

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

WRIT PETITION NO. 11233 OF 2015

1. Tukaram s/o Bharat Dudile
Age 31 years, Occu: Service
as Assistant Teacher, Shri
Ganesh Vidyalaya, Shivankhed,
Tal. Chakur, Dist. Latur
2. Ramrao s/o Sheshrao Gitte, ... **Petitioners**
Age 33 yeas, Occupation:
Service as Assistant Teacher,
Shri Ganesh Vidyalaya,
Shivankhed, Tal. Chakur,
Dist. Latur

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai 400 032
2. The Education Officer
(Secondary)
Zilla Parishad, Latur
3. Shivankhed Shikshan Prasarak
Mandal, Shivankhed, Tal.
Chakur, District: Latur,
Through its Secretary shri
Shivaji s/o Narhari Nagargoje
4. Shri Ganesh Vidyalaya,
Shivankhed, Taluka Chakur,
Dist. Latur
through its Headmaster Shri
Narsing s/o Dnyanoba Bawache
5. Venkatesh Kishanrao Kasale ... **Respondents.**
Age 75 years, Occu:
Pensioner, R/o Shivankhed Tq.
Chakur, Dist. latur

Advocate for Petitioners : Mr. S. S. Thombre
AGP for Respondents State: Mr. M. B. Bharaswadkar
Advocate for Respondents State : Mr. M. B. Bharaswadkar
Advocate for Respondent Nos.3 & 4 : Mr.M. S. Karad
Advocate for Respondent No. 5 : Mr. Santosh S. Jadhavar

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

DATE : 29th September, 2016

JUDGMENT (Per Gangapurwala, J.):

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal
3. Mr. Thombre, the learned counsel for the petitioners submits that the petitioners were appointed as Shikshan Sevak. Their appointment as Shikshan Sevak was also approved by the Education Officer. Subsequently, without notice to the petitioners and without hearing the petitioners, the order granting approval to the appointment of the petitioners is set aside. The learned counsel submits that on completion of three years, the petitioners acquired the status of permanent Assistant Teacher. No illegality was committed at the time of appointment of the petitioners. Due selection process was followed.

4. Mr.Jadhavar, the learned counsel submits that the persons who appointed the petitioners were not authorized to appoint. There was illegality in the appointment of the petitioners. Complaint was made by respondent no.5 and after considering the entire record, impugned order has been rightly passed.

5. The learned AGP states that there is dispute amongst the members of the Managing Committee. Appointment was also not as per the roster and as such, the impugned order is passed.

6. We have considered the submissions.

7. When a proposal is sent seeking approval to the appointment of a person by the Institution, naturally, the Education Officer has to consider the record and pass orders for approval. It is not necessary to hear the parties at that time. However, if after considering the said record approval is granted and subsequently, after grant of approval, if certain action is contemplated to be taken with regard to the approval granted, then in such circumstances, before passing any adverse order, it is necessary to hear the person in whose favour earlier, the order was passed.

8. In the present case, the approval was granted to the appointment of the petitioners and subsequently, vide the impugned order it is cancelled, even without notice to the petitioners. The said order does not withstand the test of the principals of natural justice.

9. In light of above, the impugned order is quashed and set aside.

10. The petitioner may appear before the Education Officer on 17th October, 2016. The Education Officer shall, after issuing notice to all interested parties, take decision afresh with regard to the approval.

11. The petitioners and all others persons are entitled to place on record the documents which they would chose to rely. The Education Officer shall consider all the said documents and pass afresh orders on its own merits, in accordance with law, after considering the stands taken by all the parties.

12. It is submitted that the petitioners are discharging their duties. Even this Court had granted interim orders, however, salary is not paid to the petitioners. The concerned Headmaster shall submit the

salary bills of the petitioners till date to the Education Office. The Education Officer shall process the same and shall not refuse to sanction the said salary bills only on the ground that question of approval is subjudice before him.

13. The concerned Headmaster shall submit the salary bills within a period of three weeks from today and upon receipt of the same, the Education Officer shall process it within a period of four weeks from the receipt of the salary bills.

14. The Education Officer shall decide the proceeding before him with regard to the approval expeditiously, preferably within a period of four months from the date of appearance of the parties.

15. Rule is made absolute accordingly. There shall be no order as to costs.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC