

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 2321 OF 2017

Mr. Bhaurao Zetingrao KalekarPetitioner
Vs.
The State of Maharashtra and ors.Respondents

WITH
WRIT PETITION (LODGING) NO.2322 OF 2017

Mr.Sunil Soma AmalePetitioner
Vs.
The State of Maharashtra and ors.Respondents

**WITH
WRIT PETITION (LODGING) NO.2323 OF 2017**

Miss Shelar Vaishali VishnuPetitioner
Vs.
The State of Maharashtra and ors.Respondents

WITH
WRIT PETITION (LODGING) NO.2324 OF 2017

Mr.Kishore Balchandra BhoirPetitioner
Vs.
The State of Maharashtra and ors.Respondents

WITH
WRIT PETITION (LODGING) NO.2356 OF 2017

Mr.Jayesh Chimaji HandePetitioner
Vs.
The State of Maharashtra and ors.Respondents

1. Heard the learned counsel appearing for the parties finally.

2. The submission is made by the learned counsel appearing for the respective parties that all these Petitions are also covered and governed by order passed by this Bench on 14 August 2017 in Writ Petition No.8818 of 2017 and other connected matters in every aspects, including the facts and impugned orders and the actions and the reliefs.

3. Therefore, we are inclined to dispose of all these Writ Petitions by common order as agreed by all the parties on the same line. Order dated 14 August 2017 passed by this Court in WP No. 8818 of 2017 and other companion matters, reads thus-

“FINAL 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 Shikhan 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.”*

4. In view of above, all these Writ Petitions are allowed for the same reasons. All the Petitions are allowed accordingly in terms of paragraph Nos. 5 to 9 of order dated 14 August 2017 passed in Writ Petition No. 8818 of 2017. There shall be no order as to costs.

(SMT.BHARATI H. DANGRE, J.)

(ANOOP V. MOHTA, J.)

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