

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

WRIT PETITION NO. 2817 OF 2021

Sandeep Manohar Mirajkar and Ors. ... Petitioners
Vs.

State of Maharashtra and Ors. ... Respondents

Mr. Laxman S. Deshmukh, Advocate for Petitioners.
Mr. S. B. Kalel, Learned AGP for State- Respondents.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.
DATE : 22ND SEPTEMBER 2021**

P.C. :

1. Rule. Learned AGP waives service for respondents. Petition is heard finally, by consent of parties.

2. By this petition filed under Article 226 of the Constitution of India, petitioners has impugned the order dated 16th February 2017 passed by the Education Officer refusing to grant approval to the appointment of petitioner no.1 for the post of peon in the petitioner no.3-school run by the petitioner no. 2.

3. It is not disputed that petitioner no. 1 was appointed to the said post of peon after following due procedure with effect from 2nd December 2011. Petitioners no. 2 and 3 submitted a proposal for the appointment of petitioner no. 1 on 31st December 2011.

4. A perusal of the impugned order indicates that respondent no. 2 while rejecting the approval has relied upon the Government Resolutions dated 12th February 2015, 6th September 1999, 6th February 2012 and 20th June 2014.

5. Mr. Deshmukh, learned counsel for the petitioners submits that the resolutions dated 12th February 2015, 6th February 2012 and 20th June 2014 which are pressed in service by the Education officer were issued after the date of appointment of the petitioner no.1 with effect from 31st December 2011. Inso far as, Government Resolution dated 6th September 1999 is concerned, it is submitted that there is no camp since the date of the said resolution and thus the said resolution dated 6th September 1999 could not have been pressed in service in the impugned order.

6. Learned counsel invited our attention to an unreported judgment delivered on 19th January 2021 in the case of **Mr. Shrikrishna Bhikaji Bondge Vs. State of Maharashtra and Ors in Writ Petition No. 3525/2019** and submits that these three resolutions would apply with prospective effect and not retrospective effect. Learned AGP could not distinguish the said judgment dated 19th January 2021 in case of **Shrikrishna Bhikaji Bondge (Supra)** and could not dispute the fact that petitioner no.1 was appointed for the post of peon with effect from 2nd December 2011.

7. In our view, the Government Resolutions dated 12th December 2015, 6th February 2012 and 20th January 2014 would not apply with retrospective effect and thus, would not apply to the appointment of petitioner no. 1 made with effect from 2nd December 2011. The reliance placed on those three resolutions by the learned Education officer (Secondary) in impugned order, is without application of mind and shows perversity. Insofar as, the reliance placed on Government Resolution dated 6th September 1999 is concerned, since there is no camp, no reliance on the said Government Resolution could be placed by the Education officer.

8. The impugned order passed by the Education Officer is contrary to the principles of law laid down by this Court in case of **Shrikrishna Bhikaji Bondge (Supra)** and in catena of decisions taking the same view and thus, deserves to be quashed and set aside.

9. We accordingly pass the following order:-

a) The impugned order dated 16th February 2017 is quashed and set aside.

b) The Education Officer is directed to grant approval to appointment of petitioner no.1 to the said post of peon with effect from 2nd December 2011, within four weeks from the date of communication of this order.

c) We also direct respondent no.2 to release grant in aid of payment of salary of petitioner no.1 since the date of his initial appointment with all consequential benefits, which shall be released within four weeks from the date of granting approval to the appointment of petitioner no.1 for the said post.

d) The name of the petitioner no.1 shall be also entered in the Shalarth Pranali within two weeks from the date of

granting approval without fail.

10. Rule is made absolute in the aforesaid terms.

11. Writ Petition is disposed of. There shall be no order as to costs.

12. Parties to act upon the authenticated copy of this order.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)