

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.803 OF 2016

Annasaheb Vitthal Jadhavar	... Petitioner
v/s	
The State of Maharashtra and others	... Respondents

WITH
WRIT PETITION NO.75 OF 2016

Ashok Anandrao Adhalrao	... Petitioner
v/s	
The State of Maharashtra and others	... Respondents

Mr S.S. Pakale i/b Mr S.M. Katkar for Petitioners.
Mr V.N. Sagare, AGP for Respondent – State.
Mr P.S. Hagare for Respondent Nos.6 and 7.

**CORAM : SHANTANU S. KEMKAR &
B.P. COLABAWALLA, JJ.**

DATE : MARCH 30, 2017

P.C.:

With the consent of the learned counsel for the parties all these petitions are finally heard. Since the facts and questions of law involved in all these cases are same, they are being decided by this common order. For the sake of convenience, facts are taken from Writ Petition No.803 of 2016.

2. Briefly stated that the Petitioner was appointed by the Respondent Nos.6 and 7 – Management as a Shikshan Sevak for a period from 15th June 2012 to 14th June 2015 vide Exh.'F' to the Petition. The said appointment of the Petitioner as Shikshan Sevak was approved by the Education Officer vide order dated 14th July 2014 Exh.'G'. On completion of three years service period, the Petitioner was appointed as a regular Assistant Teacher. The said appointment as Regular Assistant Teacher was approved by the Education officer vide order dated 7th January 2016.

3. When the matter stood thus the Education Officer vide show cause notice dated 8th December 2015 Exh.'K' called upon the Petitioner as also Respondent Nos.6 and 7 to appear before him on 14th December 2015 by observing that the appointment of the Petitioner was contrary to the rules. The Petitioner appeared before the Education Officer, but without giving due opportunity of hearing to the Petitioner and making the Petitioner or the Respondent Nos.6 and 7 aware of the discrepancies, the Education Officer vide order dated 7th January 2016 cancelled the approval of Petitioner's appointment. Feeling aggrieved, the Petitioner has filed this Petition.

4. According to the learned counsel for the Petitioner when the Petitioner's appointment was duly approved by the Education Officer it was not within his powers to have reviewed the said order that too without issuing any show cause notice. He submits that the impugned order reflects various reasons for cancelling the approval of the Petitioner's appointment, whereas, none of the said reasons were reflected in the communication dated 8th December 2015 by which the Petitioner and the Management were called upon to appear before him. The learned counsel for the Petitioner has also placed reliance on the order passed by this Division Bench of this Court on 2nd August 2013 in Satpute Vidya Machindra v/s State of Maharashtra and others (Writ Petition No.3811 of 2013) as also the Division Bench judgment of this Court in the case of Suresh K. Thorat v/s The State of Maharashtra and others, (Writ Petition No.4555 of 2011 decided on 14th November 2011) to contend that there is no power vesting to the Education Officer to review his own order and that in any case if it is found that the approval order was obtained by fraud or by misleading or by furnishing fabricated documents about the qualification and experience, it would be necessary for the Education

Officer to issue the show cause notice to the concerned person and place the papers for passing appropriate order before the Deputy director of Education, after hearing the parties in the case of Satpute Vidya Machindra (supra). In the circumstances, learned counsel for the Petitioner submits that in view of the law laid down by this Court in Satpute Vidya Machindra v/s State of Maharashtra and others and in case of Suresh K. Thora v/s The State of Maharashtra and others, the impugned order be quashed.

5. On the other hand, learned AGP has supported the impugned order. He submitted that the Petitioner's appointment being contrary to the GR as also in violation of the relevant provisions, the same has rightly be cancelled by the Education officer.

6. Having considered the submissions made by the learned counsel for the parties and having gone through the communication dated 8th December 2015, which on the face of it cannot be termed as a show cause notice and after going through the impugned order, we find that the impugned order has been passed by the Education Officer without issuance of any show cause notice to the Petitioner in

regard to the various reasons for cancelling the appointment order. In the circumstances the same is unsustainable. Moreover in view of the law laid down by the Division Bench of this Court in the case of Satpute Machindra (supra) as also in Suresh K. Thorat (supra) the Education Officer could not have itself reviewed its own order and cancel the approval of the appointment. If he was of the opinion that the approval order was obtained by fraud or by misleading or by furnishing fabricated documents about the qualification and experience, it was necessary for him to have issued show cause notice to the Petitioner and the Management and to place the papers before the Deputy Director of Education for passing appropriate order after hearing the parties. If there was no appropriate advertisement, no proper procedure adopted for interviewing the candidate and everything was a farce still it was open for the Education officer to have issued notice in that regard and have placed the matter before the Deputy Director who should have given opportunity of hearing to the Petitioner on the basis of show cause notice and to have passed reasoned order. This having been not done, we have no option but to quash the impugned order dated 7th January 2016 passed by the Education officer (Secondary), Zilla Parishad, Pune. However, we

make it clear that it will be open for the Respondent No. 5 – Education Officer to initiate the appropriate proceedings against the Petitioner as also against the Management in accordance with law in the light of the observations made herein above. With the aforesaid observations, liberty and directions the Petitions are disposed of.

7. Needless to say that appropriate decision is required to be taken by the Deputy Director as aforesaid.

(B.P. COLABAWALLA, J.)

(SHANTANU S. KEMKAR, J.)