

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

WRIT PETITION NO. 5509 OF 2021

Sagar Shamrao Kumbhar

... Petitioner

Versus

The State of Maharashtra and Ors.

... Respondents

Mr. Chetan G. Patil, for the Petitioner.

Mr. P.P. Kakade. G.P. a/w Mr. Vikas Mali-AGP for the State-
Respondents.

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

DATE : 1st DECEMBER, 2021.

P.C. :-

1. Mr. Patil, learned counsel for the petitioner on instructions seeks leave to delete respondent nos. 3 and 4 from the petition and to place on record impugned order dated 29th September, 2021 passed by Education Officer, Kolhapur Region, Kolhapur.

2. Leave to amend is granted. Amendment to be carried out forthwith.

3. Rule.

4. Mr. Mali learned AGP for the respondent nos. 1 and 2,

waives service. By consent of parties, petition is heard finally.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned orders dated 3rd January, 2018 and 21st June 2018 passed by the Education Officer, (Secondary), Zilla Parishad, Kolhapur, annexed at Exhibit F and H to the petition.

4. Mr. Patil, learned counsel for the petitioner has placed reliance on the order passed by this Court dated 8th October, 2021 in Writ Petition No. 11244 of 2019 filed by Sanjay Pandurang Powar Vs. The State of Maharashtra and Anr. and other connected writ petitions. This Court took cognizance of the approval which had been already granted to the appointment of the petitioners to the posts on which they were appointed. The Deputy Director of Education was directed to record the names of each of the petitioners in the Shalarth ID within the time prescribed and to release all the consequential benefits to the petitioners including the payment of salary in favour of the petitioners and grant-in-aid in favour of the Management on such approval.

5. In paragraph No. 6 of the said order, it is made clear that this Court has not gone into the merits of the approval order passed by the Education Officer during the pendency of the petitions.

6. Mr. Patil learned counsel for the petitioner states that in this case the Education Officer has granted approval with effect from 23rd October, 2013 as against the date of initial appointment on 1st August 2011. He submits that since the said order is passed during the pendency of this petition, the petitioner reserves his right to impugn that part of the order. It is made clear that in view of the order passed by the Education Officer, granting approval with effect from 23rd October, 2013 the right of the petitioner to challenge that part of the order is kept open.

7. Mr. Mali, learned AGP for the State strongly urged before this Court that the Education Officer who has granted approval in favour of the petitioner in this case has passed cyclostyled orders in large number of matters illegally. The State Government has initiated action against the said Education Officer who has passed the impugned order. He submits that this Court thus shall not interfere with the order passed by the Deputy Director of Education.

8. If according to the State Government, the concerned Education Officer has passed any illegal order on any ground, State Government is not prevented to take action against such erring officer. However, the fact remains that in this case, the order passed by the Education Officer is in force till today and thus the Deputy Director cannot refuse to enter the name of the

petitioner in the Shalarth ID, in furtherance of the order passed by the Education Officer.

9. We accordingly quash and set aside the order dated 29th September, 2021 passed by Deputy Director of Education, Kolhapur Region, Kolhapur and direct the Deputy Director of Education to enter the name of the petitioner in the Shalarth ID. It is made clear that the name of the petitioner shall be entered in Shalarth ID not before expiry of six weeks.

10. We make it clear that we have not decided the legality or validity of the order passed by the Education Officer relied upon by the petitioner in this petition. At the same time, we do not impose any restriction on the State Government from taking appropriate action against the erring officer or to take any further action in accordance with law relating to the order passed by the Education Officer.

11. Writ Petition is allowed in the aforesaid terms.

12. Rule is made absolute. No order as to costs.

13. The parties to act on the authenticated copy of this order.

[ABHAY AHUJA, J.]

[R. D.DHANUKA, J.]