

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

WRIT PETITION NO. 3262 OF 2021

Vijay Vitthal Thombare	... Petitioner
<i>Versus</i>	
The State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO. 3266 OF 2021**

Shri Tatoba Nan Mote	... Petitioner
<i>Versus</i>	
The State of Maharashtra and Ors.	... Respondents

Mr. Ajay A. Joshi for the Petitioner in both Writ Petitions.
Ms. Kavita N. Solunke, AGP for the Respondent Nos. 1 to 3 in WP/3262/21.
Mr. N. K. Rajpurohit, AGP for the Respondent Nos. 1 to 3 in WP/3266/21.
Mr. Lalasaheb Bandal for the Respondent Nos. 4-Management in both Writ Petitions.

**CORAM: R. D. DHANUKA AND
A. K. MENON, JJ.**

DATE : 23rd AUGUST, 2021.

P.C. :-

. By these petitions filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 23rd July, 2018 passed by the Education Officer (Secondary) rejecting the proposal submitted by the Management for appointment of the petitioners made to the respective posts on four grounds.

2. Mr. Joshi, learned counsel for the petitioners invited our attention to the correspondence annexed to the petition and would submit that all the requirements allegedly not complied with according to the impugned order have been already complied. He invited our attention to the judgments delivered by the Division Bench of this Court on 10th July, 2017 in Writ Petition No. 8587 of 2016 with other connected writ petitions, judgment delivered by the learned Single Judge on 16th July, 2009 in Writ Petition No. 4635 of 2009 in case of ***The President, Sudhagad Education Society, Dist. Raigad and Ors. v/s. The Dy. Director of Education and Anr.*** and judgment delivered by the learned Single Judge on 25th February, 2020 in Writ Petition No. 160 of 2020 in case of ***Vaishali Raoso Ghadage and Anr. v/s. The State of Maharashtra and Anr.*** He submits that both the petitioners belong to reserved category and the approval cannot be rejected on the ground that backlog is not filled up. The impugned order is contrary to the principles of law laid down by this Court.

3. Learned AGP invited our attention to the paragraph 7 of the affidavit-in-reply dated 12th August, 2021 and would submit that the proposal of the Management in respect of the appointment of the petitioners was rejected temporarily on the ground that the Management has failed to submit the documents referred therein for verification. A perusal of the affidavit-in-reply indicates that the other reasons recorded in the impugned order are not forming part of the affidavit to justify the impugned order.

4. Be that as it may, in our view, the impugned order passed by the

Education Officer is partly contrary to the judgments referred aforesaid. The question as to whether the petitioners have submitted those documents or not can be reconsidered by passing a fresh order. We are inclined to quash and set aside the impugned order and to remand the matter back to the Education Officer. It is ordered accordingly. The Education Officer shall consider the documents already produced by the Management while seeking approval to the appointment of the petitioners. The Education Officer shall also consider the judgments referred to aforesaid while passing a fresh order.

5. The petitioners would be at liberty to file additional documents. The Education Officer to hear the petitioners and the Management before passing the fresh order. The Education Officer shall also consider the judgments of this Court while passing the order. The petitioners shall appear before the Education Officer on 1st September, 2021 at 11:00 a.m. with the additional documents on which they proposes to rely upon. The Education Officer shall pass a fresh order within four weeks the date of hearing and shall communicate the order that would be passed within one week from the date of passing of such order. The Education Officer shall not be influenced with the reasons recorded and the conclusion drawn in the impugned order. If the petitioners are aggrieved by the order that would be passed by the Education Officer, the petitioners would be at liberty to file appropriate proceedings.

6. Writ Petitions are disposed off in aforesaid terms. There shall be

no order as to costs.

7. It is made clear that since the impugned order is quashed and set aside and the matters are remanded back to the Education Officer, no coercive steps should be taken on the basis of the impugned order till the fresh order is passed by the Education Officer and if the order that would be passed by the Education Officer is adverse against the petitioners for a period of four weeks from the date of communication of the said order.

[A. K. MENON, J.]

[R. D. DHANUKA, J.]