

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 949/2021

1. Ganesh Haribhau Wavre
Aged about 39 Years, Occu. Service
R/o. Mutthe Lay Out, Behind Bus Stand,
Buldana Tq & Dist. Buldhana.
 2. Shrikrushna Sahdev Solanki
Aged about 43 Years, Occu. Service
R/o Ramnagar, Buldhana,
Tq. & Dist. Buldana.
 3. Pravin Rameshwar Mule
Aged about 31 Years, Occu. Service
R/o. Birsingpur, Tq. & Dist. Buldana.
- PETITIONER(S)

// VERSUS //

1. The State of Maharashtra
Department of School Education,
Mantralaya, Mumbai-032
 2. The Education Officer (Secondary)
Zilla Parishad, Buldhana.
 3. Shri Vilasrao Deshmukh Shikshan
Prasarak Va Bahuuddeshiya Sanstha,
Buldhana, Through its President,
R/o. "Vidyavishwa", Wankhede Layout,
Buldana, Tq. & Dist. Buldhana.
 4. Rajiv Gandhi Military School,
Ajantha Road, Kolwad,
Dist. Buldana,
Through its Head Master.
- RESPONDENT(S)

 Shri P.B. Patil, Advocate for the petitioners
 Miss. Nivedita P Mehta, Assistant Government Pleader for respondent
 nos. 1 and 2/State
 Ms. Pranita Vairagade with Shri B.M. Dafle, Advocates for respondent
 nos. 3 and 4

CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, J.J.

DATED : 01/04/2022

ORAL JUDGMENT : (PER:- A. S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The challenge raised in this writ petition is to the order dated 22.01.2021 issued by the Education Officer (Secondary), Buldhana by which the proposal for grant of approval to the appointment of the petitioners has been rejected.

3. It is the case of the petitioners that pursuant to the staff approval granted by the Education Officer (Secondary) on 26.12.2013 two posts of Junior Clerk and two posts of Peon were to be filled in. Based on the aforesaid staff approval the Management on 11.02.2014 sought permission of the Education Officer (Secondary) to undertake recruitment. Such permission was granted by the Education Officer (Secondary) on 15.02.2014 and the advertisement proposed to be issued was also approved. Thereafter on 06.05.2014 the Management published an advertisement in a local newspaper pursuant to which the petitioners had applied for appointment. On 26.06.2014 the petitioner no. 1 was appointed on the post of Junior Clerk while the petitioner no. 2 and 3 were appointed on the post of Peon. The matter of grant of approval was pending before the Education Officer (Secondary). Ultimately by communication dated 22.01.2021 the approval was

refused on the ground of the State Government was undertaking the exercise of revising the policy for recruitment with regard to Military School. Being aggrieved, the petitioners have challenged the rejection of such approval.

4. Shri P.B. Patil, learned Counsel for the petitioners submitted that the petitioners were appointed after following due procedure and in view of the prior permission granted by the Education Officer (Secondary). By seeking to rely upon subsequent Government Resolution dated 04.05.2020 the approval for the appointment of the petitioners has been rejected. That Government Resolution pertained to academic year 2020-2021 and the same could be given any retrospective effect. This Court had occasion to consider somewhat similar challenge in Writ Petition No. 953/2021 (*Laxmikant S/o Bhaskarrao Gondkar and ors. Vs. The State of Maharashtra and ors.*) dated 30.11.2021. By the said judgment, it was held that the subsequent Government Resolution after appointment of the petitioners could not have been relied upon.

5. Ms. Nivedita P. Mehta, the learned Assistant Government Pleader appearing for the respondent nos. 1 and 2 supported the impugned order. It was stated that with the change in policy the Education Officer (Secondary) was required to comply with the same and as there was no vacancy available when the petitioners were appointed the approval was rightly rejected. No interference therefore

was called for with the impugned order.

6. We have heard the learned Counsel for the parties and we have perused the documents on record. The fact that the Education Officer (Secondary) on 15.02.2014 had granted permission to fill the vacant posts and the subsequent advertisement was issued on 06.05.2014 is undisputed. The petitioners were appointed by appointment letter dated 26.06.2014. The Education Officer (Secondary) however had sought to rely upon the Government Resolution dated 04.05.2020 in the impugned order. This aspect of applicability of Government Resolution dated 04.05.2020 has been considered in *Laxmikant S/o Bhaskarrao Gondkar (supra)* by this Court in paragraph 4 thereof. It reads thus:-

“4. Government Circular dated 24.04.2020 clearly states that prohibition on new recruitments would come into force only from the date of the circular i.e. 24.04.2020 and here in this case the appointments having been made on 14.01.2020, almost three months before 24.04.2020, the appointments are not hit by this circular and therefore, Education Officer ought not to have given the reason of ban on recruitment as per the government circular dated 24.04.2020. Same is true about the Government Resolution dated 04.05.2020, when it says that during period of COVID-19 Pandemic no new recruitments should be made. Here is the case where recruitments were already made and that too by following the due procedure way-back on 14.01.2020, much before the onset of Pandemic and its formal declaration by the State. So, the Education Officer ought not have given the reason of this Government Resolution as not permitting the grant of approval to the appointment of the petitioners.”

In the light of aforesaid, the Education Officer (Secondary) can be directed to re-consider the proposal for grant of approval to the appointment of the petitioners in view of that decision. Accordingly, the following order is passed:-

(i) The order dated 22.01.2021 passed by the Education Officer (Secondary) refusing to approve appointment of the petitioners is set aside.

(ii) The Education Officer (Secondary) shall re-consider the proposal for grant of approval to the appointment of the petitioners in the light of the observations made hereinabove. If any further clarification is sought by the Education Officer (Secondary) he is free to hear the petitioners and as well as Management in that regard.

(iii) Necessary exercise be completed within a period of two months from the receipt of the copy of this order. The decision taken on the proposal be communicated to petitioners.

7. Rule is made absolute in the aforesaid terms with no order as to costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)