

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

Writ Petition No. 10701 of 2017

District : Parbhani

1. Pradeep s/o. Sakharam Borade,
Age : 33 years,
Occupation : Service,
R/o. Vrundawan Colony,
Taluka & District Parbhani.
 2. Kailash s/o. Diliprao Sawandkar,
Age : 34 years,
Occupation : Service,
R/o. Yeldarkar Colony,
Vasmat Road, Parbhani,
Taluka & District Parbhani.
 3. Pradeep s/o. Vilasrao Kadam,
Age : 29 years,
Occupation : Service,
R/o. Shivaji Nagar, Purna,
Taluka Purna,
District Parbhani.
 4. Shilpa d/o. Shankarrao Ghatge,
Age : 32 years,
Occupation : Service,
R/o. Shivram Nagar,
Vasmat Road, Parbhani,
Taluka & District Parbhani.
 5. Shilpa d/o. Madhavrao Vairagar,
Age : 33 years,
Occupation : Service,
R/o. Nava Mondha, Parbhani,
Taluka & District Parbhani.
 6. Shubhangi d/o. Ashokrao Aamle,
Age : 30 years,
Occupation : Service,
R/o. Station Road, Parbhani,
Taluka & District Parbhani.
- .. Petitioners.

versus

1. The State of Maharashtra,
School Education and Sports
Department,
Mantralaya, Mumbai - 32.
 2. The Commissioner (Education),
Maharashtra State, Pune.
 3. Education Officer (Secondary),
Zilla Parishad, Parbhani,
Parbhani.
 4. Nehru Education Society,
Parbhani, Dist. Parbhani,
Through its Secretary.
 5. Gandhi Vidyalaya,
Secondary, New Mondha,
Gavhane Road, Parbhani,
Through its Headmaster.
- .. Respondents.

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Mr. V.D. Salunke, Advocate, for petitioners.

*Mr. S.B. Joshi, Asst. Government Pleader, for
respondents no.01 to 03.*

Mr. Nitin Jagadale, Advocate, for respondent no.04

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**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 08TH SEPTEMBER 2017

ORAL JUDGMENT (Per R.M. Borde, J.) :

01. Heard learned counsel for petitioners and
learned Asst. Government Pleader for respondents
no.01 to 03.

02. Rule. Rule made returnable forthwith. By consent, heard finally.

03. As no order adverse to the interest of respondent no.05 is being passed, service of notice upon rule to said respondent is not necessary.

04. Petitioners are employed as teachers in the school operated by the respondent - Education Society. Petitioners have been inducted in the employment on 18th June, 2012 and their services were approved initially as a probationer for a period of three years on 21st October, 2013. Petitioners, on completion of probation period of three years, have been confirmed and necessary orders granting approval have been issued by the Education Officer. Petitioners are aggrieved by the orders issued by the Education Officer (Secondary), Zilla Parishad, Parbhani, on 07th July, 2017 and 07th July, 2017 directing withdrawal of recognition accorded to services of petitioners earlier by then Education Officer. According to petitioners, withdrawal of approval is in violation of Government Resolution dated 02nd May, 2012. Under the policy declared by the Government, it was incumbent upon educational institutions to absorb surplus teachers and seek permission of the Education Department before issuing the advertisement calling applications for making appointment to the post of teacher. The Education Officer in the orders impugned has referred that the

educational institution has not complied with the directions contained in the Government Resolution dated 02nd May, 2012 and as such, the order of recognition accorded by then Education Officer overlooking policy of the Government deserves to be quashed.

05. Petitioners contend that it is not permissible for the present holder of the office to review the order passed by his predecessor. It is contended that there is no power of review conferred on the Education Officer under any law and as such, it was impermissible for him to take review of the administrative decision taken by his predecessor. It is further contended that the petitioners have rendered about six years of service. It has not been demonstrated that the petitioners have played any fraud or have secured employment by making any misrepresentation or suppression of certain vital information. In the circumstances, according to petitioners, it was impermissible for the Education Officer to pass the impugned orders directing withdrawal of recognition of permanent employees i.e. petitioners.

06. Reliance is placed by petitioners on the judgment delivered by Division Bench of this Court at principal seat in Writ Petition No. 10133 of 2016 (*Mrs. Shivane Prasanna Deshpande Vs. The State of Maharashtra & others*) and other companion matters, on 01st August,

2017. It is specifically recorded by the Division Bench in para 06 of the judgment, that by now it is settled principle of law that *'unless power of review is specific or by necessary implication provided, the authority cannot review its own order. If the order is obtained by exercising fraud, it would stand vitiated. However, it is not the case of the respondent - Education Officer that petitioners have obtained their initial orders by fraudulent means. If the earlier Education Officer had granted approval to the petitioners' appointment, may be erroneously, the same cannot be made a ground to recall the same and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out.'* Similar view has been adopted by the Division Bench of this Court at principal seat in Writ Petition No. 8818 of 2017 (*Shishir Liladhar Lele & others Vs. Satish Pradhan Dnyanasadhana College of Arts, Commerce & Science & others*) and companion matters dated 14th August, 2017.

07. In the instant matter also, the order impugned does not set out that the petitioners have secured the order by exercising fraud or that they are responsible for making any misrepresentation or suppression of certain vital information.

08. Pursuant to the decisions rendered by the Division Bench, as referred to above, the State Government has declared revised policy on 23rd August, 2017. The State has issued a corrigendum to the earlier Government Resolution clarifying thereunder that if any action is proposed, steps should be taken in observance to the directions

issued by the Division Bench in the judgments referred to above and the decision would be taken by the superior officer after extending opportunity of hearing to persons concerned.

09. In view of the revised policy declared by the State on 23rd August, 2017, the orders impugned in this petition, passed by the Education Officer (Secondary), Zilla Parishad, Parbhani, dated 04th July 2017 and 07th July, 2017, deserve to be quashed and set aside and the same are accordingly quashed.

10. Rule made absolute in the above terms. In the circumstances, there shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

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