

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

13 WRIT PETITION NO. 3286 OF 2015

VIJAYKUMAR AMBAJI DAVANE AND ANOTHER
VERSUS
STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners : Mr. Ghatge Mahesh V.
AGP for Respondents State: Mrs. S. S. Raut
Advocate for Respondent No.3:Mr.V. S. Panpatte - Absent

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

DATE : 29th August, 2016

ORDER:

1. Mr. Ghatge, the learned counsel for the petitioners, states that the petitioners were appointed on 10th June, 2002 as clerk and peon respectively. Proposal was submitted seeking approval to the appointment of the petitioners in the year 2009. The Education Officer recommended the same to the Director of Education. Subsequently, again in the year 2012, the Director of Education also forwarded it to the State Government, however, no decision was taken. Consistently, the proposals to sanction the said posts on which the petitioners were appointed were being forwarded. It is submitted that in the year 2002 also, strength of the school crossed 500 students and therefore, as per relevant Government Resolution, the Institution was entitled to appoint clerk and peon. The learned counsel submits that vide order dated 1st January, 2014, the

Education Officer (Primary) Zilla Parishad, Nanded had accorded approval to the appointment of the petitioners from 15.06.2012. However, without notice to the petitioners and without hearing the petitioners, vide order dated 18.02.2014, the said approval was revoked. Learned counsel submits that there was no impediment to grant approval to the appointment of the petitioners since their initial date of appointment as, the strength of the students has risen above 500. Reliance is placed on the Government Resolution dated 12.07.2014.

2. We have heard learned AGP also. None appears for respondent Nos. 3, 4 and 5. Respondent No.3 has filed affidavit. The affidavit states that the approval was granted without considering the Government Resolutions dated 02.05.2012 and 06.09.2012 i.e. ban being imposed on recruitment.

3. It is a matter of record that on 1st January, 2014, proposal seeking approval to the appointments was granted w.e.f. 15.06.2012 though it was contended that the petitioners were appointed in the year 2002. The said order is abruptly cancelled vide order dated 18.02.2014. The order does not show that while passing the said order, notice of hearing was given to the

petitioners or the Management.

4. Certainly, the petitioners are not entitled as of right to hearing when initial proposal for approval is to be considered. However, when the proposal seeking approval to the appointment of the petitioners was considered and the same was approved and subsequently, when it is being cancelled, at that time, it was necessary for the authority to call for the say of the petitioners or to hear the petitioners and to give them opportunity to put forth their stand. The impugned order is passed without notice to the petitioners, it is detrimental to the interest of the petitioners. The same is quashed and set aside.

5. The respondents Authority shall re-consider the proposal seeking approval to the appointment of the petitioners, afresh and take decision upon the same on its own merits in accordance with law, after hearing the petitioners/Management. In that case, all contentions of the respective parties are kept open.

6. Writ petition is accordingly disposed of. No costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC