

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1491 OF 2021**

Bhushan Vikas Gawad	... Petitioner
<i>Versus</i>	
The State of Maharashtra and Ors.	... Respondents
WITH	
WRIT PETITION NO. 7675 OF 2021	
Aadimaya Shivram Sawant	... Petitioner
<i>Versus</i>	
The State of Maharashtra and Ors.	... Respondents
WITH	
WRIT PETITION NO. 7707 OF 2021	
Swapnil Devdatta Khambal	... Petitioner
<i>Versus</i>	
The State of Maharashtra and Ors.	... Respondents
WITH	
WRIT PETITION NO. 2796 OF 2020	
Priti Purushottam Desai	... Petitioner
<i>Versus</i>	
The State of Maharashtra and Ors.	... Respondents

Mr. Prashant Bhavake, Advocate for Petitioners.
Mr. N. C. Walimbe, AGP for State in WP 1491-21
Mr. R. P. Kadam, AGP for State in WP 7675-21.
Mrs. P. J. Gavhane, AGP for State in WP 7707-21.
Mr. N. K. Rajpurohit, AGP for State in WP 2796-20.

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

DATE : 16th NOVEMBER, 2021.

P.C. :- (Per Court R. D. Dhanuka, J)

1. Mr. Bhavake, learned counsel for petitioner, on instructions, seeks liberty to delete respondents no.6 and 7. Leave to amend is granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule.

Rule made returnable forthwith. Mr. Walimbe AGP waives service for respondents.

By consent of the parties, the matter is taken up for final disposal.

3. The facts of these petitioner are identical. We, therefore, refer to the facts in Writ Petition No. 1491 of 2021.

4. It is the case of the petitioner that the Varadkar High School and Junior College-respondent no.7 had appointed the petitioner in the post of Shikshan Sevak on 1st December 2012. The Education officer by an order dated 6th February 2019 approved the appointment of petitioner for the post of Shikshan Sevak on unaided basis instead of aided basis.

5. Petitioner as well as the management filed a writ petition before this Court impugning the order dated 6th February 2019.

This Court by an order dated 26th July 2016 directed the respondent no. 5 to decide the said proposal afresh in accordance with law. The education officer by an order dated 2nd March 2019 approved the appointment of petitioner on the post of Shikshan Sevak. The management submitted a proposal for issuing Salarth ID for online payment of salary to the petitioner. The said proposal was submitted to the deputy director of education. It appears that Shri Akash Tambe, made a formal complaint to the respondent no.2 against all the petitioners taking general objections to the orders granting approvals to the appointments in the post of Shikshan Sevak. On 5th November 2019, respondent no.4 after issuing notice, passed an impugned order thereby cancelling individual approval granted to the appointment of the petitioners as Shikshan Sevak. All these teachers filed four writ petitions including the order dated 5th November 2019.

6. Mr. Bhavake, learned counsel for the petitioner invited our attention to the order passed by the education officer granting approval to the appointment of petitioners as Shikshan Sevak and the show cause notice issued by the deputy director of education. He also invited our attention to the impugned order passed by the deputy director of education. He submits that though under the Government Resolution dated 23rd August 2017, at the most, the deputy director of education could

exercise the power of review it could be exercised only in limited situation i.e. in case of fraud, misrepresentation or if suppression is made out. He submits that none of these allegations were made in the show cause notice by the deputy director of education. None of such findings are rendered in the impugned order passed by the deputy director of education.

7. Learned counsel relied upon the judgment dated 30th March 2021 referred by this Court in the case of **Ansari Amina Muzhar Ali Vs. The State of Maharashtra and Ors** in Writ Petition No. **1380 of 2019** and in connected matters and more particularly paragraph no. 8 of the said judgment and submitted that after considering the said Government Resolution dated 23rd August 2017, this Court was pleased to set aside the order of review which did not cover the allegations of “fraud”, “misrepresentation” or “suppression”.

8. Mr. Walimbe, learned AGP for the State does not dispute that the Government Resolution dated 23rd August, 2017 passed by the State Government permits review by deputy director of education in case of fraud, misrepresentation and suppression and not in any other circumstances. He relied upon the reasons recorded in the impugned order passed by the deputy director of education and submits that no interference is warranted with the said order.

9. It is not in dispute that the appointment of the petitioner for the post of Shikshan Sevak made by the management was duly approved by the education officer. The management had applied for entering the name of the petitioner in Salarth ID for the purpose of making online payment of salary to the petitioner. In view of a complaint made by Mr. Akash Tambe, the deputy director of education issued show cause notice to the petitioner. A perusal of the show cause notice clearly indicates that no allegations of fraud, misrepresentation or suppression were made against petitioner or against management by deputy director of education. A perusal of the impugned order also indicates that no such finding is rendered by the deputy director of education relating to fraud, misrepresentation or suppression against the petitioner or against the management.

10. This Court in its judgment delivered on **Ansari Amina Muzhar (Supra)** after considering the Government Resolution dated 23rd August 2017, held that the said Government Resolution was issued after considering the judgment of this Court delivered on 1st August 2017 in Writ Petition No. 10133 of 2016 and order dated 14th August 2017. This Court held that the said Government Resolution restricted the power of reconsideration or review in limited circumstances of fraud, misrepresentation or suppression. The phrases “fraud”, “misrepresentation” or “suppression” are not colloquial terms, but

they have a judicially recognised ambit. These three factors are not to be restricted to the acts of teachers and management alone, but they can be by the authorities and by way of collusion. In such cases, the review would be permissible. For that purpose, show cause notice should mention that these factors exist.

11. We have perused the show cause notice issued by the deputy director of education minutely. We are of the view that none of these factors on which review is permissible by the deputy directory of education exist. The same is the situation in the impugned order passed by the deputy director of education. The principles laid down by this Court in the said judgment in Writ Petition no. 10133 of 2016 and in case of Ansari Amina Muzhar (Supra) would apply to the facts of this case. Learned AGP could not point out existence of fraud, misrepresentation or suppression on the part of the petitioner or the management in appointment of the petitioner which would have empowered the deputy director of education to exercise the power of review in the show cause notice or in the impugned order.

12. In our view, though the Government Resolution permits the power of review in the deputy director of education, such powers can be exercised only in limited situation of fraud, misrepresentation and suppression and not on any other ground.

13. In our view, the impugned order passed by the deputy director of education is contrary to the principles laid down by this Court in Writ Petition No. 1380 of 2019 and order passed by this Court in Writ Petition No. 10133 of 2016 and contrary to the Government Resolution and thus, deserves to be quashed and set aside. It is ordered accordingly.

14. We accordingly pass the following order:-

- (i) Writ Petition is allowed in terms of prayer clause (b) in aforesaid writ petitions.
- (ii) The name of petitioners shall be recorded in Salarth ID, within three weeks from today.
- (iii) The salary of the petitioners, if not released, shall be released within four weeks from the date of issuance of Salarth ID.
- (iv) Rule is made absolute in the above terms
- (v) No order as to costs.
- (vi) Parties to act upon an authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D.DHANUKA, J.]

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