

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8865 OF 2014**

Pawar Ganesh Balkrishna	}	
Aged 45 yrs, Occu:Service		
Residing at & Post Kurduwadi	}	
District Solapur		.. Petitioner
vs		
1. State of Maharashtra	}	
(Notice to be served upon the		
Assistant Government Pleader		
High Court, Appellate Side,	}	
Mumbai)		
2. The Education Officer	}	
(Secondary) Zilla Parishad		
Solapur		
3. Kurduwadi Shikshan Prasarak Mandal }		
Kurduwadi, District Solapur		
(Notice to be served upon Secretary)	}	
4. The Head Master	}	
Nutan Vidyalaya, High School		
Kurduwadi, District Solapur	}	.. Respondents

Mr.Vipul Bodhane for Petitioner
Mr.C.P.Yadav Assistant Government Pleader
for Respondent nos.1 and 2.

**Coram : R.M.BORDE &
RAJESH G.KETKAR, JJ**
Date : 13th FEBRUARY 2018

ORAL JUDGMENT (Per R.M.Borde, J)

Heard.

2. Rule.

3. The Petition is taken up for final disposal at the admission stage.

4. The Petitioner is objecting to the order passed by the Education Officer on 7.8.2014 thereby recalling the earlier order passed by his predecessor according approval accorded to the appointment of the Petitioner. By virtue of the impugned order, the Education Officer (Secondary) has directed withdrawal of approval accorded to the services of the Petitioner for reason:

that the appointment has been made as against open category seat overlooking the backlog of unfilled categories in the Institution. The Petitioner was appointed as a Librarian in a school operated by the Educational Institution no.3 in the year 2010. The services of the Petitioner were approved by the then Education Officer by issuing an order on 19.10.2013. Initially, the appointment of the Petitioner was as a 'Shikshan sevak' for a period of three years. The Petitioner contended that since the appointment of the Petitioner as 'Shikshan sevak' has been approved by the Education Officer on completion of the period of three years as a Shikshan sevak, the Petitioner is entitled to

be confirmed in employment as a regular Librarian and no separate order according approval shall have to be issued by the Education Officer on completion of probationary period of three years. The Petitioner contends that although the Petitioner is a confirmed employee, the Education Officer without extending any opportunity of hearing to the Petitioner on own reviewed the order passed by his predecessor in the year 2010 and directed cancellation of the order of approval accorded in favour of the Petitioner. It is further contended that the Education Officer is not invested with powers to review the order passed by his predecessor and if at all a review of the order is required to be taken, then the Competent Authority is Deputy Director of Education, who is a superior Officer.

5. The issues raised in the instant Petition is no more res-integra and is covered by the decision rendered by the Division Bench of this Court in ***WRIT PETITION NO.10133 of 2011 in the matter of MRS SHIVANEE PRASANNA DESHPANDE VS STATE OF MAHARASHTRA & ors*** and other companion matters decided on 1.8.2017. It is recorded by the Division Bench in para 6 of the judgement quoted below :

“ 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 Petitioner's 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 impugned orders would amount to penalising them for no fault on their part. “

6. In the instant matter also, the impugned order does not set out any reason nor it has been alleged that the Petitioner has secured appointment by practicing fraud or that he is responsible for making any misrepresentation or has suppressed any vital information. In pursuance to the decision rendered by the Division Bench referred to above, the State Government has issued a Corrigendum to the earlier Government Resolution clarifying that if any action is proposed, then steps shall have to be taken in observance of the directions issued by the Division Bench in the

judgement referred above. The decision of withdrawal of approval shall have to be taken by a superior Officer after extending an opportunity of hearing to the employee concerned. The order impugned in this Petition passed by the Education Officer (Secondary) Zilla Parishad, Solapur deserves to be quashed and set aside and the same is accordingly quashed and set aside.

7. The Petitioner contends that as a result of withdrawal of approval by the Education Officer, the salary payable to the Petitioner from the date of issuance of the order has not been released. The Respondent-Zilla Parishad shall release the past salary and pay the amount receivable by the Petitioner as expeditiously as possible and preferably within a period of eight weeks from today.

8. Rule is accordingly made absolute in above terms. In the circumstances, there shall be no order as to costs

{RAJESH G.KETKAR, J}

{R.M.BORDE, J}