

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 873/2016

(DYANCHAND DHANIRAM KAPGATE & OTHERS **VERSUS** STATE OF MAHARASHTRA & ORS)

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

Court's or Judge's orders

Shri P.N. Shende, counsel for the petitioners.
 Shri V.P. Maldhure, A.G.P. for the R-1 to 3.

CORAM : SMT.VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : JUNE 7, 2016.

By this writ petition, the petitioners challenge the order of the respondent no.3-Education Officer dated 31.12.2012 cancelling the approval to the appointment of the petitioner no.1 that was granted on the same date. The petitioners seek a direction to the respondents to consider the proposal of the petitioners for grant of approval to the appointment of the petitioner no.1 on the post of Junior Clerk.

The petitioner no.3 is a minority institution and it is the case of the petitioners that there is a solitary post of Junior Clerk available in the school run by the petitioner no.2-Society. According to the petitioners, in the year 2012, the Junior Clerk retired on attaining the age of superannuation and the petitioner no.2-Society, appointed the petitioner no.1 on the post of the Junior Clerk, after following the due procedure prescribed by law. It is stated that the petitioner no.2 issued an advertisement and followed the proper selection procedure before appointing the petitioner no.1. The proposal for grant of approval to the appointment of the petitioner no.1 was sent by the petitioner no.3 to the Education Officer. The said proposal was favourably considered and approval to the appointment of the petitioner no.1 on the post of Junior Clerk, was granted on 31.12.2012. It is the case of the petitioners that the said approval order was, however, cancelled on the same day by recording a solitary reason that there

was a stay/*status quo* granted by the High Court in the matter of grant of approval to the appointments of the teaching and non-teaching staff. The petitioners have challenged the order dated 31.12.2012 and have sought a direction to the respondent no.3-Education Officer to reconsider granting approval to the appointment of the petitioner no.1, more so, when Writ Petition No.9026 of 2014 and others that were pending at the Principal Seat and in which some interim order that is referred in the order of cancellation of approval dated 31.12.2012 was passed, are disposed of. It is stated that in the circumstances of the case, the respondent no.3-Education Officer should consider granting approval to the appointment of the petitioner no.1, as the petitioner no.3 is a minority institution and the appointment of the petitioner no.1 is made in accordance with law. It is submitted that the Education Officer had already considered this aspect and had granted approval to the appointment of the petitioner no.1 by the order dated 31.12.2012 that was cancelled by the impugned order on the same date.

On hearing the learned counsel for the parties, it appears that the approval to the appointment of the petitioner no.1 is cancelled only because of the pendency of the bunch of writ petitions bearing Writ Petition No.9026 of 2014 & Others, before the Principal Seat. The said writ petitions are disposed of by the judgment dated 15.12.2015. Since the Education Officer had granted approval to the appointment of the petitioner no.1 by the order dated 31.12.2012, it *prima-facie* appears that the Education Officer was convinced that the appointment of the petitioner no.1 was made in accordance with law. It appears that the approval was cancelled only by referring to some interim orders in the bunch of writ petitions, that were decided on 15.12.2015. In the circumstances of the case, it would be necessary to direct the respondent no.3-Education Officer to reconsider the proposal for grant of approval to the appointment of the petitioner no.1 in accordance with law within a time frame.

Hence, we direct the Education Officer to consider granting approval to the appointment of the petitioner no.1 on the post of Junior Clerk within a period of one month.

Order accordingly. No costs.

JUDGE

JUDGE

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