

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

WRIT PETITION NO.2134 OF 2021

Vishwas Kunjilal Rahangdale and others

Vs.

Deputy Director of Education, Nagpur Division, Nagpur and others

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

Court's or Judge's orders

Shri. P. N. Shinde, Advocate for petitioners.
Shri. N. R. Patil, AGP for the respondent Nos.1 and 2.
Shri. Dhiraj Ailoni, Advocate h/f Shri U. J. Deshpande, Advocate for
respondent Nos.3 to 5.

**CORAM : SANDEEP K. SHINDE AND
MRS. VRUSHALI V. JOSHI, JJ.**

DATED : 21/11/2022

1. This petition under Articles 226 and 227 of the Constitution of India takes exception to order dated 08.06.2021 passed by the Deputy Director of Education, Nagpur Division, Nagpur by which the approvals granted by the Education Officer to the appointments of the petitioners to the teaching post have been cancelled.

2. Briefly stated facts of the case are as under:

That vide order dated 09.04.2020, the Education Officer (Secondary), Zilla Parishad, Gondia approved appointments of the petitioners, to the teaching posts, in the schools run and manage by the respondent No.3. However, having noted large scale irregularities while granting approval of services of the

petitioners and others, Deputy Director of Education had initiated enquiry, to ascertain whether the procedure followed was in accordance with law. Thereafter, it was found that appointments of petitioners were not approved by the Education Officer in a legal manner, which culminated into impugned order.

3. Heard Mr. Shinde, learned counsel for the petitioner and Mr. Patil, learned AGP for the respondent Nos.1 and 2/State.

4. Mr. Shinde, learned counsel for the petitioners would submit that the impugned order has been passed in breach of principles of natural justice, in as much as, before passing it neither show cause notice was issued nor petitioners were heard in terms of Government Resolution dated 23.08.2017. Mr. Shinde, learned counsel for the petitioners therefore seeks to quash the impugned order.

5. The impugned order apparently does not indicate and/or suggest, that either show cause notice was issued or opportunity of hearing was extended to the petitioners.

6. In somewhat on similar facts, one Dilipkumar Patle and another, had filed writ petition

before this Court being Writ Petition No.1315 of 2022. In the said petition, the Division Bench has held thus:

“However, we are left to wonder as to why the Deputy Director did not consider it appropriate to issue a show cause notice indicating therein prima facie reasons for which it was felt by him that a case for review existed on the ground of the appointments being vitiated by fraudulent activities. Issuance of show cause notice in a case of this nature is not a mere formality that can be dispensed with at the will of the decision maker but a valuable right of an appointee to know the exact reason why he/she is being proceeded against. Extending an opportunity of hearing must be real in the sense that the party proceeded against can raise an effective defence for consideration before a decision adverse to this interest is arrived at.”

7. In the above decision, upon taking recourse to the Government Resolution dated 23.08.2017, Division Bench was pleased to set aside the impugned order therein by which approvals of the services of the petitioners therein were cancelled.

8. Thus, in consideration of the facts of the case, since impugned order has been passed in breach of

principles of natural justice, it is quashed and set-aside. Thus, Writ Petition is allowed and hence the following order :

ORDER

(i) The impugned order dated 08.06.2021 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 petitioners' services granted by the Education Officer but such approval would be dependent on the decision to be taken in accordance with law.

(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 petitioners if, at all, it is his *prima facie* view that such approval stands vitiated due to fraudulent activities.

(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, Secondary and Higher Secondary Education, Maharashtra State,

Pune 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 and the respondent No.3 shall be under an obligation to proceed in accordance with the law making recruitment on the said posts.

(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 petitioners and in such eventuality, the order of approval of the petitioners' services will revive and they shall be entitled to all service benefits.

(MRS. VRUSHALI V. JOSHI, J.)

(SANDEEP K. SHINDE, J.)