

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

**WRIT PETITION NO. 7296 OF 2021**

Suraj Ashok Redekar ...  
Petitioner

*Versus*

State of Maharashtra and Ors. ...  
Respondents

**WITH**

**WRIT PETITION NO. 7297 OF 2021**

Rohan Dharmaraj Mhanmulkar ...  
Petitioner

*Versus*

State of Maharashtra and Ors. ...  
Respondents

**WITH**

**WRIT PETITION NO. 7324 OF 2021**

Suhel Alamshah Shaikh ...  
Petitioner

*Versus*

State of Maharashtra and Ors. ...  
Respondents

**WITH**

**WRIT PETITION NO. 7302 OF 2021**

Anis Mushtak Auti ... Petitioner  
*Versus*

State of Maharashtra and Ors. ...  
Respondents

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Mr. Cheta G. Patil, a/w. Mr. Mandar G. Bagkar, for the

Petitioners.

Mr. Vikas M. Mali,

Mrs. P.J. Gavhane, AGP

Mrs. P.N. Diwan, AGP

Mr. N.C. Walimbe, AGP

Mr. N.K. Rajpurohit, AGP

Ms. S.S. Bhinde, AGP for the State/ Respondents.

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

**DATE : 1<sup>st</sup> DECEMBER, 2021.**

**P.C. :-**

1. Writ Petition Nos. 7297 of 2021, 7234 of 2021 and 7302 of 2021 are not on board. Upon mentioning by learned counsel for the petitioners, the matters are taken on board.

2 Mr. Patil, learned counsel for the petitioner seeks liberty to delete the respondent nos. 4 and 5 from the petition. Leave to amend is granted. Amendment to be carried out forthwith.

3. Learned counsel for the petitioner and learned AGP jointly makes a statement that the facts in all these matters are identical and can be disposed of by common order.

4. Rule.

5. Mr. Mali learned AGP for the respondents waives service. By consent of parties, petition is heard finally.

6. Mr. Patil, learned counsel for the petitioner tendered a chart showing date of appointment of petitioner in each of these matters, date of approval granted by Education Officer, date of show cause notice and the order passed by the Deputy Director of Education refusing to record the name of the petitioner.

7 Learned counsel for the the petitioner strongly placed reliance on the order passed by this Court on 23<sup>rd</sup> August 2021, in case of Vilas J. Londe Vs. The State of Maharashtra and Ors in Writ Petition No. 2003 of 2020 and would submit that facts before this Court in the said Judgment are identical to the facts in this case. In this case also the appointment were approved by the Education Officer to the post of Jr. Clerk in respect of each of these petitioners. The Management is minority institute.

8. It is submitted by learned counsel for the petitioners that after passing of impugned order by the Education Officer, when the Management submitted proposal for entering the name of the petitioner in the

Shalarth Pranali to the Department, the Deputy Director vide orders dated 22<sup>nd</sup> September 2020, refused to enter the name of the petitioner on erroneous ground that the Deputy Director of Education had issued show cause notices in each of these cases on 8<sup>th</sup> February 202, calling upon the petitioners to show cause as to why proposal granted by the Education Officer on 22<sup>nd</sup> September 2020, shall not be cancelled.

9. Learned counsel for the petitioner invited our attention to the subsequent order passed by the Deputy Director of Education staying the proceedings on 24<sup>th</sup> February, 2021 pending before him.

10. It is submitted by learned counsel for the petitioner that show cause notices does not allege any fraud, suppression or misrepresentation on the part of the petitioners or Management. The Deputy Director of Education has no power to stay the order passed by the Education Officer granting approval to the appointment of the petitioners.

11. It is submitted by learned counsel that this Court by the said judgment dated 23<sup>rd</sup> August 2021, has quashed show cause notices issued by the Deputy Director of Education. He also placed reliance on the other

judgment of this Court in support of his submissions.

12. Mr. Mali, learned AGP for the State is not able to distinguish the judgment of this Court passed on 23<sup>rd</sup> August 2021 in case of Vilas J. Londe (supra).

13. A perusal of the record indicates that it is not in dispute that the respondent-Management is minority institute. The appointment of the petitioners on various dates by the Management as Jr. Clerk is approved by the Education Officer. On 9<sup>th</sup> April, 2019 in Writ Petition No. 7296 of 2021, on 11<sup>th</sup> April 2019 in Writ Petition No. 7297 of 2021, on 15<sup>th</sup> June 2019 in Writ Petition No. 7324 of 2021 and on 31<sup>st</sup> July 2019 in Writ Petition No. 7302 of 2021.

14. In our view, since the Education Officer has already granted approval to the appointment of the petitioner, the Deputy Director of Education could not have refused to enter the name of the petitioners in Shalarth Pranali.

15. A perusal of show cause notices dated 8<sup>th</sup> February, 2021 indicates that there are no allegations of fraud, suppression or misrepresentation made by the Deputy Director in such show cause notices. The petitioners were appointed to the post of Jr. Clerk.

16. A perusal of the affidavit in reply filed by the State Government in this case would indicate that the procedure for issuing show cause notice to verify the correctness of the order of approval has been undertaken by the office of the Deputy Director. There are no allegations of fraud, suppression or misrepresentation made in the affidavit-in-reply filed before this Court.

17. A Division Bench of this Court in the judgment of **Vilas Londe (Supra)** has considered identical facts and after adverting to the Judgment in case of **Shital Kumar Patil Vs. State of Maharashtra and Others** in Writ Petition No. 4273 of 2019 alongwith Writ Petition No. 4275 of 2019 and Judgment of Hon'ble Supreme Court in case of **T.M.A. Pai Foundation Vs. State of Karnataka** and in case of **Secretary, Malankara Syrian Catholic College**, has held that the minority institutions have been excluded from the applicability of Section 5(1) of the MEPS Act. The principle laid down in the Judgment applies to the facts of this case.

18. This Court has also held that the Deputy Director of Education could not have issued any show cause notice for setting aside the approval already granted by the

Education Officer. The said show cause notice is without jurisdiction. This Court accordingly quashed the show cause notice itself and directed the respondent no. 3 therein to release grant-in-aid in accordance with the sanctioned pay scale of the petitioner to the post of Jr. Clerk.

19. In our view said Judgment in case of Vilas Londe (supra) applies to the facts of this case. We do not propose to take a different view in the matter.

20. Mr. Mali, learned AGP for the State, however, strongly urged that the Education Officer who has passed order of approval in favour of the petitioners has passed several cyclostyled illegal orders and the State Government has initiated action against the said Education Officer who has passed similar order in these matters also. We took cognizance of the statement made by learned AGP.

21. The Fact however remains that the order passed by the Education officer exists till today and are in force. Thus, the Deputy Director of Education could not have refused to enter the name of the petitioners in the Shalarth Pranali in furtherance of the order passed by the Education Officer without going into correctness of

the order passed by the Education Officer.

22. We accordingly pass the following order.

- (a) The impugned order dated 22<sup>nd</sup> September 2020 passed by the Deputy Director of Education are quashed and set aside.
- (b) Show cause notices dated 8<sup>th</sup> February, 2021 issued by the Deputy Director of Education are also quashed and set aside.'
- (c) The Deputy Director of Education is directed to enter the name of the petitioners in the Shalarth Pranali not before 6 weeks from today.
- (d) It is made clear that this Court has not precluded the State Government to initiate any action against the erring officer.
- (e) The arrears of salary if any, shall be released by the Deputy Director of Education after four weeks from the date from entering the names of the petitioners in the Shalarth Pranali

- (f) Writ Petition is disposed of in abovesaid terms.
- (g) Rule is made absolute. No order as to costs.

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

**[ABHAY AHUJA, J.]**

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