

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

WRIT PETITION NO. 11233 OF 2016

Pandurang Balbhim Ghule
Age: 30 yrs., Occu: Service,
r/a. Sanjay nagar, in front of
Yashodhara Kanya Prashala,
Vijapur Road, Solapur.

...PETITIONER

VERSUS

1. The State of Maharashtra
2. Education Officer (Secondary)
Zilla Parishad, Solapur.
Z.P. Compund Solapur.
3. The President,
Netaji Subhash Chandra Bose
Shikshan Prasarak mandal,
Kasegaon, Tal. South, Solapur,
Dist. Solapur.
4. Headmistress
Barrister Babasaheb Bhosale
Prashala, Kasegaon,
Tal. South Solapur, Dist. Solapur.

...RESPONDENTS

APPEARANCES-

Mr. Shrishali Sakhare for Petitioner.
Mr. Hamid D. Mulla for Respondent No. 3 and 4.
Mr. V.M. Mali, AGP for Respondent No. 1 and 2.

**CORAM : S. S. SHINDE &
V. G. BISHT, JJ.**

RESERVED ON: 28/02/2020.
PRONOUNCED ON: 13/03/2020.

JUDGMENT (PER S. S. SHINDE, J.)

1. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the respective parties.

2. This writ petition is filed with following prayer:-

(b) this Hon'ble Court be pleased to call for the record and proceedings of present case and after examining the legality and priority thereof, impugned order of respondent no. 2, Educational Officer (Secondary), Z.P. Solapur bearing letter/order No. O.W.No. Edu.Offi.Appro./Edu.Offi. Appro. Camp/2012/796 dated 20/6/2012 be quashed and set aside;

3. It is the case of the Petitioner that Respondent No. 3 and 4 issued an advertisement for the appointment of Assistant Teacher in the year 2010. Pursuant to said advertisement the Petitioner applied and was successful in interview and was selected as Assistant Teacher. On 7th September 2010 the appointment letter was issued to the Petitioner. He immediately joined Respondent No. 4-School as Assistant Teacher. The Petitioner gave joining report to the Respondent No. 4-School. The appointment of the Petitioner was on clear vacant and sanctioned post and in due adherence to the mandate of Section 5 of The Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 (hereinafter referred to as 'the said Act'). At the time of appointment of the Petitioner Respondent No. 4-School

was running on 80% grant and the Petitioner was appointed as Assistant Teacher and posted in place of one Mr. Koli who was promoted on 100% grant in aid post. The School Committee passed resolution and sent the proposal of the Petitioner for approval on 29.11.2010. On said proposal dated 29.11.2010, the Education Officer has given his approval on 21.04.2012 to the appointment of the Petitioner for initial two years on probation. It is the case of the Petitioner that the petitioner is working very sincerely and honestly and has completed two years probationary period satisfactorily. He has acquired status of regular/permanent employee as contemplated under sub section 2 of section 5 of the said Act. After joining the service the management submitted his salary bill to the pay unit. The pay unit has given only two months salary and thereafter, no salary was given to the Petitioner.

4. It is the case of the Petitioner that the approval granted to the appointment of the Petitioner by Education Officer has been cancelled by the Education Officer on 20.06.2012 without assigning any reason. Though Respondent No. 2 has cancelled his approval, Respondent No. 3 and 4 has not removed the Petitioner from services and till date he is serving with Respondent No. 4 School, however without receiving salary. After cancellation of approval of the Petitioner, Respondent No. 2 has not sent any

surplus teacher to Respondent No. 3 and 4.

5. Respondent No. 3 and 4 sent several letters to Respondent No.-2 Education Officer requesting to recall his order of cancellation of approval to the appointment of the Petitioner and restore approval granted earlier. However, Respondent No. 2 has not acceded to the request of the management. There are as many as 5 to 6 letters written by Respondent No. 3 and 4 to Respondent No. 2 requesting for approval to the services of the Petitioner. The Petitioner also approached Respondent No. 2 requesting for approval of his appointment and service as Assistant Teacher in Respondent No. 4-School run by Respondent No. 3-Management. However, Respondent No. 2 did not accede to the request of Respondent No. 3 and 4 and of the Petitioner. Hence, this petition.

6. Learned counsel for the Petitioner submits that once approval is granted by the Education Officer, it is not open for the Education Officer to recall his order. In support of aforesaid contention learned counsel pressed into service the ratio laid down in two unreported judgments of Bombay High Court at Principle Seat in the case of *Suresh K. Thorat V/s. The State of*

*Maharashtra & Ors*¹, and *Satpute Vidya Machindra vs. The State of Maharashtra & Ors*.². Learned counsel submits that, when the petitioner has satisfactorily completed the probation period and his appointment was prior to the imposition of ban for recruitment by issuing Government Resolution in the year 2012 by the Government of Maharashtra, there was no reason for recalling the order of granting the approval to the appointment of the Petitioner by Respondent No. 2.

7. On the other hand, learned AGP appearing for Respondents-State submits that the appointment of the Petitioner was not keeping in view with the procedure prescribed under Section 5 of the said Act. There are surplus teachers on the role of Respondent No. 2 and therefore surplus teachers needs to be absorbed in the various schools including schools run by Respondent No. 3.

8. We have given careful consideration to the submissions of learned counsel for the Petitioner and learned AGP. With their able assistance perused the pleadings and grounds taken in the petition, annexures thereto and two unreported judgments of this

1 Writ Petition No. 4555 Of 2011
Along With Writ Petition No. 4556 of 2011.

2 Writ Petition No. 3811 of 2011
Along with Writ Petition No. 3812 of 2013.

Court. The issue arises for our consideration is, whether the Education Officer i.e. Respondent No. 2 is empowered to recall his own order thereby granting approval in favour of the Petitioner?

9. The aforesaid issue is no longer *res integra* and answered by two authoritative pronouncements by this Court. In the case of *Suresh K. Thorat* (supra) this Court in Para 4 observed as under:-

"This innocuous order passed on 6.6.2011 is therefore unsustainable and there is no such power vested with the Education Officer to review or recall the approval order passed by him earlier. In case the Education Office subsequently had realised that the approval order was obtained by fraud or by misleading or by furnishing fabricated documents about the qualifications and experience, it would be necessary for him to issue a show-cause notice and place the papers before the Deputy Director of Education for appropriate order after hearing the parties concerned."

10. The another Division Bench (Coram:- A.S.Oka, & G.S. Patel, JJ) in the case of *Satpute Vidya Machindra* (supra) in Para 3 relying upon the earlier judgment in the case of *Suresh K. Thorat* (supra) held that there is no power vested to the Education Officer to review his own order. In view of discussion in forgoing paragraphs, we pass the following order:-

ORDER

- 1) The Writ Petition is allowed in terms of prayer clause (b).
- 2) The approval granted in favour of Petitioner on 21.04.2012 by Respondent No. 2-Education Office stands restored.
- 3) The respondents are directed to act on the basis of initial approval dated 21.04.2012 granted by Education Officer and extend the benefits to the Petitioner.
- 4) In case, Respondent No. 2-Education Officer wish to once again recall his order dated 21.04.2012, he shall issue necessary show cause notice to the Petitioner and place the papers before the Deputy Director of Education for appropriate order as observed in Para 4 in the case of *Suresh K. Thorat* referred herein above.
- 5) Rule made absolute on above terms and writ petition stands disposed of accordingly.

(V.G. BISHT, J.)

(S. S. SHINDE, J.)