
Mr. Vijay Killedar, for the Petitioner in all petitions.

Ms. Rupali M. Shinde, AGP for Respondent Nos. 1 to 3, in all petitions.

Mr. Suhas Inamdar i/b Sushil Inamdar, for Respondent No. 6.

CORAM : B. R. GAVAI, &
MANISH PITALE, JJ.

DATE : DECEMBER 6, 2017

JUDGMENT : [PER : MANISH PITALE, J.]

1. Heard. Rule. Rule is made returnable forthwith. Learned AGP waives service of notice for Respondent Nos. 1 to 3. Learned counsel Mr. Suhas Inamdar waives service of notice for Respondent No. 6.

2. The Petitioners in these writ petitions were appointed in the post of Assistant Teacher with Respondent No. 5 School on different dates in the year 2014. The appointments of Ram Madhukar Shelke (Petitioner in Writ Petition No. 11418/2017) and Balaji Prakash Nandwate (the Petitioner in Writ Petition No. 11438/2017) were approved by an order dated 2.1.2016 by Respondent No. 3 –

Education Officer. The appointments of Juber Rashid Bijali (Petitioner in Writ Petition No. 11437/2017) and Pratiksha Sadanand Shelake (Petitioner in Writ Petition No. 11444/2017) were approved by Respondent No. 3 the Education Officer on 4.1.2016.

3. Thereafter, by impugned order dated 22.1.2016, Respondent No. 3 Education Officer has stayed his own orders granting approval to the appointments of the Petitioners. The said order dated 22.1.2016 has been passed by Respondent No. 3 – Education Officer on the basis of a complaint by Respondent No. 6 and it is stated that the orders of approval would remain stayed till the complaint submitted by Respondent No. 6 is finally decided.

4. These writ petitions have been filed by the Petitioners challenging the said impugned order dated 22.1.2016 on the ground that Respondent No. 3 Education Officer does not have powers of review and that having granted approval to the appointments, he could not have exercised the power to revisit the orders of approval.

5. The question as to whether Respondent No. 3 Education Officer could have exercised powers of review is no more *res integra*, as a Division Bench of this Court in an order dated 1.8.2017 passed in

a group of petitions, lead petition being Writ Petition No. 10133 of 2016, has categorically held that the Education Officer does not have power of reviewing his own order. The relevant portion of the order reads as follows:

“6. We find that it will not be necessary for us to go into the merits to find out as to whether the reasons given by the Education Officer in the affidavit are correct or not. We find that the petitions deserve to be allowed on short ground that by the impugned order, Respondent Education Officer has set aside the order passed by the earlier Education Officer. As such, the impugned order revokes the approval granted by the earlier order passed by the predecessor in the office of the Respondent Education Officer. 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 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.”

6. Thus, it is evident that in the present writ petitions, position of law is clearly in favour of the Petitioners herein and the impugned order dated 22.1.2016 is unsustainable and deserves to be quashed and set aside. Although it is also placed on record that

Respondent No. 6 has submitted a letter dated 8.11.2016 before Respondent No. 3 – Education Officer stating that he is withdrawing the complaint, which had led to the issuance of the impugned order dated 22.1.2016, we find that it is not necessary for us to go into that aspect, because the impugned order dated 22.1.2016 could not have been passed by Respondent No. 3 – Education Officer, as he has no powers of review.

7. Accordingly, all the writ petitions are allowed. The impugned order dated 22.1.2016 is quashed and set aside. Rule is made absolute in terms of prayer clause (a), with no orders as to costs.

Sd/-
[MANISH PITALE, J.]

Sd/-
[B. R. GAVAI, J.]

Vinayak Halemth