

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1412 OF 2022

Datta S/o Govind Pawar,
Age : 42 years, Occu. Service,
R/o Shivaji Vidyalaya, CIDCO,
Nanded, Tq. & District Nanded.

... **Petitioner**

Versus

1. The State of Maharashtra
Through Principal Secretary,
School Education Department,
Mantralaya, Mumbai.
2. Director of Education (Secondary)
Maharashtra State, Pune.
3. Deputy Director of Education (Secondary),
Latur Division, Latur.
4. Education Officer (Secondary),
Zilla Parishad, Nanded,
Tq. and District Nanded.

... **Respondents**

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Advocate for Petitioner : Mr. V. S. Kadam.
AGP for Respondents-State : Mr. S. B. Yawalkar.

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**CORAM : R. D. DHANUKA, AND
S. G. MEHARE, JJ.**

DATE : 12.04.2022

ORAL JUDGMENT (PER R. D. DHANUKA, J.) :-

1. Rule. Learned AGP waives service of notice on behalf of

the respondents. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. By this petition filed under Article 226 of the Constitution of India, petitioner seeks a writ of Certiorari for quashing and setting aside the impugned order dated 05.10.2021 passed by the Deputy Director (Education) thereby refusing to enter the name of the petitioner in the Shalarth Pranali though the appointment of the petitioner is already approved by the Education Officer.

3. The petitioner was appointed as Assistant Teacher. Petitioner was transferred from unaided division to aided division on 10.07.2019. The Education Officer (Secondary) has granted approval to the transfer of the petitioner from unaided division to aided division of the School on 20% grant-in-aid basis on 10.12.2020. The Management submitted the proposal to the petitioner to include his name in Shalarth Pranali for online payment.

4. On 05.10.2021 and 06.01.2022, the Deputy Director of Education, however, rejected the said proposal on the ground that the Education Officer (Secondary) has not granted

permission to fill in the post of Marathi subject and permission to fill in the post from Nomadic Tribe (A) Category has not been granted in the year 2013.

5. Being aggrieved by the same, the petitioner has filed this petition. It is not in dispute that the Education Officer has already granted approval to the transfer of the petitioner from unaided division to aided division on 20% grant-in-aid by order dated 10.12.2020. The Management had submitted the proposal of the petitioner to include his name in Shalarth Pranali for online payment to the Deputy Director (Education). The Deputy Director has rejected the said proposal on merits of the transfer of the petitioner from unaided division to aided division and also on the ground of his initial appointment not having been in accordance with law.

6. In our view, the Deputy Director of Education has no power to interfere with the order passed by the Education Officer already granting approval to the appointment of the petitioner and thereafter for transfer from unaided division to aided division, on the ground that the said appointment as well as the said transfer was not in compliance with the provisions

of law. There were no allegations of fraud or manipulation against the petitioner or against the Management by the Deputy Director of Education while rejecting the proposal for entering the name of the petitioner in Shalarth Pranali for online payment.

7. The Division Bench of this Court in judgment dated 21.01.2022 in case of ***Abhijit Ashok Waje Vs. The State of Maharashtra and others in Writ Petition No.8881 of 2021 and other connected petitions*** has rejected the submissions made by the learned AGP that the approval granted by the Education Officer can be reviewed by the Deputy Director of Education at the time of entering the data in Shalarth Pranali on the basis of the circular dated 29.03.2019 or as per Government Resolution dated 06.02.2012, read with corrigendum dated 23.08.2017. It is held by this Court that the State Government has to review the approval granted and set aside the same on the ground that it was based on misrepresentation or fraud, the separate Government Resolution and procedure for that purpose are contemplated. The power cannot be exercised at the stage when it was not conferred. Furthermore, the recent decision of this Court in case of Abhijit Waje (*supra*) has been followed by

this Court in catena of decisions.

8. Even otherwise, in our view, the Government Resolution cannot be issued contrary to the provisions of the Act. We are, therefore, not inclined to accept the submissions made by the learned AGP that by virtue of these Government Resolutions, the Deputy Director of Education was conferred with powers to interfere with the order of the Education Officer even at the stage of considering the proposal of Management to enter the name of employee in Shalarth Pranali for online payment in furtherance of the approval granted by the Education Officer though there were no allegations of fraud or suppression.

9. In our view, the Deputy Director of Education has acted totally without jurisdiction by interfering with the order passed by the Education Officer granting approval to the appointment of the petitioner or to the order of transfer from unaided division to aided division. The impugned order passed by the Deputy Director of Education dated 05.10.2021 communicated to the petitioner on 06.01.2022 is accordingly quashed and set aside.

10. This Writ Petition is allowed in terms of prayer clauses

"A" and "B". The name of the petitioner shall be entered in the Shalarth Pranali by the Deputy Director of Education within a period of two (2) weeks from the date of communication of this order. The Deputy Director of Education shall also release 100% salary grants to the petitioner from the date of his transfer on aided post i.e. from 11.07.2019 within a period of four (4) weeks from the date of entering the name of the petitioner in Shalarth Pranali.

11. Rule is made absolute in the aforesaid terms. No order as to costs.

12. Parties to act upon the authenticated copy of this order.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

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vmk/-