

Sequeira

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

WRIT PETITION NO. 7794 OF 2014.

Shri Mali Deepak Nagnath & anr.

.. Petitioners

Vs.

The State of Maharashtra
through Secretary, Education
Department & ors.

.. Respondents

Mr.V.S.Deokar a/w Ms Ujwala Karape, for the petitioners.

Ms.S.S.Bhende, Assistant Government Pleader, for the respondent
Nos.1 to 3.

***CORAM: Smt. Vasanti A. Naik &
Shri C.V.Bhadang JJ.
Wednesday 4 March, 2015.***

PC.:

By this petition, the petitioners impugn the order of the Education Officer dated 07/08/2014 cancelling the approval to the appointment of the petitioners on the post of 'Shikshan Sevak'.

The respondents management appointed the petitioners after issuance of an advertisement, on the post of Shikshan Sevak. After the appointment of the petitioners was made, on 15th June 2012, the management sent the proposal of the petitioners to the Education officer for grant of approval. The respondent No.3 – Education officer granted approval to the appointment of the petitioners by an order dated 19/10/2013. By the impugned order

dated 07/08/2014, the Education Officer cancelled the approval on the ground that the appointment of the petitioners could not have been made on 15th June 2012 in view of the ban against the appointments. The order dated 07/08/2014 is impugned in the instant petition.

Interalia, it is submitted on behalf of the petitioners that the impugned order is liable to be quashed and set aside as the Education officer did not grant an opportunity of hearing to the petitioners before cancelling the approval. It is stated that it was necessary for the Education officer to have heard the petitioners before cancelling the approval.

Ms.Bhende, learned Assistant Government Pleader, appearing on behalf of the Education Officer, states that though the Education Officer, had not heard the petitioners, the Deputy Education Officer had heard the petitioners and the report of the Deputy Education Officer was considered by the Education Officer while cancelling the approval. It is stated that in the aforesaid background, it was not necessary for the Education officer to have heard the petitioners.

On hearing the learned counsel for the parties, it appears that the Education officer could not have cancelled the approval to the appointment of the petitioners without affording an opportunity of hearing as it is well-settled that the approval cannot be cancelled

without hearing the person concerned. In the instant case, admittedly, the Education Officer, who passed the order did not hear the petitioners. The Deputy Education Officer who heard the petitioners was not competent to cancel the approval. It is well-settled that the authority which decides the matter and passes the order is obliged to give an opportunity of hearing. The Asstt. Govt. Pleader is not justified in submitting that an opportunity was not necessary before the Education Officer cancelled the approval as the petitioners were duly heard by the Deputy Education Officer. It was incumbent on the part of the Education Officer to have heard the petitioners before passing the impugned order.

Hence, for the reasons aforesaid, the Writ petition is partly allowed. The impugned order is quashed and set aside. The Education Officer may take appropriate action in the matter of cancellation of the approval after hearing the petitioners. The petitioners undertake to remain present before the Education officer on 23rd March 2015, so that issuance of notice to the petitioners could be dispensed with. The Education Officer should decide the matter in accordance with law. The points raised in the petition are kept open. No costs.

(C.V.Bhadang J.)

(Vasanti A.Naik J.)