

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4954 OF 2016

Vaibhavwadi Taluka Shikshan
Sanstha, Mumbai & Ors. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

WITH
WRIT PETITION NO.4956 OF 2016

Vaibhavwadi Taluka Shikshan
Sanstha, Mumbai & Ors. ...Petitioners
Versus
The State of Maharashtra & Ors. ...Respondents

Mr.Prashant Bhavke for the petitioners in both the Writ Petitions.

Mrs.P.J. Gavhane, AGP for the State - respondent Nos.1 to 3.

CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.
DATE : 15TH SEPTEMBER, 2021
(THROUGH VIDEO CONFERENCE)

P.C.:-

1. Rule. Mrs.Gavhane, learned AGP waives service for the respondents. By consent of the parties, both the writ petitions were heard together and are being disposed of by a common order.

2. By these petitions filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 16th April, 2015 passed by the respondent no.3 – Education Officer thereby refusing to grant individual approval to the appointment of the petitioner no.3 to the

post of Peon at the petitioner no.2 school and seek an order and direction to reconsider the said proposal by offering opportunity of being heard to the petitioners and to grant individual approval to the appointment of the petitioner no.3.

3. Mr.Bhavke, learned counsel appearing for the petitioners invited our attention to the impugned order dated 16th April, 2015 passed by the Education Officer (Secondary). He submits that out of four reasons recorded by the Education Officer (Secondary), the reasons recorded in paragraphs 1 and 2 being factual aspects are not disputed by the petitioners. Objection is to the reasons recorded in paragraph 3 and 4.

4. Insofar as rejection of approval on the ground that during the period 2008-2009, there was ban on the appointment of the Government employee is concerned, it is submitted by the learned counsel that in this case, the petitioner no.3 in both the writ petitions were appointed on 21st June, 2010 on the said post of Peon and thus the said G.R. would not apply to the appointment made subsequently.

5. Insofar as the reasons recorded in paragraph 4 that the fresh proposal shall be submitted considering the Government Resolution dated 12th February, 2012 is concerned, it is submitted that the said Government Resolution also would not apply to the petitioner no.3 in both the writ petitions, since both of them were already

appointed in the year 2010 when there was no ban.

6. Mrs.Gavhane, learned AGP for the State could not defend the order passed by the Education Officer (Secondary). The respondent - State has not disputed that the petitioners were appointed in the year 2010. No Government Resolution is pointed out thereby imposing any ban on appointment of the employee during the said period when the petitioners were appointed in the year 2010.

7. Learned counsel for the petitioners relied upon the judgment of the Division Bench in case of **Suman Shriram Kakad vs. State of Maharashtra & Anr. 2011 (Supp.) Bom.C.R. 943** and in particular paragraphs 15 and 16 and on an unreported judgment delivered by this Bench in case of **Shrikrishna Bhikaji Bondge vs. State of Maharashtra & Ors.** in Writ Petition No.3525 of 2019 and more particularly paragraphs 13 and 14. We have perused the judgments relied upon by Mr.Bhavke, learned counsel for the petitioners.

8. In our view, since the petitioners were appointed in the year 2010, ban for the specific period i.e. 2008-2009 would not apply to such appointments of the petitioners subsequently. Similarly the Government Resolution dated 12th February, 2015 does not apply with retrospective effect and would apply with prospective effect. The appointment of the petitioner no.3 in both the writ petition having been made in the year

2010 would not be affected by ban imposed, if any, under the said Government Resolution dated 12th February, 2015. The judgments relied upon by the learned counsel for the petitioners referred to above would assist the case of the petitioners.

9. In our view, both the reasons recorded in paragraphs 3 and 4 of the impugned order dated 16th April, 2015 are totally perverse and without application of mind and contrary to the principles laid down by this Court in cases of **Suman Shriram Kakad** (supra) and **Shrikrishna Bhikaji Bondge** (supra) and various other judgments delivered by this Court. The order passed in paragraphs 3 and 4 of the impugned order dated 16th April, 2015 thus deserves to be quashed and set aside.

10. We accordingly pass the following order :-

a). The impugned order dated 16th April, 2015 recorded in paragraphs 3 and 4 thereof passed by the Education Officer (Secondary) Zilla Parishad, Sindhudurg are quashed and set aside.

b). The Education Officer (Secondary) Zilla Parishad, Sindhudurg is directed to grant individual approval to the appointment of the petitioners in both the writ petition in the post of Peon at the petitioner no.2 – school within four weeks from today. The Education Officer (Secondary) Zilla Parishad, Sindhudurg shall release grant in respect of the said appointments payable to the petitioner no.2 school within four weeks from the date of granting individual approval. No order

as to costs. Parties to act on the authenticated copy of this order.

c). Both the writ petitions are allowed in aforesaid terms. Rule is made absolute accordingly.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)