

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

WRIT PETITION NO. 2975 OF 2019

Mohasin Khan Ismail Khan Pathan .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Gunale, Advocate for the Petitioner.

Mrs. M. A. Deshpande, Addl.G.P. for the Respondent Nos. 1 and 2.

Shri Ameya Sabnis, Advocate for Respondent Nos. 3 and 4.

**CORAM : MANGESH S. PATIL AND
 SANDEEP V. MARNE, JJ.**

DATE : 06.10.2022.

FINAL ORDER :

. The petitioner is seeking approval to his appointment as a Shikshan Sevak with effect from the date of his appointment, 01.01.2010.

2. After hearing both the sides, it transpires that in fact, the respondent/Education Officer (Secondary) was expected to take a fresh decision and pass an order by considering all the relevant aspects and by permitting the management to forward a fresh proposal. Pertinently, there has been dispute regarding genuineness of the purported approval granted by the then Education Officer, which is being questioned by the present Education Officer. It is after considering even that aspect, this

Court vide order dated 24.07.2018 in Writ Petition No. 14211 of 2017 had specifically issued following instructions in para No. 7 :

“7. The institution shall submit the fresh proposal along with all the attending documents seeking approval to the appointment of the petitioner as a Shikshan Sevak and Assistant Teacher. On receipt of said proposal the Education Officer shall consider all the relevant aspects of the matter that is due adherence to the procedure as prescribed. Thereafter pass the orders afresh. The petitioner and the institution, if they so desire, may represent themselves before the Education Officer. After receipt of the proposal from the institution, the Education Officer shall decide the same expeditiously and preferably within a period of six (06) months from the date of receipt of the proposal. The writ petition is disposed of. No costs.”

3. It appears that pursuant to such a direction the management had submitted proposal along with all necessary annexures on 12.01.2015 (Exhibit – F). The impugned communication though mentions about having heard the management as well as the petitioner and order was being passed pursuant to the directions of this Court (supra), interestingly without there being any reason or occasion for the respondent-Education Officer, he has again referred to the aspect

of genuineness of the earlier approval which he was expected to ignore or overlook and was directed to consider the proposal afresh on its own merits. Be that as it may, the only other reason mentioned in the impugned communication is the non availability of a sanctioned post at present and his inability to grant approval. He has not apparently considered availability of the post and all other attending circumstances as contemplated U/Sec. 5 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act, 1977 and the Rules framed thereunder, of the relevant time when the petitioner was appointed.

4. We are surprised, inspite of this Court having specifically expected the Education Officer to consider the request for grant of approval on its own merits, the impugned communication is devoid of any sufficient and cogent ground muchless pointing out about he having applied his mind to the fact situation of the matter and borne in mind the directives of this Court.

5. As usual, the respondent-Education Officer in affidavit in reply has now for the first time come out with various grounds touching the aspect of approval which ought to have been properly a part of the order that was to be passed while considering grant of approval. In the matter of **Mohinder Singh Gill and another Vs. Chief Election Commissioner** reported in ***AIR 1978 SC 851***, it has been specifically laid down that when a law expect a public officer to pass an order the ground cannot be

supplemented by way of affidavit at latter point of time. This is what happened with the proposal in the matter.

6. Considering aforementioned facts and circumstances, we allow the writ petition partly and direct the respondent-Education Officer to take a decision afresh on the aforementioned lines by extending opportunity to the management and also to the petitioner of being heard. We make it clear that the Education Officer shall incorporate whatever grounds he intends to rely upon, if he really is not inclined to grant approval and shall not be permitted to add the grounds by way of affidavit at some latter point of time. The decision shall be taken as early as possible and in any event within a period of six (06) weeks from today. The writ petition is disposed of.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Oct. 22