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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7648 OF 2017

Vilas s/o Dattatry Pawar and others ..Petitioners.
Versus
The State of Maharashtra and others ..Respondents

Ms. Rutuja Shinde i/by Mr. Devendra D. Pawar, Advocate for the
Petitioners

Ms. Kavita N. Solunke, AGP for Respondent Nos.1 to 3.

**CORAM: B. R. GAVAI &
SMT. BHARATI H. DANGRE, JJ.**

DATE: 3rd MAY, 2018

ORAL JUDGMENT: (Per B.R. Gavai, J.)

1] Rule. Rule is made returnable forthwith. Petition is taken up for final hearing by consent of parties.

2] Petition challenges the order dated 29th May, 2017 vide which Respondent No.4 – Education Officer withdrew the approval which was granted to the appointment of the Petitioners vide order dated 29th August 2016.

3] Heard Ms. Shinde, learned Counsel appearing on behalf of the

Petitioners. She submits that a Division Bench of this Court, in its Order dated 1st August, 2017 passed in a bunch of Writ Petitions beginning with Writ Petition No.10133 of 2016, has held that the Education Officer has no power to review his own order. She submits that, the facts in the present case are identical to the facts in the said case. A Division Bench of this Court in the said order passed in the said bunch of Petitions, has observed in para 6 as under:-

“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 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 Petitioners have

already put in their services for 11 years, the impugned orders would amount to penalising them for no fault on their part.”

4] In the present case also, the Respondent – Education Officer, after considering the proposal submitted by the Respondent – Management had granted approval on 29th August, 2016. However, the same has been recalled by him vide order impugned in the present Petition.

5] In that view of the matter, Petition deserves to be allowed on a short ground that by the impugned order, Respondent – Education Officer has set aside the order passed by the earlier Education Officer.

6] The impugned order dated 29th May, 2017 is quashed and set aside. The order dated 29th August, 2016 is restored. It is further directed that the Petitioners would be entitled to continuity in service with all consequential benefits.

7] Rule is made absolute accordingly with no order as to costs.

(SMT. BHARATI H. DANGRE, J.)

(B. R. GAVAI, J.)