

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13280 OF 2016

Jyoti Manish Bangar & Others ... Petitioners.
V/s.

The State of Maharashtra, through the
Municipal Secretary, School Education
& Sports Department & Others ... Respondents.

Mr. N.V. Bandiwadekar, with Mr. Vivek Rane, i/b Mr. A.R. Kapadnis,
for the Petitioners.

Mr. V.M. Mali, AGP, for Respondent Nos. 1 to 4.

Mr. Vijay Killedar, for Respondent No. 5.

CORAM : SUNIL B. SHUKRE, AND
AMIT BORKAR, JJ.

DATE : 25th FEBRUARY 2022.

P.C. :

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties present before the Court.

2. The Petitioner No. 1 was appointed as Shikshan Sevak and her appointment received approval from Respondent No. 5 with effect from 1st November 2012. Upon completion of three years tenure as Shikshan Sevak, the Petitioner No. 1 was appointed as Assistant

Teacher and her such appointment also received approval of Respondent No. 5 with effect from 1st November 2015. Such an appointment of Petitioner No. 1 was, however, canceled by Respondent No. 4.

3. It is the contention of the learned Counsel for the Petitioner that cancellation made by one officer to the approval granted by another officer is nothing but review of the decision taken by the earlier officer and, therefore, it is not permissible in law, especially when there is no express provision in law conferring power of review upon the Education Officer, i.e. Respondent No. 4. He also submits that the approval has been canceled only on the ground that it was inadvertently granted by Respondent No. 5 and it has not been canceled on the ground that it was obtained by the Petitioner by playing fraud with Respondent No. 5 or submitting misleading factual scenario before Respondent No. 5. He relies upon the view taken by several other Benches of this Court in different cases, including the case of *Mrs. Shivaneesh Prasanna Deshpande V/s. The State of Maharashtra*,¹ and *Sureshsing Sattarsing Girase V/s. State of Maharashtra*.²

3. Mr. Killedar, learned Advocate for Respondent No. 5 submits that after the approval was canceled by Respondent No. 4, the Deputy Director, i.e. Respondent No. 3 issued a direction to the Respondent No. 4 for taking necessary action regarding cancellation

¹ Writ Petition No. 10133 of 2016 along with other connected matters, decided on 1st August 2017.

² 2021 (6) Mh.L.J. 617.

of the approval as he had received some complaints regarding irregular grant of approval to the appointment of Petitioner No. 1. He, therefore, submits that Respondent No. 6 is willing to recall the impugned order and initiate fresh action against the Petitioners, if permitted by this Court. He also submits that some inquiry is presently going on into the complaint received against Petitioner No. 1 and if it is found that the approval was obtained by the Petitioners by fraud, the Authorities would take fresh action against the Petitioners. He relies upon the view taken by another Division Bench of this Court in the case of *Satpute Vidya Machindra V/s. The State of Maharashtra*.³

4. The alternative proposal of Respondent No. 6 is opposed by the learned Counsel for the Petitioners.

5. In the present case, it is not in dispute that the Education Officer or, for that matter, any other officer of the Education Department is not conferred with any power of review regarding recalling of the approval granted by another officer. Of course, this Court has taken a view that if it is seen that approval is obtained by playing fraud or making false representation to the concerned authority, the action regarding withdrawal of the approval can be taken provided show-cause notice is issued to the concerned teacher and opportunity of hearing is granted to him. This is the view consistently taken by this Court not only in the case of *Satpute*

³ Writ Petition No. 3811 of 2013 decided on 2nd August 2013.

Vidya Machindra (Supra), but also in the case of *Mrs. Shivaneesh Prasanna Deshpande* (Supra). In *Mrs. Shivaneesh Prasanna Deshpande*, Division Bench of this Court has held that no doubt if an order is obtained by exercising fraud, it will stand vitiated but, for that matter, it must be proved by the Education Department that there is some material which shows that the possibility of playing fraud by the teacher is not ruled out. If one takes a careful look at the impugned order, however, one will find that it is not at all the case of Respondent No. 5 that Petitioner No. 1 has obtained approval by playing fraud or by making false representation to Respondent No. 6. The impugned order only states that the approval was granted inadvertently as at that time ban on recruitment was in operation. It does not make out any case of playing of fraud or making of false representation by Petitioner No. 1. Similar were the facts in the case of *Mrs. Shivaneesh Prasanna Deshpande* wherein the Division Bench found that it was not the case of the Education Officer that the Petitioners therein had obtained their initial orders by fraudulent means.

6. In view of above, we are of the view that the proposal submitted by Respondent No. 6 is unreasonable and, therefore, it deserves to be rejected. We are also of the view, in view of what is stated just now, that the impugned order cannot be sustained in the eyes of law. It deserves to be quashed and set aside.

7. The petition is, therefore, allowed in terms of prayer clause (b).

8. We further direct that the name of Petitioner No. 1 shall be entered in the Shalarth Pranali and salary together with arrears shall be released to her immediately, after the allotment of Shalarth ID, if not already done.

9. **Rule is made absolute.** No costs.

(AMIT BORKAR, J.)

(SUNIL B. SHUKRE, J.)

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Note: This order is modified as per order dated 8th March 2022. Corrections in paragraph 9 are shown in bold.