

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

WRIT PETITION NO. 13510 OF 2019

Murlidhar S/o Limbaji Mapari,
Age : 52 Years, Occu. : Nil,
R/o: C/o B. K. More,
Bajrang Chowk, Aurangabad. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai – 32.
2. The Registrar,
Yashwantrao Chavan Maharashtra
Open University, Nashik.
3. The Education Officer (Secondary)
Zilla Parishad, Parbhani.
4. Mauli Magasvargiya Shikshan
Sanstha, Wazer (Bk)
Tq. Jintoor, Dist. Parbhani,
Through its Chairman/Secretary. .. Respondents

Shri U. R. Aute, Advocate h/f Shri Talekar and Associates,
Advocate for the Petitioner.

Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 and 3.

Smt R. R. Mane, Advocate for the Respondent No. 2.

Shri V. H. Dighe, Advocate for the Respondent No. 4.

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

CLOSED FOR JUDGMENT ON : 29.09.2022
JUDGMENT PRONOUNCED ON : 04.10.2022

JUDGMENT (Per Sandeep V. Marne, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner assails the order dated 14.08.2018 passed by the respondent No. 2-university thereby cancelling his admission to a course of Bachelor of Education (B. Ed.). Consequently, he is also held ineligible for B. Ed. degree and his degree has been confiscated.

3. Facts of the case in nutshell are that :

The petitioner was initially appointed as untrained teacher in Sant Tukaram Vidyamandir Kandari, Tq. Badnapur, Dist. Jalna by letter dated 30.06.1992 against a leave vacancy during the period 01.07.1992 to 30.04.1993. A temporary approval for such appointment was granted by the Education Officer, Zilla Parishad, Jalna on 05.11.1992. Later, he came to be appointed in Sant Tukaram Vidyalaya Dhanora, Tq. Jintur vide appointment order dated 10.06.1993 for the period from 11.06.1993 to 11.06.1996. The appointment was on temporary basis. The Head Master of Sant Tukaram Vidyalaya Dhanora, Tq. Jintur, Dist. Parbhani issued no objection certificate to him for securing admission for B. Ed. course for the year 1996-1998. He was accordingly admitted to B. Ed. course by Yashwantrao Chavan Maharashtra Open University, Nashik for the academic years 1996-1998. He underwent the course and completed the same in May 1998. In pursuance of the qualification of B. Ed. acquired by him, permanent approval came to be granted in his favour by the Education Officer (Secondary), Zilla Parishad, Parbhani vide order dated 30.03.1999 with effect from

06.07.1998. By order dated 17.05.2000, the university proposed to cancel his admission to B. Ed. course as well as his degree. Following the decision of the university, the respondent No. 4-school proceeded to terminate the services of the petitioner in the year 2001. He filed Writ Petition No. 271 of 2002 challenging the said decision, which came to be allowed vide order dated 27.08.2014 holding that the decision was arrived at without following principles of natural justice. Therefore, the decision of the university was set aside while granting it liberty to undertake a fresh enquiry by giving an opportunity to the petitioner to explain his case. It was further directed that even though the decision of the university was set aside, the consequences that followed would remain unchanged.

4. In pursuance of the order passed by this Court on 27.08.2014 in Writ Petition No. 271 of 2002, the petitioner was issued show cause notice on 10.09.2014. An enquiry was conducted by the respondent No. 2-university, in which he participated. The enquiry officer submitted his report on 19.06.2015. Since no decision was taken by the respondent No. 2-university, the petitioner filed Writ Petition No. 3946 of 2017, which was disposed of on 26.02.2018 recording statement on behalf of the university that final decision would be taken. Accordingly, the impugned order came to be passed on 14.08.2018 cancelling his admission to B. Ed. course and confiscating his degree.

5. In the meantime, the petitioner filed Appeal No. 60 of 2002 before the School Tribunal, Latur challenging his termination, which came to be dismissed, which order is subject matter of

challenge in Writ Petition No. 1435 of 2007 pending before this Court.

6. Appearing for the petitioner, Mr. Aute, the learned counsel has submitted that the decision taken by the university is erroneous. He relied upon the information brochure for Bachelor of Education Programme published by the respondent No. 2-university for 1996-1998 to contend that the petitioner was fully eligible to seek admission to the course. He would submit that his initial appointment during 01.07.1992 to 30.04.1993 was approved by the Education Officer. His subsequent appointment during 11.06.1993 to 11.06.1996 was on a sanctioned post. He would contend that the Headmaster of the school had duly recommended petitioner's case for undergoing the B. Ed. course. After successfully undergoing the course, he has been awarded B. Ed. degree, which cannot be unceremoniously withdrawn by the university. He would submit that on the basis of his B. Ed. qualification the Education Officer had granted permanent approval to his appointment with effect from 06.06.1998 and, therefore, withdrawal of his B. Ed. degree has adversely affected his employment with the school, leading to termination from service. Mr. Aute has relied upon the decision of the Full Bench of this Court in the case of **St. Ulai High School and another Vs. Devendraprasad Jagannath Singh and another** reported in ***(2007) 1 Mh.L.J. 597*** in support of his contention that approval of Education Officer is not a condition precedent to a valid order of appointment. He has also relied upon the decision of this Court in the case of **Nitin S/o Panjabrao Phalke Vs. The Education Officer (Secondary) and others** reported in ***2015(2) All MR 885*** in support of his contention that the validity of the

impugned order is required to be adjudged only on the basis of reasons recorded therein and that the reasons cannot be supplemented in the form of affidavit.

7. Per contra, Mrs. Mane, learned counsel appearing for the respondent No. 2-university has vehemently opposed the petition. She would submit that there were several discrepancies in the appointment of the petitioner. Referring to the first appointment order dated 30.06.1992, she would contend that even though the appointment order stated the period of appointment as from 01.07.1992 to 30.04.1993, the Headmaster had issued a certificate in respect of different period from 01.07.1992 to 07.04.1993 (lesser period by 23 days). Inviting our attention to the report of the Enquiry Officer, she would contend that under the information brochure specific seats were allotted for each district and despite the petitioner submitting application for admission for study centre of Parbhani district, his case was erroneously considered for admission in the merit list of Jalna district. She would further contend that first appointment of the petitioner was not only temporary and against leave vacancy, the approval therefor was also temporary in nature. The second appointment during the period from 11.06.1993 to 11.06.1996 did not have any approval by the Education Officer. Inviting our attention to the information brochure, Mrs. Mane would contend that approval to the post was *sine qua non* for the admission to the B. Ed. course. She therefore, contends that the impugned decision taken by the university is valid and prays for dismissal of the petition.

8. Mr. Dighe, learned counsel appearing for the respondent

No. 4-school management also opposes the petition. He submits that there was no approval to the appointment of the petitioner during the period from 11.07.1993 to 11.06.1996. The approval for petitioner's appointment came to be issued only after acquisition of B. Ed degree vide order dated 30.09.1999 and relying upon acquisition of degree. Since acquisition of degree itself is invalid, the approval granted on 30.03.1999 is rendered invalid. He contended that services of the petitioner were accordingly terminated in the year 2001 and that there was no vacant post in the school for his accommodation. He further submits that no relief has been claimed against the respondent No. 4.

9. Rival contentions of the parties now fall for our consideration.

10. The entire controversy revolves around the provisions of the information brochure for Bachelor of Education Programme (1996-1998) published by the respondent No. 2-university. In para 3 of the brochure, it was provided that the programme was for teachers already in the service and fulfilling the conditions in the brochure. It was further provided that since the programme was for in-service teachers, only such teachers putting in minimum two years of service on post approved by the Government on full-time basis were eligible to seek admission to the course. It was further provided that since the teachers undergoing the programme were also required to perform certain duties in the schools, it was mandatory to obtain prior permission of the schoolhead. In para 4 of the brochure, it was provided that the admissions were to be granted to the eligible

teachers on the basis of seniority. In para No. 6 of the brochure, it was provided that 2400 teachers were to be granted admissions to the course in 30 districts in the ratio of 80 admissions per district. A quota for various types of schools for giving admissions was prescribed.

11. On perusal of the terms and conditions of the information brochure, the most vital condition for securing admission to the course was 'completion of two years of service on full time basis on a post sanctioned by the Government'. In the impugned order the sole reason assigned for cancelling petitioner's degree was 'non-grant of approval to the petitioner's service'. It is therefore, required to be determined as to whether grant of approval by Education Officer was one of the mandatory conditions stipulated in the information brochure. Upon perusal of para 3 of the information brochure, we do not find that there is any such condition which mandated approval of the Education Officer to the appointment of teachers seeking admission to the course. Para 3 of the information brochure merely provides for full time appointment on a post sanctioned by the Government.

12. In the case of **St. Ulai High School** (supra), the Full Bench of this Court in para 35 (iii) has held as under :

(iii) Neither the MEPS Act, 1977, nor the Rules framed thereunder mandate the grant of approval by the Education Officer as a condition precedent to a valid order of appointment. The requirement of approval which relates to the disbursal of grant in aid is a matter between the management and the State and want of approval will not invalidate an order of appointment.

13. Thus approval is linked merely to grant-in-aid and

absence of approval does not render an appointment *per se* invalid. Petitioner's appointment as teacher is undisputed. It is not the case of any of the Respondents that the post occupied by him was not a sanctioned post. Therefore in absence of condition providing for approval of the Education Officer in the information brochure, we are of the view that Portioner's admission to the course cannot be termed illegal, in any manner. Consequently, the sole reason stated in the impugned order dated 14.08.2018 is erroneous and it deserves to be set aside.

14. Faced with these difficulties, Mrs. Mane has made strenuous efforts to contend that there are other valid reasons for cancellation of petitioner's degree certificate. She has relied upon various findings in the enquiry officer's report in support of her contention. She particularly laid stress on the aspect that the petitioner had submitted form for admission from Parbhani district, but was granted admission in Jalna district. She also sought to highlight findings of the enquiry officer about discrepancies in the Headmaster's certificate in respect of first appointment of the petitioner from 01.07.1992 to 30.04.1993. However these are not to be found in the impugned order. Following the judgment of the Apex Court in the case of **Mohinder Singh Gill and another Vs. Chief Election Commissioner** reported in ***AIR 1978 SC 851***, we refuse to take into consideration the said reasons sought to be pressed by Mrs. Mane. We reproduce para 8 of the judgment in the case of **Mohinder Singh Gill** (supra) as under :

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons

in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p.18).

"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".

Orders are not like old wine becoming better as they grow older."

15. The judgment in the case of **Mohinder Singh Gill** (supra) has been followed by this Court in the case of **Nitin S/o Panjabrao Phalke** (supra), in which it is held in para No. 11 as under :

"11] Thus, the only question is, whether the Education Officer was justified in recalling the earlier order for the twin reasons of there being no approval and on account of certain misrepresentation/supply of incorrect information, as alleged. Insofar as the second aspect is concerned, except a bare in the order dated 30.9.2001, there is nothing on record to show that there was such a misrepresentation or the specific nature thereof. In this regard, it may be mentioned at the outset that this ground about there being certain misrepresentation is not to be found in the impugned letter dated 25.10.1999 (Annexure I). That letter apparently refers to only one ground for recalling of earlier order namely absence of approval. This aspect about there being a misrepresentation is for the first time mentioned in the order dated 30.9.2001. It is trite that a particular order/decision cannot justifiably be supported and supplemented on the basis of reasons subsequently articulated."

16. Consequently, the reasons which are not to be found in the impugned decision dated 14.08.2018 cannot be taken into consideration while determining its validity. The sole reason of non issuance of approval to the appointment of the petitioner by the Education Officer cited in the impugned order is already found to be invalid by us. Even otherwise, the fact that the petitioner was a teacher in the respondent school at the time of seeking admission is undisputed. The objective behind commencing the course was to assist the untrained teachers to acquire the qualification that they lacked. If this paramount objective is kept in mind, the objections raised by the respondent university to petitioner's entry to the course, particularly after he had completed the same by earning a degree, becomes too hyper technical. Respondent university has also not been able to point out any specific provision under which, the acquired degree can be rescinded. This is not a case of fraud or misrepresentation. If the respondent university was insisting about prior approval of the education officer to petitioner's appointment, they ought to have rejected his application for admission to the course. Again, university has to blame itself for alleged discrepancy about petitioner seeking admission from Parbhani but granted the same from Jalna. On conspectus of facts and circumstances, we do not find that any valid ground existed for nullifying petitioner's admission to the course and/or to rescind his degree certificate. Consequently, we proceed to pass following order.

ORDER

- a. The impugned order dated 14.08.2018 passed by the respondent No. 2-university is set aside.

- b. Consequently, it is declared that the admission of the petitioner to B. Ed. course is valid and the B. Ed. decree secured by him from the respondent No. 2-university is restored for all purposes.
- c. The writ petition is accordingly allowed. Rule is made absolute in above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Oct. 22