

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11605 OF 2022

Late Venkayya Kusayya Guttedar Krida
& Shikshan Prasarak Mandal & Anr.

...Petitioners

Vs.

The State of Maharashtra & Ors.

...Respondents

Mr. Shailendra S. Kanetkar for the Petitioner.

Smt. S. S. Bhende, Assistant Government Pleader for Respondent Nos.1 to 5
-State.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATED : 6 DECEMBER 2022.

P. C. :

By this Petition, the Petitioners challenge the order of Respondent No.2-Deputy Director of Education cancelling the approvals granted by the Education Officer (Secondary) to Shri Thorat and Shri Nagare as Assistant Teacher and Peon respectively.

2. Petitioner No.1 is an unaided minority institution which runs Petitioner No.2-School, which was initially unaided but subsequently was receiving partial aid. In the year 2010 as against a reserved post of Assistant Teacher, Shri Thorat, a candidate belonging to VJNT was appointed as Assistant Teacher, as according to the Petitioners there was no appropriate

candidate available. At the time of appointment of Shri Thorat, he did not possess the requisite B.Ed qualification. Shri Nagare was appointed as a peon by the Petitioners w.e.f 1st June, 2005 against permanent vacancy in the open category.

3. In respect of these two appointments, a complaint was filed in the year 2018 by one Shri Kanul, an Assistant Teacher of the same school with the Respondents stating that the appointments were contrary to the provisions of law and liable to be cancelled. Shri Thorat at that time was holding the post of Head Master. A report came to submitted by the Deputy Inspector of Education on 30th July, 2018 stating that Shri Nagare was appointed prior to the completion of 18 years of age and Shri Thorat did not possess the necessary qualification of B.Ed. Considering the report, notice of hearing was issued to the Petitioner and the complainant in respect of cancellation of the approvals granted to Shri Thorat and Shri Nagare.

4. In response to the notice of hearing, detailed written submission was filed by the Petitioner. After hearing the parties and considering the material on record the Deputy Director by impugned order dated 28th November, 2019 cancelled the approvals granted to the appointment of Shri Thorat and Shri Nagare. The present petition challenges the order of the Deputy Director.

5. Heard learned counsel appearing for the parties.

6. Learned counsel for the Petitioners submits that the impugned order cancelling the approvals is erroneous as Shri Thorat was appointed as an untrained teacher and the approval granted by the Education Officer dated 17th March, 2012 to Shri Thorat erroneously grants Shri Thorat the scale of trained teacher. He further submits that after realizing the error, Shri Thorat was relieved from post of Head Master and one Shri Sutar has been appointed and during pendency of this petition Shri Thorat has obtained necessary qualification as B.Ed. As far as Shri Nagare is concerned, Learned Counsel admits that Shri Nagare was appointed prior to his completion of 18 years of age and considering this fact, Shri Nagare was reappointed with effect from 1/6/2017 after he had completed 18 years of age. It is his contention that the Petitioner being unaided minority institution there is no question of fraud being committed upon the State Government.

7. Learned AGP supports the order passed by the Deputy Director and contends that the issue involved in the present case is regarding the approvals granted contrary to the provisions of law and no interference is warranted.

8. We have considered the rival submission of the parties. The issue in the present case is whether the approvals granted by the Education officer to the appointments of Shri Thorat and Shri Nagare are sustainable in law. Perusal of the approval dated 17/3/2012 granted to the appointment of Shri Thorat shows that the time scale of trained teacher has been granted to Shri Thorat. It is an admitted position that at the time of his appointment

Shri Thorat did not possess the requisite B.Ed qualification. Subsequent acquisition of the qualification during the pendency of this Petition will not rectify the initial illegality in the approval granted to the appointment. The contention of the Petitioner that Shri Thorat was appointed as untrained teacher and the Petitioner school had submitted the proposal accordingly, cannot be accepted in view of the statement at Page 23 of the Petition, which is the document of the Petitioner school setting out the strength of the teaching and non-teaching staff of the school. The statement shows the education qualification of Shri Thorat as B.A. B.Ed. Considering the admission of the Petitioner and the document at Page 23 of the Petition, in our opinion, the approval to the appointment of Shri Thorat was obtained on mis-representation.

9. As far as appointment of Shri Nagare is concerned, the fact that he was less than 18 years of age has been admitted by the Petitioners and the fact of reappointment with effect from 1/6/2007 does not ratify the illegality which has been caused in procuring the approval to the appointment. Pertinently the Petition makes bare averment about re-appointment of Shri Nagare without any document of re-appointment being produced.

10. Once it is admitted by the Petitioners that the approval erroneously mentions the qualification of Shri Thorat as B.A. B.Ed and that Shri Nagare had not completed 18 years of age at the time of his appointment, nothing further remains to be considered. The contention that the status of the institution being unaided, no fraud was committed

upon the State Government is completely irrelevant as what was under consideration of the Deputy Director of Education are the approvals granted to the appointments of Shri Thorat and Shri Nagare, which are rightly found to be illegal and cancelled.

11. Considering the aforesaid, there is no merit in the Petition. Writ Petition is accordingly dismissed.

12. The Writ Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH, J.)

(NITIN W. SAMBRE, J.)