

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

WRIT PETITION NO. 7724 OF 2016

Shri. Shriram Mohan Kinjawadekar & Anr. ...Petitioners
V/s.
The State of Maharashtra & Anr. ...Respondents

Mr. N. V. Bandiwadekar a/w. Mr. Vinayak Kumbhar i/b. Sagar A.
Mane for the Petitioners.

Mr. A. P. Vanarase, AGP for the Respondent / State.

**CORAM : NITIN JAMDAR AND
C. V. BHADANG, JJ.**

DATE : 17 March 2021

P.C.

. The Petitioners are aggrieved by the order passed by the Education Officer (Secondary), Zilla Parishad, Sindhudurg, dated 18 November 2015, refusing approval to the petitioners' appointment as Junior Clerk.

2. Petitioner No.2 Institution conducts the school at Malad Mumbai. The earlier incumbent on the post of Junior Clerk was retired due to superannuation on 31 December 2009. His appointment was approved, and he was working on a sanctioned post. On 16 December 2009, the Head Master of Petitioner School made an application to the Respondent No.2 Education

Officer to publish an advertisement. The advertisement was issued on 17 September 2013. Petitioner No.1 participated, and he was selected by Resolution dated 28 September 2013 by Petitioner No.2 appointing Petitioner No.1, and an appointment order was issued on 3 October 2013. Petitioner No.2 submitted a proposal to Respondent No.2 Education Officer on 11 November 2013, which was rejected by the impugned order. The sole basis of the impugned order is Government Resolution dated 12 February 2015 issued by Respondent No.1 was imposed on new appointments / vacant post.

3. The learned counsel for the Petitioners submit that the Government Resolution is not retrospective.

4. Heard Mr. N. V. Bandiwadekar, learned Counsel for the Petitioners and Mr. A. P. Vanarase, learned AGP for Respondent Nos.1 and 2.

5. The rejection of approval of Petitioner's appointment is based on Government Resolution dated 12 February 2015 read with Government Resolution dated 23 October 2013 referring to the staffing pattern and embargo on the fresh appointment. The Education Officer has observed in the impugned order that as per Government Resolution dated 12 February 2015 till a Committee is established to review the staffing pattern as per Government Resolution dated 23 October 2013, no fresh appointment be made, and on that ground, approval cannot be granted.

6. Learned Counsel for the Petitioner submitted that the Petitioner was appointed on 3 October 2013, which is before the Government Resolution dated 12 February 2015, and therefore this embargo will not apply to the appointment of the Petitioner. Reliance is placed on the judgment and order passed by Division Bench of this Court in Writ Petition No.3525 of 2019 dated 19 January 2021.

7. Perusal of the Government Resolution dated 12 February 2015 shows that the Government Resolution refers to an earlier Resolution dated 23 October 2013 and the decision to establish a committee to review staffing pattern. The Government Resolution dated 12 February 2015 states it is decided that till the Committee, as per Government Resolution dated 23 October 2013, submits its report, further appointments should not be made. The Government Resolution dated 23 October 2013 contains no specific embargo. Plain language in the Government Resolution dated 12 February 2015 shows that ban has been brought into force post 12 February 2015. Therefore this restriction was not applicable before 12 February 2015. The Petitioner's appointment being of 3 October 2013, the rejection of the Petitioner's approval on the ground of restriction, therefore, cannot be sustained.

8. The impugned order dated 18 November 2015 is quashed and set aside. The Petitioner no.2-Management proposal regarding approval to Petitioner no.1's appointment is restored to

the file of Respondent-Education Officer who will decide the same as per law after scrutinizing all relevant facts, except the one which we have decided in this order. The decision be taken within eight weeks from the date the order reaches the Education Officer.

9. The Writ Petition is disposed of in the above terms.

(C. V. BHADANG, J.)

(NITIN JAMDAR, J.)