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

WRIT PETITION NO. 2560 OF 2021

Seema Bharat Patil and Anr.

... Petitioners

V/s.

The Assistant Commissioner,
Social Welfare Department and Ors.

... Respondents

Mr. Sanjiv Sawant a/w. Digvijay Palande i/b. Abhishek Deshmukh
for the Petitioner

Mr. Narendra V. Bandiwadekar a/w. Mr. Sachin D. Kadam for the
Respondent No.5

Ms. S.S. Bhende, AGP for the Respondent - State

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

DATE : 24 FEBRUARY 2022

P.C. :-

Heard the learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. Taken up for
final disposal by consent.

3. By the impugned letter dated 20.09.2020, the salary of
the Petitioners has been stopped on the ground that there was no

approval granted by the High Power Committee to the appointment of the Petitioners. This ground proceeds on the presumption that it was one of the conditions of the approval granted to the appointment of the Petitioners vide order dated 3 September 2019 that it was subject to the approval to be given by the High Power Committee.

4. On going through the approval dated 3 September 2019 carefully, it can be seen that there is no condition stipulated therein which lays down that the approval was granted subject to the further approval to be given by the High Power Committee. There is one condition which is condition no.15, which relates to some decision to be taken by the High Power Committee. However, this decision is about the fixation of the pay structure and not about granting of approval to the appointment of the Petitioners. Then, the approval dated 3 September 2019 has not been withdrawn by the State Government. No show cause notice whatsoever has been issued to the Petitioners in this regard. Therefore, the impugned order which is based upon something not existing in the approval order dated 3 September 2019 cannot be sustained in the eyes of law. It is the contention of the learned AGP that the approval granted to the Petitioner was irregular in the sense that the posts were not sanctioned, that prior permission of the concerned officer was not taken. These are, however, not the grounds mentioned in the impugned letter. These grounds, which appear in the additional

affidavits in reply filed by the State Government therefore cannot be considered in view of the law settled by the Apex Court in the case of *Mohinder Singh Gill v/s. Chief Election Commissioner (AIR) 1978 SC 851*.

5. The Petition therefore deserves to be allowed and the same is allowed accordingly. The impugned letter is hereby quashed and set aside. The Respondent Nos. 1 to 4 are directed to release the arrears of salary and start paying salary regularly to the Petitioners in accordance with law. Arrears of salary shall be released within a period of four weeks from the date of the receipt of the order.

AMIT BORKAR, J.

SUNIL B. SHUKRE, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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Date: 2022.02.25
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