

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

WRIT PETITION NO. 3028 OF 2020

Sandip Shivajirao Patil

... Petitioner

Versus

State of Maharashtra and Ors.

... Respondents

Mr. Chetan G. Patil for the Petitioner.

Ms. Kavita N. Solunke, AGP for the State-Respondent Nos.1 and 2.

Mr. Mandar G. Bagkar for the Respondent Nos. 3 and 4.

**CORAM: R. D. DHANUKA AND
R. I. CHAGLA, JJ.**

**DATE : 26th JULY, 2021.
(Through Video Conference)**

P.C. :-

. Rule. Learned AGP appearing for the respondent nos. 1 and 2 and the learned counsel appearing for the respondent nos. 3 and 4 waive services. Heard finally by consent of parties.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner is praying for quashing and setting aside the order dated 9th July, 2018 passed by the respondent no.2 annexed at Exhibit E to the petition and to direct the respondent no.2 to grant approval to the appointment of the petitioner since the date of his appointment i.e. 1st August, 2013.

3. On 2nd September, 2013, the respondent no.4-college approached respondent no.2 seeking approval to the appointment of the petitioner.

However, no decision is taken by the respondent no.4. Whenever, the petitioner and respondent no.4 approached the respondent no.2, he gave evasive reasons and replies and kept the proposal pending.

4. On 2nd June, 2018, the respondent no.4 again approached respondent no.2 seeking individual approval of the appointment of the petitioner. The respondent no.2 refused to grant approval to the appointment of the petitioner as peon vide impugned order dated 9th July, 2018.

5. Learned counsel appearing for the petitioner submitted that in the impugned order, the Government Resolution dated 23rd October, 2013 has been referred to and is found the basis of rejection of the approval to the appointment of the petitioner as a peon. He submitted that the said Government Resolution referred in the impugned order was issued subsequent to the appointment of the petitioner as peon in the respondent no.4-college which was w.e.f. 1st August, 2013. He submitted that in view of the said Government Resolution issued subsequently, could not be relied upon in the impugned order dated 9th July, 2018 and thus be set aside. He further submits that it is covered by the judgment of this Court in case of ***Shital Kumar Patil v/s. State of Maharashtra and Ors.*** dated 16th July, 2021.

6. Learned counsel referred to paragraph 15 of the said decision wherein this Court held that a perusal of the order passed by the Educational Officer indicates that the reliance is placed on the Government Resolution dated 23rd October, 2013, 12th February, 2015

and 8th August, 2017 in the said order while rejecting the said proposal made by the respondent no.4 to respondent no.2, this Court was of the view that since the appointment of the petitioner was already made on 30th July, 2017 w.e.f. 1st July, 2017, Government Resolution dated 8th August, 2017 did not apply to the said appointment. It was held that the Government Resolution dated 8th August, 2017 did not apply with retrospective effect.

7. Learned AGP appearing for the respondent-State relied upon the affidavit-in-reply dated 22nd July, 2021. She submitted that although the petitioner was appointed on 30th July, 2013, the Government Resolution dated 23rd October, 2013 would be applicable to the appointment of the petitioner, since the petitioner is appointed by violating norms/directions issued vide Government Resolution dated 10th June, 2010 as well as 6th February, 2012, no relief can be granted to the petitioner.

8. Having considered the submissions, in our view the issue of the Government Resolution dated 23rd October, 2013 being applicable to the appointment of the petitioner as peon made prior thereto and which is in the basis of the impugned order dated 9th July, 2018 is covered by the said judgment of this Court dated 16th July, 2021. The impugned order makes no reference to the Government Resolutions dated 10th June, 2010 and 6th February, 2012 which have been referred to by the respondent nos.1 and 2 in the affidavit-in-reply dated 22nd July, 2021.

9. In the decision of this Court in case of ***Shital Kumar Patil***

(supra) dated 16th July, 2021 it is categorically held in paragraph 15 which reads thus :-

“15. A perusal of the order passed by the Education Officer indicates that the reliance is placed on the Government Resolutions dated 23rd October, 2013, 12th February, 2015 and 8th August, 2017 in the said order while rejecting the said proposal made by the respondent no.4 to the respondent no.2. In our view, since the appointment of the petitioner was already made on 30th June, 2017 w.e.f. 1st July, 2017, Government Resolution dated 8th August, 2017 did not apply to the said appointment. The said Government Resolution dated 8th August, 2017 did not apply with retrospective effect.”

10. From a reading of the said paragraph, it is clear that the said issue is already concluded. The said principles would apply to the Government Resolution dated 23rd October, 2013 also. The said Government Resolution would necessarily apply prospectively and not retrospectively. The impugned order has erroneously rejected the appointment of the petitioner to the post of peon in the respondent no.4-college. In our view, the respondent no.2 thus could not have placed reliance on the Government Resolution dated 23rd October, 2013. The impugned order is thus required to be set aside.

11. No reliance can be placed by the State on the Government Resolutions dated 10th June, 2010 and 6th February, 2012 in the affidavit-in-reply filed by the respondent nos. 1 and 2 dated 22nd July, 2021 for the first time as the Government Resolutions are not the basis of passing the impugned order.

12. In view of the above findings, this petition deserves to be allowed in terms of prayer clause (A), which reads thus :-

“A) That this Hon’ble Court be pleased to issue a appropriate writ, order or direction thereby quashing and setting aside the order dated 9th July, 2018 passed by the respondent no.2 herein Exhibit E hereto and further be pleased to direct respondent no.2 herein to grant approval to the appointment of the petitioner since the date of his appointment i.e. 1st August, 2013 and release the grant in aid for payment of salary of the petitioner since the date of his appointment.”

13. The respondent no.2 shall take decision on granting approval to the appointment of the petitioner within a period of four weeks from today and upon approving the appointment of the petitioner, release the grant in aid for payment of salary of the petitioner since the date of his appointment within two weeks thereafter. The decision of the respondent no.2 on the proposal of the petitioner shall be communicated to the petitioner within one week from the date of taking of decision.

14. Writ Petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs.

[R. I. CHAGLA, J.]

[R. D. DHANUKA, J.]