

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6014 OF 2018.

1.Gramin Vikas Sanstha, Hinganghat
and others. Petitioners.

-VERSUS-

1.State of Maharashtra,
and others. Respondents.

.....

Shri R.L. Khapre, Senior Advocate with Shri A. Shriwas, Advocate for
the Petitioners.

Ms. K. Deshpande, Assistant Government Pleader for Respondents.

.....

CORAM : NITIN JAMDAR AND
ANIL S. KILOR, JJ.

DATE : 25 FEBRUARY 2021.

P.C.

Petitioner No.1 is an Educational Trust, and the Petitioner Nos. 2 to 7 are its employees. A resolution was passed by Petitioner No.1 on 27 November 2012 to fill up Junior Clerk and Laboratory Assistant posts. A roster point was finalized by the Assistant Commissioner on 13 April 2012. After that, Petitioner No.1 issued an

advertisement on 14 January 2013 to fill up three posts of Junior Clerk and six posts of Laboratory Assistant. These posts were to be filled in from the candidates belonging to the reserved category.

2. Pursuant to the advertisement, the Selection process was carried out. Petitioner No.1 issued appointment orders to the successful candidates, i.e. Petitioner Nos. 2 to 7 on 29 January 2013. Accordingly, the Petitioner Nos. 2 to 7 joined their services. Approval to the appointment of Petitioner Nos. 2 to 7 was granted on 6 October 2016.

3. By the impugned order dated 20 May 2018, the Deputy Director of Education, Nagpur Region, Nagpur, after conducting a hearing and examining the case of Petitioner Nos. 2 to 7, cancelled the approval granted on 6 October 2016. The approval was revoked on two grounds; First, that the appointments of the Petitioner Nos. 2 to 7 made on 29 January 2013, were when the ban on recruitment existed by the Government Resolution dated 23 March 2012. Second, the appointments were made when as per the Government Resolution dated 12 February 2015, the approval could not have been granted without the staffing pattern being finalized. Being aggrieved by this decision, the Petitioners have approached this Court.

4. Considering the controversy involved and by consent of the parties, Writ Petition is taken up for disposal. Reply-affidavit is filed on behalf of the Respondent Deputy Director of Education.

5. We have heard the learned Senior Advocate for the Petitioners and the learned Assistant Government Pleader for the Respondents.

6. So far as the first ground is concerned that the appointments were made when there was a ban on recruitment, the Deputy Director has relied upon a Government Resolution dated 22 March 2012. This Government Resolution is on record. By Government Resolution dated 2 August 2011, the State Government has issued directions to conduct a special drive for removing the backlog. The said resolution refers to the ban on recruitment. The period for removal of the backlog was till 31 March 2012. After that, by Government Resolution dated 10 April 2012, this period was extended up to 31 March 2013. Suffice to say that as an effect of the Government Resolution, the ban continued up to 31 March 2013. However, the Deputy Director of Education has not considered that the ban resulted from a special drive to fill up the post earmarked for the members of the reserved category, and it operated against the filling up of posts from the open category.

7. It is nowhere disputed that the Petitioner's appointments were from the reserved category. That being the position, on the ground that there was a ban on recruitment when the Petitioners were appointed, which ban was for appointments through open category, cannot be sustained.

8. The second ground is that the Petitioners appointment was made when the staffing pattern as per the Government Resolution dated 12 February 2015 was not finalized. The Government Resolution dated 12 February 2015 in its preamble refers to the Government Resolution dated 23 October 2013. The Government Resolution dated 12 February 2015 only reiterates the staffing pattern, which was already specified in the Government Resolution dated 23 October 2013. The learned Senior Advocate for the Petitioners has placed on record the Government Resolution dated 23 October 2013.

9. The Petitioners contend that their appointments on 29 January 2013 were before the issuance of the Government Resolution dated 23 October 2013, and based on this Government Resolution, which is prospective, Petitioners approval could not have been cancelled.

10. We have gone through the Government Resolution dated 23 October 2013. In Clause 3 of the said Government Resolution, the phraseology used is that the staffing pattern would come into force from the date of the resolution. Clause 4 also refers to discontinuing an earlier staffing pattern. Clause 5 deals with the effect of staff which has been rendered surplus. Regarding the above contention of the Petitioners, the Deputy Director of Education has not taken any stand as to whether this resolution would apply to those appointed before the said resolution. Neither in the affidavit in reply, nor in the impugned

order, whether the said Government Resolution, which prima facie by its language appears to be prospective, has not been dealt with.

11. We are therefore of the opinion that merely because the Government Resolutions dated 23 October 2013 and 12 February 2015 has brought into force the staffing pattern, automatically the approval of the Petitioners cannot be cancelled, unless the Deputy Director takes a stand that even those appointments before passing of these resolution, would be covered. No such observation is found in the impugned order. The impugned order passed by the Deputy Director of Education, Nagpur Region, Nagpur deserves to be quashed and set aside and the matter regarding approval of the Petitioner Nos. 2 to 7 in the context of the above Government Resolutions dated 12 February 2015 and 23 October 2013 will have to be decided by the Deputy Director in the light of the language employed in the Government Resolution, which prima facie appears to be prospective. We clarify that we have concluded the first issue regarding the Government Resolution dated 22 March 2012 regarding the ban on recruitment, which shall not be reopened by the Deputy Director.

12. Accordingly, the impugned order dated 22 May 2018 passed by the Deputy Director of Education, Nagpur Region, Nagpur, is quashed and set aside. It is open to the Deputy Director of Education to consider the Petitioners' approval in the context of the Government Resolutions dated 12 February 2015 and 23 October 2013. We further make it clear that as a consequence of quashing and

setting aside of the impugned order, the earlier approval stands revived, and the Petitioner Nos. 2 to 7 will be entitled to their salaries as regular employees, subject to the outcome of the order that the Deputy Director may pass.

13. Writ Petition is accordingly disposed of in the above terms.

(ANIL S. KILOR, J)

(NITIN JAMDAR, J)

Rgd

Rakesh
Dhuriya

Digitally signed
by Rakesh
Dhuriya
Date: 2021.03.02
15:56:25 +0530