would amount to penalising them for no fault on their part."

This Court has clearly held that the authority cannot review its own order. In the present petition it is not the case of the Respondent No.3 that Orders were obtained by fraud or by misrepresentation or for suppression of material facts.

15. Relevant in the context is the judgment of this Court in *Ansari Amina Muzhar Ali v. The State of Maharashtra & Ors. (supra)*, in which it is held as under:

“7. Here, we are concerned with the order passed inter-party. The Petitioners had approached this Court earlier, and with certain observations, the petitions were allowed. The Division Bench opined that it is a settled principle of law that unless the power of review, specifically or by necessary implication, is provided, the Authority cannot review its own order. Second, if there is a case of fraud or misrepresentation made out, there can be ground to recall the order. Another aspect that where a person has put in a long period of service, then such a review would be highly inequitable.

8. The State Government, by issuing Government Resolution dated 23 August 2017, after noting the observations, has laid down that when approval is to be cancelled, a show-cause-notice be issued, and an opportunity of hearing be given to the concerned and then the decision be taken. The observations made in the order dated 1 August 2017 in Writ Petition No.10133/2016 and order dated 14 August 2017 referred to in the Government Resolution were not challenged, and we have not been shown any decision of any Court saying that this would not be the parameters. We have also not been shown any decision or Government Resolution that a full fledged review of all cases of approval is directed to be taken. We, therefore, do not agree with the submission of the learned A.G.P that the observations of the Court in the earlier Petitions were only in the context of the same officer recalling the order. The observations were not in the context of any officer but were prescribing the act of reviewing the earlier decisions, as such reviews after a long period of time when legitimate expectations arise, parties settle in life; are highly inequitable. Such powers would be arbitrarily used. The Division Bench, therefore, restricted the power of reconsideration/review in limited circumstances of fraud, suppression and misrepresentation. The phrases

"fraud", "misrepresentation", and "suppression" are not colloquial terms, but they have a judicially recognized ambit. These three factors need not be restricted to the acts of teachers and management alone, but they can be by the authorities and by way of collusion. In such cases, the review would be permissible. For that purpose, show cause notice should mention that these factors exist.

9. Therefore, when the impugned orders came to be passed, the aspect of whether there was any fraud or misrepresentation or suppression was to be dealt with. The impugned orders based on a show cause proceed only on the basis that Rule 9(8) has not been followed, and with no allegation of any fraud, suppression, misrepresentation or collusion. Therefore, since neither the show cause-notice nor the impugned order is based on fraud, misrepresentation or suppression, such impugned orders would be contrary to the order passed on 16 August 2017. Considering the language of the Government Resolution dated 23 August 2017 whereby show-cause-notice and opportunity of hearing are contemplated, a reasoned order is to be passed first putting the party to the notice of the fraud or misrepresentation or suppression and then to deal with the same in the impugned order. Since this has not been done and, in view of the order passed on 16 August 2017 in Petitioners' own case, the impugned order is liable to be quashed and set aside."

16. The show cause notice dated 26.07.2018 does not show any reasoned irregularities in appointment of the Petitioner as a teacher in the Respondent No.6- School. The impugned Order is based on the ground that Rule 9(8) of the MEPS Rules, 1981 has not been complied

with, but there is no allegation of fraud, misrepresentation or suppression. Thus, the show cause notice dated 26.07.2018 as well as the impugned Order issued by the Respondent No.3 is not based on fraud, misrepresentation or suppression.

17. The decision of this Court in the matter of ***Shishir Liladhar Lele & Ors. v. Satish Pradhan Dnyanasadhana College of Arts, Commerce & Science & Ors. (supra)*** requires to be noted at this juncture. The relevant paragraphs of the said judgment read thus:

“4) The respondents Authorities, who have granted the approvals so recorded above, have recalled the order of approval by cancelling it without following the due procedure of law specifically, in spite of a Division Bench Judgment of this Court (Coram: B.R.Gavai & Riyaz I. Chagla, JJ) in Writ Petition No 10133 of 2016 (Shivanee Deshpande Vs. State of Maharashtra and others) and other connected matters, whereby it is specifically held after considering the similar situation, as under:

"By now, it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. No doubt, if an order is obtained by exercising fraud, it would stand vitiated. However, it is not the case of the respondent-Education Officer that the petitioners have obtained their initially orders by fraudulent means. It is further observed in the said order as under if the earlier Education Officer had

granted approval to the petitioners' appointment, may be erroneously, the same cannot be made a ground to recall the same and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out. Particularly, when most of the petitioners have already put in their services for 11 years, the impugned orders would amount to penalising them for no fault on their part".

5) In view of the above, there is a force in the contention so raised by the learned Counsel appearing for the petitioners. The learned AGP therefore on instructions, conceded to the position of law and makes statement that the concerned respondents/officers/authorities shall recall the impugned order/action and related proceeding, if any dated 27th June, 2017 or such other dates as early as possible, preferably within two weeks; and they will als authority cancelling the approval granted o recall/withdraw their impugned action and/or orders of cancellation of approval in question. Further, they will grant/continue to provide all service benefits / entitlement to the petitioners or such teachers."

18. The G.R. dated 23.08.2017 issued by the State Government states that the authority higher to the one granting approval should issue show cause notice and grant an opportunity to present the case. Also, before passing the impugned Order, the authority should issue a show cause notice showcasing fraud or misrepresentation, but that is not the

case in the present petition. Thus, impugned Order is liable to be quashed and set aside.

19. The learned A.G.P. for the Respondent- State had placed reliance on the judgment of *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. (supra)* stating that the appointment of the Petitioner is illegal, however no reasonable justification has been provided by the Respondent- State as to how the said appointment is illegal. On the contrary, the appointment was approved by the Respondent No.4.

20. Almost 14 years have lapsed since the date of appointment of the Petitioner as a Shikshan Sevak in the Respondent No.6- School. There is no reason to disturb the appointment of the Petitioner at this distance of time. We find merit in this Petition and therefore, are, inclined to pass the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned Order dated 13.11.2018 passed by the Respondent No.3 is hereby quashed and set aside.

- (iii) The Respondent Nos.5 and 6 shall send a proposal to the Respondent Nos.3/4 within a period of four weeks from the date of producing this order.
- (iv) The salaries and arrears, if any, be released by the Respondent Nos.1 to 4.
- (v) Rule is made absolute in aforesaid terms.

21. The Writ Petition No.5863 of 2019 stands disposed off accordingly.

22. All parties to act upon an authenticated copy of this Order.

(SANDESH D. PATIL, J.)

(M. S. KARNIK, J.)