

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10973 OF 2014
WITH CA/4146/2015 IN WP/10973/2014

SANJAY MOHANRAO DOMATE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY
REVENUE DEPARTMENT AND OTHERS

.....
Advocate for petitioners : Mr. Maniyar Irfan D.
AGP for respondent/State : Mr. K.G. Patil
Advocate for respondent No. 5 : Mr. Ravi R. Bangar

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WITH
WRIT PETITION NO. 10974 OF 2014

ANAND GYNOBA VYAWHARE, NANDED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. Bali Harish S.
AGP for respondent/State : Mr. K.G. Patil
Advocate for respondent no. 5 : Mr. Ravi R. Banger

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WITH
WRIT PETITION NO. 10975 OF 2014

JAGDISH BALAJIRAO MANE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. Bali Harish S.
AGP for respondent/State : Mr. K.G. Patil
Advocate for respondent Nos. 3 and 4: Mr. R.K. Ingole
Advocate for respondent no. 5 : Mr. Ravi R. Banger

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WITH
WRIT PETITION NO. 10976 OF 2014

PARVATI VISHWANATH VALLAPWAD, NANDED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. Bali Harish S.
AGP for respondent/State : Mr. K.G. Patil

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Advocate for respondent no. 3 : Mr. V.S. Panpatte

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WITH

WRIT PETITION NO. 10978 OF 2014

SAMBHAJI ASHOKRAO TATE, NANDED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for petitioner : Mr. Bali Harish S.
AGP for respondent/State : Mr. K.G. Patil
Advocate for respondent No.3: Mr. V.S. Panpatte
Advocate for respondent no. 5 : Mr. Ravi R. Banger

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WITH

WRIT PETITION NO. 11366 OF 2014

ASHIVINI GOPALRAO JOSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioner : Mr. Salgare Vitthal G.
AGP for respondent/State : Mr. G.K. Naik Thigle
Advocate for respondent nos. 5 : Mr. S. V. Natu

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WITH

WRIT PETITION NO. 11388 OF 2014

RAMESH MOHANRAO KADAM
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for petitioner : Mr. Salgare Vitthal G.
AGP for respondent/State : Mr. G.K. Naik Thigle
Advocate for respondent nos. 5 and 6 : Mr. P. B. Salunke

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WITH

WRIT PETITION NO. 11718 OF 2014

DILIP VEERBHADRA KONAPURE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for petitioner : Mr. Vikram S. Kadam
AGP for respondent/State : Mr. D.R. Korde
Advocate for respondent no. 3 : Mr. S. B. Ghatol Patil

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Advocate for respondent nos. 4 and 5 : Mr. R. S. Patil

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WITH

WRIT PETITION NO. 11721 OF 2014

MAROTI BALIRAM CHAULWAD

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for petitioner : Mr. Vikram S. Kadam

AGP for respondent/State : Mr. K.G. Patil

Advocate for respondent No 3: S.B. Pulkundwar

Advocate for respondent nos. 4 and 5 : Mr. R. S. Patil

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WITH

WRIT PETITION NO. 1180 OF 2015

VITHAL SAMBHAJI NARWADE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for petitioner : Mr. Bali Harish S.

AGP for respondent/State : Mr. K.G. Patil

Advocate for respondent no. 3 and 4: Mr. R.K. Ingole

Advocate for respondent no. 5 : Mr. I. D. Maniyar

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WITH

WRIT PETITION NO. 10496 OF 2014

GAJANAN SHIVAJI KADAM

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for petitioner : Mr. Bali Harish S.

AGP for respondent/State : Mr. K.G. Patil

Advocate for respondent no. 3 : Mr. S.B. Pulkundwar

Advocate for respondent no. 5 : Mr. I. D. Maniyar

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WITH

WRIT PETITION NO. 10497 OF 2014

ASHA SURESHRAO MARPALIKAR

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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.....
Advocate for petitioner : Mr. Bali Harish S.
AGP for respondent/State : Mr. K.G. Patil
Advocate for respondent no. 3 : Mr. R.K. Ingole
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WITH
WRIT PETITION NO. 10498 OF 2014

ARUNA NAMDEORAO VIRALE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. Bali Harish S.
AGP for respondent/State : Mr. K.G. Patil
Advocate for respondent No. 3 : Mr. G. R. Ingole
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WITH
WRIT PETITION NO. 11577 OF 2014

VIJAYALAKSHMI MAROTI SWAMI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for petitioner : Mr. Bali Harish S.
AGP for respondent/State : Mr. K.G. Patil
Advocate for respondent no. 5 : Mr. S. V. Natu
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 26th JUNE, 2015

P.C. :-

1. In all 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. Learned counsel for respective petitioners submit 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 submit that only notice was issued asking the petitioners as to why their approval should not be cancelled. Learned counsel submit that the said order is in flagrant violation of principles of natural justice. It is also submitted by the learned counsel for respective parties 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. Bangar, Mr. Natu, Mr. R.S. Patil and Mr. Maniyar learned

counsel for the management in respective writ petitions submit that all documents were placed before the Education Officer by the management showing that the appointments have been rightly made and no illegalities are committed in making the appointments. Even permission was also sought, however, no reply was given and thereafter by issuing advertisement and by following selection process, appointments are made.

4. 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 them, 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 2.5.2012, 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 some of the matters, even before the post became vacant the advertisement was given to fill in the post.

5. The learned A.G.P. 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.

6. 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.

7. 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.

8. 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.

9. 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.

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

O R D E R

- I. The impugned orders cancelling the approval of the petitioners are quashed and set aside.
- II. The petitioners are relegated before the respective Education Officer. They shall appear before the respective Education Officer on 15.7.2015. The petitioners and the respective managements are entitled to file their reply alongwith 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. Civil applications also stand disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

rlj/