

Digitally signed  
by BIPIN  
DHARMENDER  
PRITHIANI  
Date:  
2021.12.20  
10:36:06  
+0530

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

**WRIT PETITION NO. 4846 OF 2021**

Laxman Babu Gorad and Ors.

... Petitioners

*Versus*

The State of Maharashtra and Ors.

... Respondents

\*\*\*\*\*

Mr. L. S. Deshmukh for the Petitioners.

Mr. S. B. Kalel, AGP for the State-Respondent Nos. 1 to 4.

\*\*\*\*\*

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

**DATE : 17<sup>th</sup> DECEMBER, 2021.**

**P.C. :-**

. Rule. Learned AGP waives service for the respondent nos. 1 to 4. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 20<sup>th</sup> July, 2021 passed by the respondent no.3 thereby refusing to grant the approval to the appointment of the petitioner no.1 for the post of Assistant Teacher in unaided division in petitioner no.3-school with effect from his appointment dated 1<sup>st</sup> July, 2019 along with all consequential benefits including salary and for that purposes issue appropriate writ and/or order.

3. The petitioner no.1 was appointed to the post of Assistant Teacher in unaided division on 1<sup>st</sup> July, 2019. The Management

applied for approval of the appointment of the petitioner no.1 to the said post to the Education Officer. The Education Officer however has rejected the said proposal submitted by the Management by order dated 26<sup>th</sup> July, 2021 on the grounds namely (a) permission for such advertisement was not obtained, (b) Certificate certifying that there is no dispute in the Management not submitted and (c) In view of the Government Resolution dated 23<sup>rd</sup> June, 2017, the Management ought to have made appointment according to the Pavitra Portal and not by issuance of advertisement.

4. Insofar as the first reason is concerned, the learned counsel for the petitioners invited our attention to the letter addressed by the Management seeking permission for issuance of advertisement on 1<sup>st</sup> June, 2019. He submits that since there was no response from the Education Officer, the Management issued an advertisement (annexed at page 26) in the newspaper after expiry of two weeks from the date of seeking permission. The Education Officer thus could not have been rejected the permission on that grounds.

5. Insofar as the second reason for not granting approval by the Education Officer is that the Management has not produced the certificate to the effect that there is no dispute in the Management is concerned, it is submitted by the learned counsel that no such certificate could be insisted by the Education Officer. The Education officer cannot refuse to grant approval on the ground that there may be dispute between the Management.

6. Insofar as third reason in the impugned order to the effect that the appointment of the petitioners is not made through the Pavitra Portal is concerned, learned counsel invited our attention to the Government Resolution dated 23<sup>rd</sup> June, 2017 and would submit that the said Government Resolution would apply only to an aided institute whether partly aided or fully aided institute or who is sanctioned for grant-in-aid. He submits that the petitioners were appointed on unaided post.

7. Learned AGP sought to place reliance on the averments made in the affidavit-in-reply and would submit that the Education Officer was justified on rejecting the said proposal submitted by the Management not only for the reasons recorded in the impugned order dated 20<sup>th</sup> July, 2021 but also the reasons recorded in the affidavit-in-reply. He however could not justify any of the reasons recorded in the impugned order. The learned AGP does not dispute that the Management had applied for permission to issue advertisement and only after there being no response on such application for seeking permission, issued the said advertisement. Learned AGP could not justify as to how the Education Officer could reject the proposal on the ground that certificate certifying that there is no dispute in the Management was not submitted. Similarly, the applicability of the Government Resolution dated 23<sup>rd</sup> June, 2017 to the appointment made on an unaided post also is not demonstrated.

8. Insofar as the additional reasons recorded in the affidavit-in-reply are concerned, in our view the reasons not forming part of the

impugned order cannot be supplanted in the affidavit-in-reply.

9. The Management had applied for permission to issue advertisement, however there was no response. After waiting for reasonable period, the Management issued such advertisement. The Education Officer thus could not have rejected the approval on that ground.

10. In our view, the Education Officer could not have rejected the approval on the ground that the Management has not submitted a certificate certifying that there was no dispute in the Management. Even if there is any dispute, the Education Officer cannot refuse the approval on that ground.

11. A perusal of the said Government Resolution dated 23<sup>rd</sup> June, 2017 pressed in service by the learned counsel does not provide that the said resolution would apply to the appointments made on an unaided posts. All the reasons recorded by the Education Officer are totally perverse and without application of mind and thus deserves to be quashed and set aside.

12. We accordingly pass the following order :-

(a) Writ Petition is allowed in terms of prayer clauses (A) and (B).

(b) The approval shall be granted within four weeks from

today. The name of the petitioners shall be included in the Shalarth Pranali by the Deputy Director of Education within two weeks from the date of granting approval to the appointment of the petitioners. All consequential benefits including salary from the date of initial appointment shall be granted by the Education Officer within four weeks from the date of recording the name of the petitioner in the Shalarth Pranali, without fail.

- (c) Rule is made absolute in aforesaid terms. There shall be no order as to costs.
- (d) Parties to act on an authenticated copy of this order.

**[R. N. LADDHA, J.]**

**[R. D. DHANUKA, J.]**