

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.12234 OF 2016

Vikrant Prataprao Gaikwad]
Age – 35, Occu – Service]
R/o – Arale, Taluka : Panhala]
District – Kolhapur]..... Petitioner.

Versus

1] The State of Maharashtra]
Through the Secretary]
School Education Department]
Mantralaya, Mumbai]
2] The Education Officer]
(Secondary), Zilla Parishad]
Sangali, Kolhapur - 416003]
3] The Superintendent,]
Pay and Provident Fund Unit(Secondary),]
Sangli.]
4] Warana Shishan Prasarak Mandal]
Kokrud, Taluka – Shirala]
District – Sangli.]
5] Shri Wakeshwar Madhyamik Vidhyalaya]
Wakurde Budruk, Taluka – Shirala,]
District – Sangli]..... Respondents.

WITH
CIVIL WRIT PETITION NO.12346 OF 2016

Shri Naresh Hanmant Bhise]
Age – 38 years, Occu – Service]
R/o. A/P Bilashi, Tal. Shirala]
Dist. Sangli]..... Petitioner.

Versus

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|----|---|---|
| 1] | The State of Maharashtra |] |
| | Through the Secretary |] |
| | School Education Department |] |
| | Mantralaya, Mumbai |] |
| | |] |
| 2] | The Education Officer |] |
| | (Secondary), Zilla Parishad |] |
| | Sangali, Kolhapur - 416003 |] |
| | |] |
| 3] | The Superintendent, |] |
| | Pay and Provident Fund Unit(Secondary), |] |
| | Sangli. |] |
| | |] |
| 4] | Higher Education Society |] |
| | Shirala, Tal. Shirala, |] |
| | Dist. Sangli, Through its |] |
| | Chairman / Secretary. |] |
| | |] |
| 5] | Warana Prasad Vidyalaya |] |
| | Bilashi, Tal. Shirala |] |
| | Dist. Sangli, |] |
| | Through its Head Master. |] |
- Respondents.

Mr. Kedar P Lad for the Petitioners.

Mr. Pritam Nigade i/by Mr. R G Shinde for Respondent Nos.4 and 5.

Mr. V M Mali, AGP for the Respondents/State.

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

DATE : 28th February 2020

JUDGMENT :- (S. S. SHINDE, J.)

1 Rule. Rule is made returnable forthwith. Learned AGP waives service of notice for the Respondents-State; and Mr. Pritam Nigade waives service of notice for Respondent Nos. 4 and 5 in the both the Petitions. By consent of parties, petitions are taken up for final hearing.

2 Since facts in both the petitions are common, both petitions are heard together and disposed of by this common judgment.

3 In so far as Petitioner in Writ Petition No. 12234 of 2016 is concerned, he came to be appointed as Assistant Teacher on 30/06/2009 against a seat which is available for the open category. On 13/07/2010 Respondent No. 2 granted approval to the appointment of Petitioner as Assistant Teacher. The Petitioner successfully completed the probationary period of 2 years and was made permanent in service of Respondent No.4 on 10/10/2012. On 29/05/2015 the Petitioner received a notice from Respondent No.2 informing that on account of the complaint made to him an inquiry is going to be conducted in respect of the approval granted to the appointment of the Petitioner and the Petitioner was directed to remain present on 08/06/2015. Accordingly Petitioner as well as Respondent Nos.4 and 5 appeared before Respondent No.2 and filed their Say. However, Respondent No.2 did not consider the say filed by the Petitioner and Respondent Nos.4 and 5 and cancelled the approval granted to the appointment of Petitioner by order dated 22/01/2016. On the basis of the said order dated 22/01/2016 Respondent No.2 withheld the salary of the Petitioner. Being aggrieved by the said order dated 22/01/2016 the Petitioner preferred Writ Petition No.4190 of 2016 in

this Court. By order dated 25/04/2016 this Court allowed the said Petition and directed Respondent No.2 to conduct fresh inquiry and to pass order within 3 months. Thereafter by the impugned order dated 30/07/2016 Respondent No.2 again cancelled the approval granted to the appointment of the Petitioner. Hence this Petition.

4 In other Petition i.e. Writ Petition No.12346 of 2016 the Petitioner came to be appointed as Shikshan Sevak in Respondent No.5 School on 26/07/2010. On 30/09/2010 Respondent No.2 Education Officer granted approval to the said appointment of the Petitioner as Shikshan Sevak in SC category and on monthly honorarium. After satisfactorily completing said service the Petitioner became entitled to be permanent in service, and therefore Respondent No.4 issued order to appoint the Petitioner as Assistant Teacher on the Pay Scale from 26/07/2013 in SC category. The Respondent No.5 received order dated 18/05/2015 issued by Respondent No.2 informing the Head Master that the salary of the Petitioner from May 2015 should be stayed till the hearing is concluded. The Petitioner received notice from Respondent No.2. The Petitioner as well as Respondent No.5 appeared before Respondent No.2 and filed their Say. Respondent No.2 did not consider the Say filed by the Petitioner as well as Respondent Nos.4 and 5 and cancelled the approval granted to the appointment of the Petitioner by order dated 22/01/2016. Being aggrieved by the said order dated 22/01/2016, the Petitioner preferred Writ

Petition No.2955 of 2016 in this Court. This Court by order dated 25/04/2016 allowed the said Writ Petition and directed Respondent No.2 to conduct fresh inquiry and pass order within three months. Thereafter by the impugned order dated 30/07/2016 Respondent No.2 again cancelled the approval granted to the appointment of the Petitioner. Hence this Petition.

5 In both the Petitions the dates of approval and the appointment as Assistant Teacher of the Petitioners are different, however, the orders cancelling the approval granted to their appointments is of the same date i.e. 30/07/2016.

6 In Writ Petition No.12234 of 2016 an Affidavit in reply has been filed by the Dy. Education Officer. It is stated that considering back log of 6 posts of various backward class categories it was not permissible to appoint candidate from open category when already teacher belonging to open category are in excess than actually required as per percentage ear marked. It is also stated that the appointment of the Petitioner is not as per provisions of rules and hence the same is improper.

7 The learned AGP appearing for the Respondents/State fairly conceded that the facts in Writ Petition No.12234 of 2016 and Writ Petition No.12346 of 2016 are similar in nature. It is also submitted across the bar that

by earlier order dated 01/08/2017 passed in Group of Petition i.e. Writ Petition No.10133 of 2016 and others this Court (Coram : B. R. Gavai & Riyaz I Chagla, JJ) disposed of the said Writ Petition by holding that the impugned orders dated 20/07/2016 are not sustainable in law. It is informed that the present Writ Petitions are from the said group and remained to be disposed of. It appears that the facts involved in both the Writ Petitions and the facts in the said Group of Petitions are similar in nature. The learned counsel for the parties, therefore, submits that both these Petitions can be disposed of on the basis of the said order dated 01/08/2017.

8 In the context of the aforesaid submissions, paragraphs 6 and 7 of the order dated 01/08/2017 are relevant and are reproduced herein under for ready reference :-

- 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. 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.

7 In that view of the matter, we find that the impugned orders dated 30th July, 2016 are not sustainable in law. We, however, clarify that if the Education Officer is of the view that in some of the schools backlog of reserved category candidates is not properly maintained, the Education Officer would always be empowered to insist that hereinafter no candidate belonging to open category shall be filled in unless the quota of reserved category candidates, as per the requirement of MEPS Act Rules, is fulfilled.

9 In view of order dated 01/08/2017 passed in the group of Petitions i.e. Writ Petition No.10133 of 2016 and others, both the present Writ Petitions are also required to be disposed of. Therefore Rule in both the Writ Petition is made absolute in terms of prayer clause (b) with no orders as to costs. Both the Writ Petitions are accordingly disposed of.

[V. G. BISHT, J]

[S. S. SHINDE , J]