

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 9860 OF 2015

SHITAL ACHYUTRAO GAIKWAD. .. **PETITINER.**

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS, .. **RESPONDENTS.**

...

Advocate for Petitioner : Mr.Undre Vikram S
AGP for Respondents/State: Mr.S.R. Yadav.

...

and

WRIT PETITION NO. 9858 OF 2015

NAVNATH GANPATI TAMBARE. .. **PETITIONER.**

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS. .. **RESPONDENTS.**

...

Advocate for Petitioner : Mr. Undre Vikram S
AGP for Respondents/State: Mr.K.S. Patil.

...

CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: 14th DECEMBER, 2015.

PER COURT :-

1. These petitions take exception to the impugned communication dated 19th September, 2015 (Exh.F & Exh.E to the respective petition) wherein, by invoking Clause (2) of the Government Resolution dated 12th February, 2015 issued by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai, approval to the services of the petitioners has been refused for the time being.

2. The learned Counsel for the petitioners submits that the appointments of the petitioners were made in September, 2012 after following due procedure. The petitioners succeeded before the School Tribunal. The respondent – Education Officer was party before the School Tribunal. However, he did not raise the plea that, the petitioners' appointments were not in conformity with the procedure / provisions prescribed under the the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the M.E.P.S. Rules, 1981.

3. The learned AGP appearing for the respondents / State invited our attention to the averments in the affidavit-

in-reply and clause (2) of the Government Resolution dated 12th February, 2015 and submits that, the said Government Resolution is very much applicable in the facts of the present case.

4. We have heard learned Counsel for the petitioners and learned AGP appearing for the Respondents / State. With their able assistance, perused the pleadings in the petition, annexures thereto, reply filed by the respondent – Education Officer and reasons assigned in the impugned communication. Admittedly, the Government Resolution of which reference is made herein above, has been issued on 12th February, 2015 and the petitioners were appointed in the year, 2012. The proposal seeking approval to the services of the petitioners was subject matter before the respondent No.3 which is nothing to do with the recruitment process as stated in Clause (2) of the Government Resolution dated 12th February, 2015. It appears that the respondent No.3, without application of mind to the facts of the case, has wrongly placed reliance on Clause (2) of the said Government Resolution and rejected approval to the services of the petitioners. In the first place, said

Government Resolution cannot be made applicable with retrospective effect inasmuch as, appointments of the petitioners were made in the month of September, 2012 and Government Resolution was issued on 12th February, 2015 and secondly, proposal was forwarded for approval to the appointments of petitioners to the Education Officer; and it was not the case of fresh recruitment.

5. In that view of the matter, impugned communications are quashed and set aside. The respondent No.3 – Education Officer (Secondary), Zilla Parishad, Osmanabad is directed to consider the request of the petitioners for approval, afresh; but, certainly not to reject the same by assigning the same reasons which have been assigned in the impugned communications, and take decision, as expeditiously as possible; however, within eight weeks from today.

Both the petitions are disposed of on above terms.

(P.R. BORA, J.)

(S.S. SHINDE, J.)