

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9705 OF 2017

Shri Nitin Bhaidas Nerkar & anr.

.... Petitioners

vs

The State of Maharashtra & anr

.... Respondents

ALONG WITH
WRIT PETITION (ST) NO. 23686 OF 2017

Smt. Ansari Sadia Shakil Ahmed

.... Petitioner

vs.

The State of Maharashtra & ors.

.... Respondents

Mr. N. V. Bandiwadekar for the petitioners in both matters.

Mrs. R.M. Shinde, AGP for respondent/State in both matters.

**CORAM: ANOOP V. MOHTA AND
SMT. BHARATI H. DANGRE, JJ.**

DATE : August 28, 2017

FINAL ORDER:

1 Statement is made by the learned Counsel appearing for the parties that the petitioners' cases are governed on facts as well as on law by a judgment of this Court in Appellate Side Writ Petition No. 8818 of 2017 and other connected matters dated 14th August, 2017. The learned AGP is conceding this position.

2 This Court after hearing the parties and similar placed

facts and circumstances of the case, passed the following order :

1)“Rule. Rule is made returnable forthwith. Heard finally by consent of parties as the common issues are involved and so also the action of common respondents, we are inclined to dispose of the present writ petitions by this common order, as agreed by all. Learned A.G.P. waives service of notice for the Respondent State in all the matters.

2) The petitioners are working as Assistant Teacher in their respective Institutions since long, ranging from 6 to 12 years. They were appointed on vacant posts after following the due procedure of law, initially as a Shikshan Sevaks, after three years approvals were granted, and confirmed/appointed as Assistant Teachers. At both stages, the concerned respondents/officers in the respective petitions have granted approvals as required in accordance with law. All the petitioners therefore in view of this have been in service in the respective posts.

3) The respondents, suddenly based upon a report of the Commissioner, (Education) Maharashtra State, Pune initiated the proceedings/impugned action of cancellation of approvals, already granted since long. It is stated that the said Commissioner did issue show cause notice, but without specifying the changes/reasons, for intended action.

4) The respondents Authorities, who have granted the approvals so recorded above, have recalled the order of approval by cancelling it without following the due procedure of law specifically, in spite of a Division Bench Judgment of this Court (Coram: B.R.Gavai & Riyaz I. Chagla, JJ) in Writ Petition No 10133 of 2016 (Shivaneesh Deshpande Vs. State of Maharashtra and others) and other connected matters, whereby it is specifically held after considering the similar situation,

as under:

“By now, it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. No doubt, if an order is obtained by exercising fraud, it would stand vitiated. However, it is not the case of the respondent Education Officer that the petitioners have obtained their initially orders by fraudulent means. It is further observed in the said order as under 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. Particularly, when most of the petitioners have already put in their services for 11 years, the impugned orders would amount to penalising them for no fault on their part”.

5) In view of the above, there is a force in the contention so raised by the learned Counsel appearing for the petitioners. The learned AGP therefore on instructions, conceded to the position of law and makes statement that the concerned respondents/officers/authorities shall recall the impugned order/action and related proceeding, if any dated 27th June, 2017 or such other dates as early as possible, preferably within two weeks; and they will also recall/withdraw their impugned action and/or orders of cancellation of approval in question. Further, they will grant/continue to provide all service benefits /entitlement to the petitioners or such teachers.

6) In the interest of justice and to avoid further delay and complication, we are inclined to accept the statement made the learned AGP on behalf of the respondents authorities. In view of this, we are inclined to dispose of these petitions by keeping all

contentions open of both sides.

7) It is made clear that in view of withdrawal of the impugned action so referred to above, all the petitioners/teachers are entitled for all the requisite benefits as they are otherwise entitled in law. The concerned respondents, within a period of three weeks, will take effective steps to avoid further delay. It is made clear that once the impugned action / order is withdrawn as recorded above of the consequential benefits including their salaries need to be immediately released, if withhold for such reasons.

8) All the writ petitions are allowed accordingly. No costs.

9) The parties to act on the basis of an authenticated copy of this order.”

3 In view of above, for the same reasons, we are inclined to extend the same reliefs to the petitioners also. The respondents are granted three weeks time from today. Accordingly, both the petitions are allowed. No order as to costs.

The parties to act on the basis of an authenticated copy of this order.

(BHARATI H. DANGRE, J.)

(ANOOP V. MOHTA, J.)