

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

WRIT PETITION NO. 6138 OF 2021

Amol Bhoju Dalvi

... Petitioner

Versus

The State of Maharashtra Thr.
The Secretary, School Education
Dept.

... Respondents

Mr. Avinash R. Belge, Advocate for the Petitioner.
Mr. N.C.Walimbe, AGP for the State/Respondent Nos.1 to 4.
Mr. Prathamesh Bhosle i/b Mr. Nishin Shrikhande, Advocate
for the Respondent Nos.5 and 6.

**CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.**

DATE : 24TH NOVEMBER, 2021

P.C. :-

1. Mr. Walimbe, Learned AGP for the Respondent
Nos.1 to 4 and Mr. Bhosale for Respondent Nos.5 and 6
waives service.

2. Rule.

3. Respondents waive service. By consent of the
parties, writ petition is heard finally.

4. By this petition, petitioner seeks a writ of certiorari for quashing and setting aside the order dated 5th November, 2019 passed by the Deputy Director of Education thereby setting aside the order passed by the Education officer, by which approval to the appointment of the petitioner for the post of Assistant Teacher was granted, on the ground that at the time of appointment of the petitioner, there was no vacant post available with the Respondent No.6/School.

5. Heard the learned Counsel for the parties and perused the order passed by the Education Officer as well as the show cause notice issued by the Deputy Director Education and the impugned order dated 5th November, 2019.

6. On perusal of the show cause notice and also the impugned order dated 5th November, 2019 passed by the Deputy Director of Education thereby setting aside the order passed by the Education Officer. It is clear that there was no allegation of fraud, suppression or misrepresentation on the

part of the petitioner or the management in appointing the petitioner on the post of the Assistant Teacher. The order dated 5th November, 2019 clearly indicates that the order passed by the Education Officer is set aside only on the ground that there was no vacant post available. Learned Counsel for the respondent No.6/School states that the post of the Assistant Teacher was available when the petitioner was appointed. Statement is accepted.

7. This Court, in case of ***Ansari Amina Muzhar Ali V/s State of Maharashtra and Ors. in WP 1380 of 2019*** and companion petitions after considering the resolution dated 23rd August, 2017 has clearly held that the Deputy Director of Education has limited power of setting aside the order passed by the Education Officer, only if there is fraud, misrepresentation or suppression on the part of the management or the employee in appointing the petitioner and not on the ground of irregularities in appointing the petitioner. In our view in absence of any such allegations of fraud, misrepresentation or suppression, the impugned order passed by the Deputy Director Education and the Show

Cause Notice were without jurisdiction and contrary to the principles of law laid down by this Court.

8. The impugned order dated 5th November, 2019 passed by the Respondent No.3 is accordingly, quashed and set aside. The order dated 7th March, 2019 passed by the Education Officer granting approval to the individual appointment of the petitioner in Respondent No.6/School under Section 7 is restored with all consequential benefits.

9. The Writ Petition is allowed in the aforesaid terms. Rule is made absolute accordingly.

10. The name of the petitioner shall be entered in the Shalanth ID within four weeks from today by the Deputy Director of Education without fail.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]