

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.9366 OF 2015**

Kankavali Shikshan Sanstha, Kankavali
Through Its President/Secretary And Ors. .. Petitioners

v/s.

The State of Maharashtra Through
The Secretary And Ors. .. Respondents

....

Mr. Prashant Bhavake, for the Petitioners.

Mr. S.B. Kalel, AGP, for State.

....

**CORAM: SUNIL B. SHUKRE &
AMIT BORKAR JJ.**

DATE : 14 FEBRUARY 2022

P.C:-

Heard learned Counsel for the Petitioners and learned AGP for the Respondents, who has already made his appearance on behalf of these Respondents. Rule. Rule made returnable by consent of the parties.

2. No reply is filed by the Respondents. However, considering the nature of the impugned order, we do not think that

even if any reply is filed by the Respondents, it would take the case of the Respondents any further and therefore the reply if filed by any of the Respondents would not be really determinative of what otherwise is the fait accompli of Petitioner No.3.

3. The order impugned here is of 2 February 2013 and is passed by Respondent No.3. It refuses approval to the appointment of Petitioner No.3 to the post of Assistant Teacher, which was made by following due process on 11 June 2012. The only reason stated in the impugned order is that the refusal cannot be granted in view of G.R. dated 2 May 2012. G.R. dated 2 May 2012 contains several conditions as well as prescriptions and therefore, it was necessary for Respondent No.3 to have spelt out as to which one or many of these prescriptions and conditions are not fulfilled in the case of Petitioner No.3, but Respondent No.3 has not done so. It is, therefore, not known as to exactly for what reason the approval has been refused to the appointment of Petitioner No.3. Learned Counsel for the Petitioners submits that, in any case, GR dated 2 May 2012 is not applicable to the case of Petitioner No.3 as it is an admitted fact that the Petitioner No.3 was appointed against existing vacancy, which arose due to retirement of another Assistant Teacher and, therefore, it cannot be termed to be an appointment made to fill-up a newly or freshly created post. Learned Counsel for the Petitioners further submits that this is the view taken by another Co-ordinate Bench of this Court in *Sandiprao*

V. Savant vs. President/Secretary, Agrani Shikshan Prasarak Mandal & Ors. in Writ Petition No.3708 of 2018 decided on 23 August 2021.

4. The submissions so made by learned Counsel for the Petitioners deserve their due consideration by Respondent No.3. This is all the more so because Respondent No.3 has not given any specific reason for not granting approval to the appointment of Petitioner No.3 in the impugned order dated 2 February 2013. Respondent No.3, therefore, would have to reconsider to the issue afresh by keeping in mind the conditions of G.R. dated 2 May 2012 and also the law laid down by this Court in the aforesaid case of *Sandiprao V. Savant*, wherein this Court has clearly held that G.R. dated 2 May 2012 imposes ban on creation of new post, but this ban does not apply to the appointment made on the vacant posts.

5. In view of the above, we find that the impugned order cannot be sustained on the either ground. Rule made absolute and the impugned order is set aside. The matter is remanded back to Respondent No.3 for consideration of the issue of the grant of approval to the appointment of Petitioner No.3 as Shikshan Sevak afresh, and take decision in accordance with law and in the light of the observations made hereinabove. The decision shall be taken at the earliest, preferably within twelve weeks from the date of receipt of the order. He is also directed to take appropriate decision regarding

inclusion of the name of Petitioner No.3 in the Shalarth System, in accordance with law, if occasion to do so arises.

(AMIT BORKAR J.)

(SUNIL B. SHUKRE, J.)