

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 368 OF 2017

Prakash Shankar Shinde & Anr. ..Petitioners

v/s.

The State of Maharashtra & Anr. ..Respondents

**WITH
WRIT PETITION NO. 370 OF 2017**

Prashant Honrao Gabhale & Anr. ..Petitioners

v/s.

The State of Maharashtra & Anr. ..Respondents

**WITH
WRIT PETITION NO. 378 OF 2017**

Prashant Prakash Nemishte & Anr. ..Petitioners

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. N.V.Bandiwadekar a/w. Adv. Mandar Bagkar for the Petitioners
Mr. J.A. Madane for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd JUNE, 2017.**

P.C.

1. Heard. Rule. By consent of parties taken up for hearing at the stage of admission.
2. The petitioners herein have challenged the orders dated 5th December, 2016 passed by the Education Officer (Secondary), Zilla Parishad, Kolhapur. The challenge in Writ Petition No.368 of 2017 and 370 of 2017 is to the order dated 5th December, 2016 whereby the Education Officer has stayed the approval granted in favour of the respective petitioners till receipt of guidance from the Superior Officer. Whereas, the challenge in Writ Petition No.378 of 2017 is to the order dated 5th December, 2016 whereby the Education Officer has canceled the approval granted in favour of the petitioners.
3. The petitioners herein had earlier filed Writ Petition No. 2780 of 2015, Writ Petition No. 2151 of 2015 and Writ Petition No.2279 of 2015 to direct the Education Officer to take decision on the proposal of approval. The said petitions were disposed of by order dated 24th March, 2015 whereby the Respondent No.2, Education Officer was directed to decide the applications for approval filed by

the petitioners in accordance with law, as early as possible, preferably within eight weeks from the date of the order. Accordingly, the proposal was submitted and approval was granted to each of these petitioners as Shikshan Sevak for three years. Subsequently, the service of the petitioner Mr. Shinde (petitioner in Writ Petition No. 368 of 2017) were continued as Junior Clerk in the payscale from 13th August, 2012, whereas the services of the Mr. Nemishte (petitioner in Writ Petition 378 of 2017) and Mr. Gabale (petitioner in Writ Petition No. 370 of 2017) were continued as Assistant Teachers in payscale from 21st December, 2015. Since the Respondent No.2 did not release the grant, applications were made by the Headmistress seeking permission to include the name of the petitioner no.1 for payment of salary online. On 29th November, 2016, an order was issued whereby the respondent no.2 was informed that permission was granted to include the names of the petitioners for payment of salary online. The petitioners made representations and requested that the order should be issued for releasing their monthly honorarium salary. Subsequently, by the impugned orders, the respondent no.2 stayed the approval of

Nemishte and Gabhale and canceled the approval of the petitioner Shinde.

4. Learned Counsel Shri Bandiwadekar has submitted that the order of stay or cancellation was passed without hearing the petitioners. He has also submitted that the order does not record any reasons either for staying or canceling the order of approval.

5. There is no dispute that the impugned orders do not record and reasons either for staying or canceling the approval. The learned AGP has brought to my notice, an affidavit in reply, filed by the Deputy Education Officer wherein reasons for stay and cancellation of approval have been spelt out. Needless to state that when the order itself does not contain any reasons, it cannot be supplemented by giving fresh reasons either in the affidavit or otherwise.

6. Be that as it may, it is not in dispute that the appointment was approved by the Education Officer. Admittedly, the Education Officer had not issued any show cause notice to the petitioners and the impugned orders have been passed without hearing the petitioners. In the above circumstances, the impugned orders cannot be sustained.

7. Hence the writ petitions are allowed. The impugned orders are quashed and set aside.

. It is open to the Education Officer to pass appropriate orders in accordance with law after hearing the petitioners. It is made clear that this Court has not gone into the merits of the matter. All points and contentions, including the contentions as regards the power of the Education Officer to stay or cancel the approval, are specifically kept open.

Rule made absolute.

(ANUJA PRABHUDESSAI, J.)