

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

WRIT PETITION NO. 10972 OF 2014

Chimnaji Govind Kodwad .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 10754 OF 2014**

Pushpa Dhondiram Nilpatrewar .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Gunale, Advocate for the Petitioner in both matters.
Smt. S. A. Dhumal, A.G.P. for Respondent Nos. 1 and 2 in both matters.

Shri V. S. Panpatte, Advocate for the Respondent No. 3 in both matters.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 01ST JULY, 2015.

PER COURT :

. In both these matters, the petitioners are appointed as Shikshan Sevaks. The approval was granted by the Education Officer to their appointments, pursuant to the proposal

submitted by the management. It appears that pursuant to the directions given by this Court in Public Interest Litigation, enquiry was conducted with regard to the appointment of such petitioners. Pursuant to the enquiry report, Education Officer issued notice to the respective petitioners as to why their approval should not be cancelled and called for hearing. Thereafter, rejected the approval granted in favour of the petitioners. The said orders are assailed in the present writ petitions.

2. Mr. Gunale, the learned counsel for petitioners submits that the petitioners were appointed after following due procedure of law and against clear vacancy. Their proposals were approved after considering all relevant aspects of the matter. The petitioners were not given copy of enquiry report, nor were made to understand on which ground the Education Officer purported to cancel the approval granted in their favour. Learned counsel submits that only notice was issued asking the petitioners as to why their approval should not be cancelled. Learned counsel submits that the said order is in flagrant violation of principles of natural justice. It is also submitted by the learned counsel for petitioners that as on today, there are no surplus candidates which are required to be absorbed in other grant in aid institutions. According to the learned counsel, permission of the Education Officer is not necessary to fill in the posts.

3. Mr. Panpatte, the learned counsel for the Zilla Parishad submit that the appointments are made without permission. The application seeking permission is only a farce. Even without waiting for reasonable time, the advertisement was issued. According to the learned counsel, at the relevant time, there were more than 300 teachers available in the surplus list for absorption and at present also more than 200 surplus teachers are available for absorption. There was ban on recruitment vide Government Resolution dated 02.05.2012, still recruitment was made which is not permissible. Roster of reservation is not followed nor documents were submitted at the time of appointment. Procedure as laid down in Section 5 (1) of the M.E.P.S. Act and Rule 9 of the M.E.P.S. Rules has not been followed. The opportunity of hearing has been given to the petitioners. In one of the matters, even before the post became vacant the advertisement was given to fill in the post.

4. Mr. Thigle, the learned Additional Government Pleader submits that the Education Officer has given necessary hearing and the procedure has been complied with. Considering the enquiry report and after hearing the petitioners and the management, the Education Officer has taken conscious decision and reasons are given in the order by the Education Officer for cancelling the approval.

5. We have considered the arguments canvassed by the

learned counsel for the respective parties. It is the cardinal and fundamental principle of civil jurisprudence that when an order adverse to any party is sought to be passed, the principles of natural justice are to be adhered. It is submitted that after getting enquiry report, the Education Officer issued notices and after hearing the petitioners, the approvals have been cancelled after finding the appointments being illegal and not in consonance with the well established procedure, so also against the policy, Rules and the norms. It does not transpire that the Education Officer, at any material point of time, has given copy of enquiry report or part of the enquiry report to the concerned petitioners so as to make them aware of the ground on which they are required to file their say or to put forth their ground. Nor the notices issued to the petitioners calling them for hearing contained any ground on which the Education Officer is contemplating to cancel their approval. Without making the petitioners known of the ground on which their approval is sought to be cancelled, the purpose of hearing was only a farce and would not serve any purpose. Such procedure would not tantamount to adhering to the principles of natural justice.

6. In case the petitioners would have been made known the contents of enquiry report as against the petitioners or if notice would have been issued to the petitioners stating the ground on which their proposal is sought to be cancelled, then the petitioners would have been in a position to put forth their stand

effectively. In absence thereof, naturally the petitioners were handicapped to put forth their stand.

7. Now the petitioners have part of the enquiry report which is sought to be used against them and now they are aware of the ground on which their proposal is sought to be cancelled as is clear from the affidavit filed and the chart submitted.

8. Considering the above, we quash and set aside the impugned orders and relegate the petitioners before the respective Education Officer, who shall after getting the say of the petitioners and hearing the petitioners and the managements, decide about the aspect of proposal afresh.

09. In the light of above, we pass the following order:-

ORDER

- I. The impugned orders cancelling the approval of the petitioners are quashed and set aside.
- II. The petitioners are relegated before the Education Officer (Primary) Zilla Parishad, Nanded. They shall appear before the Education Officer on 15.7.2015. The petitioners and the respective managements are entitled to file their reply along with all necessary documents in support of their contention to the

ground raised in the enquiry report and the Education Officer after getting reply and hearing the petitioners decide about the said aspect of approval to the appointment of the petitioners afresh.

- III. Writ petitions accordingly stand disposed of with aforesaid observations and directions. No costs.
- IV. In case the Education Officer seek to raise some other ground against the petitioners, i. e. apart from the enquiry report, then the Education Officer shall bring the said ground to the notice of the said petitioners in advance so as to give opportunity to the petitioners to reply to the same.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]