

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4230 OF 2018

- 1) Shri Nagpur Gujrati Mandal, through
its General Secretary, Lakadganj,
Nagpur.
- 2) Umiya Shankar Narayanji High School,
Lakadganj, Nagpur, through its
Head Mistress.
- 3) Kum. Anjali Mohanlal Khare,
aged about 38 years,
Asstt. Teacher,
c/o Umiya Shankar Narayanji
High School, Lakadganj,
Nagpur. ... Petitioners

- Versus -

- 1) State of Maharashtra, through its
Secretary, Department of Education,
Mantralaya, Mumbai-32.
- 2) The Education Officer (Secondary),
Zilla Parishad, Nagpur.
- 3) The Deputy Director of Education,
Nagpur Division, Nagpur. ... Respondents

Shri Anand Parchure, Advocate for petitioners.

Smt. M. Deshmukh, Assistant Government Pleader for respondents.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : OCTOBER 5, 2021

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Heard Shri Parchure, learned Counsel for the petitioners, and Smt. Deshmukh, learned Assistant Government Pleader for the respondents.

2) Rule, returnable forthwith. Heard finally by consent of the learned Counsel for the parties.

3) We find that the impugned order dated 27/4/2018 passed by the respondent no.3 is manifestly illegal as the respondent no.3 has taken into account the factors, which are not relevant, to decide the controversy involved in the dispute between the petitioners and the respondents. The dispute is about grant of approval to the appointment of the petitioner no.3 as Shikshan Sevak, which was made in the petitioner no.2 School, by issuing appointment order dated 29/12/2014

4) The appointment of the petitioner no.3 so made was duly approved by the respondent no.2 Education Officer, but later on, the respondent no.3 held that such approval granted by the respondent no.2 was illegal and, therefore, he revoked the approval order by passing the impugned order. Before such revocation, opportunity of

hearing was granted to the petitioner no.3 and also to the Head Mistress of the petitioner no.2 School. But, it is seen from the impugned order and also the representation made to the respondent no.3 by the petitioner no.3 that the factors appearing on record and the points raised by the petitioner no.3 were not at all considered by the respondent no.3 and, therefore, the respondent no.3, in our view, arrived at a conclusion regarding the appointment of the petitioner no.3, which was erroneous.

5) It is the contention of the petitioner no.3 and also remaining petitioners that there were three posts of Teachers lying vacant in the petitioner no.2 School at the time when appointment of the petitioner no.3 was made and accepting this fact as correct, the respondent no.2 Education Officer had also granted approval to the appointment of the petitioner no.3. Shri Parchure, learned Counsel for the petitioners, further submits that appointment of the petitioner no.3 having been made in the year 2014, the staffing pattern of the year 2013-14 was relevant and availability of sanctioned posts ought to have been determined by the respondent no.3 by making reference to 2013-14 staffing pattern and not to the one, which was of the year 2009-10, as has been made in the impugned order. The learned Counsel for the petitioners also submits that the respondent no.3 completely ignored the fact that on

account of retirement of one Smt. S.S. Waghmare, taking of voluntary retirement by Smt. V.J. Chandurkar, School Teacher and non filling up of one post of English Teacher, there were already available three vacancies of the posts, which were already sanctioned and one of these posts was filled up by giving appointment to the petitioner no.3. He further submits that all this has not been considered by the respondent no.3.

6) A bare perusal of the impugned order shows that the submissions so made by the learned Counsel for the petitioners are right. The respondent no.3 has not applied his mind in any manner to the afore-stated submissions made on behalf of the petitioners in spite of the fact that all the relevant data was placed before the respondent no.3. We, therefore, find that the impugned order is perverse and illegal and hence, the same needs to be quashed and set aside.

7) In the result, the petition is allowed. The impugned order dated 27/4/2018 passed by the respondent no.3 is quashed and set aside. The matter is remanded back to the respondent no.3 for taking a fresh decision in accordance with law within a period of two weeks from the date of receipt of this judgment. We also direct the respondents to pay the arrears of salary to the petitioner no.3 and

also release her salary for the month of September 2021. Rule accordingly. No costs.

JUDGE

JUDGE

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