

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8521 OF 2021

Pravin Vishwasrao Ayarekar ... Petitioner
Vs.
State of Maharashtra and others ... Respondents

Mr. Prashant Bhavake for Petitioner.
Ms. Sushma S. Bhende, AGP for Respondents-State.

**CORAM : R. D. DHANUKA &
R. N. LADDHA, JJ.**

DATE : DECEMBER 08, 2021

P.C. :-

Mr. Bhavake, learned counsel for the petitioner seeks liberty to delete respondent Nos.6 and 7 from the cause title of the petition. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Ms. Bhende, learned AGP waives service for the respondents-State. By consent of parties, petition is heard finally.

3. By this petition under Article 226 of the Constitution of India, petitioner prays for writ of certiorari for quashing and setting aside impugned order dated 08.07.2020 passed by respondent No.5 - Education Officer rejecting to grant proposal submitted by the management seeking individual approval to the appointment of the petitioner to the post of Junior Clerk appointed on 01.07.2012.

4. Mr. Bhavake, learned counsel for the petitioner invited our attention to the impugned order dated 08.07.2020 and would submit that his client's proposal is rejected on the ground that there was a ban on the appointment of employees with effect from 05.06.2010 on the ground that staffing pattern was not finalized. He submits that the Howard

Memorial High School in which the petitioner was appointed is run by the the minority institution. Learned counsel places reliance on the judgment of this Court delivered on **16.07.2021** in case of *Shital Kumar Patil Vs. State of Maharashtra* in **Writ Petition No.4273 of 2019** and connected **Writ Petition No.4275 of 2019** (*Viraj Chavgonda Sarade Vs. State of Maharashtra*) and submits that both these issues are no longer *res integra*. He further submits that both the reasons recorded by the Education Officer in the impugned order are contrary to the principles of law laid down by this Court in **Shital Kumar Patil** (*supra*).

5. On 04.12.2021, this Court had adjourned this matter along with other companion matters to enable learned AGP to take instructions as to whether issues involved in this petition are covered by the judgment of this Court in the case of **Shital Kumar Patil** (*supra*) or not and to make the statement to that effect before this Court.

6. Ms. Bhende, learned AGP for the respondents could not distinguish the judgment of this Court in case of **Shital Kumar Patil** (*supra*) holding that the Resolutions pressed in service by the respondents would not apply to a minority institution.

7. In our view, the said judgment in **Shital Kumar Patil** (*supra*) would squarely apply to the facts of this case. We do not propose to take a different view in this matter. In our view, both the reasons recorded by the Education Officer in the impugned order are contrary to the principles of law laid down by this Court in **Shital Kumar Patil** (*supra*). We accordingly pass the following order:-

- (a) Writ petition is allowed in terms of prayer clause (b);
- (b) Individual approval to the appointment of the petitioner shall be granted by the Education Officer within four weeks from today without fail. After the approval is granted by the Education Officer, the Deputy Director of

Education shall enter name of the petitioner in *Shalarth Pranali* within two weeks thereafter. The consequential benefits based on the grant of the approval and upon entering the name of the petitioner by the Deputy Director of Education in *Shalarth Pranali* shall be released by the Education Officer within four weeks thereafter.

8. Rule is made absolute accordingly. There shall be no order as to costs.
9. Parties to act on the authenticated copy of this order.

(R. N. LADDHA, J.)

(R. D. DHANUKA, J.)

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