

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

WRIT PETITION NO. 3236/2022

(JYOTI CHUNNILAL KOICHE & OTHERS **VERSUS** DEPUTY DIRECTOR OF EDUCATION, NAGPUR &
ANOTHER)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri C.M. Samarth, counsel for the petitioners.
Ms S.S. Jachak, Assistant Government Pleader for the respondents.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

DATE : DECEMBER 21, 2022.

P.C.

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

In this writ petition, challenge has been raised to the order passed by the Deputy Director of Education, Nagpur thereby cancelling the approval granted to the appointment of the petitioner no.1. One of the grounds raised in challenge is that the notice issued to the petitioner no.1 by the Deputy Director of Education did not indicate the reason for reconsidering the order granting approval to her appointment.

The learned counsel for the petitioners submits that in somewhat similar circumstances this Court in **Writ Petition No.1315 of 2022** [*Dilipkumar Patle & Another Versus Deputy Director of Education, Nagpur Division, Nagpur & Others*] has set aside a similar order by the order dated 05.09.2022 and has issued various directions by which the question as to whether the approval granted earlier is liable to be set aside or not has been directed to be reconsidered. The Government Resolution dated 23.08.2017 has been considered while issuing those directions. He therefore submits that similar course may be followed in this writ petition.

The learned Assistant Government Pleader for the respondents does not dispute the fact that an identical issue was considered in the aforesaid writ petitions.

We have perused the aforesaid judgment dated 05.09.2022 rendered in the case of *Dilipkumar Patle & Another* (supra). In paragraphs 11 and 12 of the said decision, it has been observed as under:-

“11. We, therefore, hold that in proceeding against the petitioners, the Deputy Director, Higher Education has followed the relevant Government Resolution in the breach. In such a view of the matter, we also hold that the impugned order of cancellation of approval of the services of the petitioners cannot be sustained in law and the same is liable to be set aside. Accordingly, we propose to dispose of the writ petition by passing the following order:-

ORDER

- i. The impugned order dated 25-10-2021 stands set aside.*
- ii. The effect of such setting aside of the impugned order would not automatically result in revival of the approval of the petitioner's services granted by the Education Officer but such approval would be dependent on the decision to be taken in terms of this order, as indicated hereinafter.*
- iii. Instead of the Deputy Director, Higher Education revisiting the matter of approval, we direct the Joint Director, Higher Education to look into the matter and to issue show cause notice to the petitioners if, at all, it is his prima-facie view that such approval stands vitiated due to fraudulent activities. Requiring the Joint Director to consider the matter, is with the purpose of obliterating any bias that the petitioners right apprehend.*
- iv. The show cause notice must indicate the tentative reasons for taking a relook on the issue of approval of the petitioners.*
- v. The petitioners shall have a week's time to respond to the show cause notice. Within a period of two weeks thereafter, the Joint Director shall extend an opportunity of hearing to the petitioners and pass an appropriate order.*
- vi. If the order is favourable to the petitioners, they will be entitled to continuity of service as if the approval of services granted to them had never been cancelled. In such an event, they will be entitled to backwages for services that they claim to have been discharging despite the order of cancellation.*

vii. Should the order be adverse to the interest of the petitioners, they shall immediately step down from the respective posts of Shikshan Sewaks and the respondent no.3/School shall be under an obligation to proceed in accordance with the law for making recruitment on the said posts.

viii. If the Joint Director does not issue the show cause notice within a month of receipt of a copy of this order, it will be presumed that there is no reason to proceed against the petitioners and in such eventuality, the order of approval of the petitioner's services will revive and they shall be entitled to all service benefits.

12. The writ petition stands disposed of. No costs."

We find that the petitioner no.1 is similarly situated and she also seeks to rely upon the Government Resolution dated 23.08.2017 to urge that the Deputy Director of Education has not considered that Government Resolution while passing the impugned order.

In view of aforesaid for reasons contained in the aforesaid decision, the following order is passed:-

I) The order passed by the Deputy Director of Education setting aside the order granting approval by the Education Officer (Secondary) is quashed and set aside.

II) The effect of such setting aside of the impugned order would not automatically result in revival of the approval of the services of the petitioner no.1 granted by the Education Officer but such approval would be dependent on the decision to be taken in terms of this order, as indicated hereinafter.

III) Instead of the Deputy Director, Education revisiting the matter of approval, we direct the Joint Director, Secondary and Higher Secondary Education, Maharashtra State, Pune to look into the matter and to issue show cause notice to the petitioner no.1 if, at all, it is his *prima-facie* view that such approval stands vitiated due to fraudulent activities. Requiring the Joint Director to consider the matter is with the purpose of obliterating any bias that the petitioner right apprehend.

IV) The show cause notice must indicate the tentative reasons for taking a relook on the issue of approval of the petitioner no.1.

V) The petitioner no.1 shall have a week's time to respond to the show cause notice. Within a period of two weeks thereafter, the Joint Director, Secondary and Higher Secondary Education, Maharashtra State, Pune shall extend an opportunity of hearing to the petitioner no.1 and pass an appropriate order.

VI) If the order is favourable to the petitioner no.1, she will be entitled to continuity of service as if the approval of services granted to her had never been cancelled. In such an event, she will be entitled to backwages for services that she claims to have been discharging despite the order of cancellation.

VII) Should the order be adverse to the interest of the petitioner no.1, she shall immediately step down from the post of Shikshan Sewak and the petitioner no.3-School shall be under an obligation to proceed in accordance with the law for making recruitment on the said post.

VIII) If the Joint Director, Secondary and Higher Secondary Education, Maharashtra State, Pune does not issue the show cause notice within a month of receipt of a copy of this order, it will be presumed that there is no reason to proceed against the petitioner no.1 and in such eventuality, the order of approval of the services of the petitioner no.1 will revive and she shall be entitled to all service benefits.

The writ petition is accordingly disposed of. Rule accordingly. No costs.

(ANIL L. PANSARE, J.)

(A. S. CHANDURKAR, J.)

APTE