

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

Writ Petition No. 6349 of 2013

Deepak s/o Prakash Kamble & anr.

v.

State of Maharashtra & ors.

WITH

Writ Petition No. 6438 of 2013

(Mahavir s/o Digambar Vishwambar v. State of Maharashtra & ors.)

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. R. A. Haque Advocate for the Petitioners in W.P. No. 6349/13.
Mr. A.S. Fulzele, AGP, for respondents 1 to 3.
Mr. Firdos Mirza Advocate for respondent no. 4.
Mr. N.B. Kalwaghe Advocate for respondents 6, 7 and 8.

Mr. M.R. Johrapurkar Advocate for petitioner in W.P. No. 6438/13.
Mr. A.S. Fulzele, AGP, for respondents 1 to 3.
Mr. Firdos Mirza Advocate for respondent no. 4.

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**Coram : B.P Dharmadhikari &
S.B. Shukre, JJ.**

Date : 25th March, 2015.

Three non-teaching employees of respondent no. 4-
institution and respondent no.5-school are before this Court in these
two petitions assailing the decision dated 22.3.2013 rendered by
respondent no. 2- Deputy Director of Education cancelling approval

to their appointments.

2. Shri Johrapurkar and Shri Haq, learned counsel for the petitioners, submit that relevant records have not been looked into. As the employees earlier selected in response to the advertisement did not join, after following proper procedure a fresh advertisement was published on 1.4.1994 and the petitioners were selected. Accordingly, they reported and started working.

3. Advocate Kalwaghe, who appears for respondents 6, 7 and 8 in W.P. No. 6349/13, submits that respondents 6, 7 and 8 had already joined after their selection in 1992 and were very much working in 1994 and, as such, contention that they did not join, is not correct. Hence, claim of the petitioners that they are selected legally cannot be accepted. He points out that though these respondents were not parties before respondent no.2 and they were not heard by that authority, the order dated 22.3.2013 is in their favour. He, therefore, opposes the petitions.

4. Learned AGP is seeking time to assist the Court. He submits that though initially affidavit has been filed on 11.3.2014, later on, due to non availability of records, necessary details could not be furnished to this Court.

5. With the assistance of respective counsel, we have perused the record. We find that on 9.9.2014 this Court issued directions to respondents to file reply within a period of two weeks. Further time was given on 23.9.2014 and thereafter on 21.1.2015 this Court has passed the following order :

“Heard.

Perused communication dt. 17.7.2013 sent by the Education Officer to petitioner no. 2 and respondent no. 5. It mentions three posts and points

out three appointments made in the year 2007 and approval thereto in the year 2007-08. Thereafter, the very same persons are again mentioned and it is alleged that they are appointed in next year, though there was no vacancy. The communication, therefore, mentions that, in the year 1994-95 these three persons were appointed in excess. Thus, in the earlier order, these three persons are found within sanctioned strength and in the next year, it is alleged that these three persons are beyond that strength.

The learned AGP is seeking time of two weeks to clarify the position. Time is granted by way of last chance.

S.O. 4.2.2015.”

6. In the light of the position noted therein, AGP sought time of two weeks to clarify the position. Therefore, we had adjourned the matter on 11.2.2015. On 25.2.2015, this Court was informed that the concerned Education Officer had gone missing with relevant records. Because of this statement made by learned AGP, we granted time of four weeks and that is how the matter is appearing before this Court today.

7. In some other matters, similar controversy relating to other schools is involved. Office of Government Pleader has been taking adjournments either to trace out the record or trace out the said Education officer. It is already brought to the notice of this Court that F.I.R. is also registered against that Education Officer. In this situation, it is apparent that the matter cannot be considered effectively by this Court unless and until records are re-constructed.

8. Respondents 6, 7 and 8 in W.P. No. 6349/13 have

already got approval and are working. They were not heard by respondent no. 2 while passing the impugned order. The impugned order, though in paragraph 8 mentions advertisement dated 1.8.1994 and holding of interviews on 3.8.1994 as also issuance of appointment order dated 8.8.1994 to one Mahavir Vishwambhare, who is petitioner in W.P. No. 6438/13, we find that said advertisement has not been looked into.

9. If the approval was cancelled by the Education Officer, vacancies were pointed out and then no objection was given to publish advertisement, the effect thereof on recruitment of petitioners before us need consideration. The petitioners submit that because respondents 6, 7 and 8 did not join the posts were vacant. According to them, if staff justification in the year 1983-94 is looked into, the vacancies were very much in existence. Petitioners also relied upon some observations in the impugned order and the reply sent by the Education officer to the management on 17.7.2013. That reply shows that in 1994-95 total three posts in Class IV category find mention. Whether those posts were in addition to the posts already filled in or different than one on which respondents 6, 7 and 8 are working, is a question.

10. In this situation, when relevant records are not coming before the Court, we do not find it proper to keep this matter pending. The petitioners, management as well as respondents 6, 7 and 8 may have some records in their custody, which will enable respondent no. 2 to reconstruct the record and to take a fresh decision. Hence, for these reasons and for the reasons recorded by us on 21.1.2015 (supra), we direct the petitioners as also respondents 6, 7 and 8 in W.P. No. 6349/13 to appear before respondent no. 2 on 06.5.2015. On that day, they shall provide true copies of all the documents in their possession to the office of

respondent no. 2. Respondent no. 2 shall also procure similar documents and other records from respondents 4 and 5. Respondents 4 and 5 shall remain present before respondent no. 2 on that day for said purpose. After procuring all the relevant records and after giving opportunity to the parties to peruse the same, respondent no. 2 shall pass fresh order within eight weeks therefrom.

11. Keeping all the contentions open and with these directions, writ petitions are disposed of. No costs.

Judge

Judge

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