

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

WRIT PETITION NO.3217 of 2017

Ku.Pradnya Prakashrao Deshmukh,
 Aged 32 years, Occu: Assistant Teacher,
 R/o. C/o. Kaduba Champalal Chavan,
 Shivajinagar T-Point SinkhedRaja,
 Tq. SinkhedRaja and District Buldhana.

..... **PETITIONER**

...V E R S U S...

- 1] The State of Maharashtra,
 Through its Secretary, School Education Department,
 Mantralaya, Mumbai-440 032.
- 2] Education Officer (Secondary),
 Zilla Parishad, Buldhana.
- 3] President/Secretary,
 Lokmanya Tilak Shikshan Prasarak Mandal,
 Vakhari Vadgaon, Tq. and District Jalna.
- 4] Headmaster,
 Jijamata Madhyamic Vidyalay,
 Adgaon Raja, Tq. SinkhedRaja,
 District Buldhana.
- 5] President/Secretary, (R-5 Added as per Hon'ble Court's
 Kai.Bhaskarraoji Shingne Shikshan order dated 26.09.2017)
 Prasarak Va Krida Mandal, Raheri,
 Taluka Sindhkhedraja, District Buldhana.
- 6] ~~G.R.Rathod~~, (R-6 added as per Hon'ble Court's
 order dated 18.09.2018)
 Dy. Director of Education, (Name deleted as per Registrar(J)
 Amravati Division, Amravati. Order Dated 08.01.2020)

7] Deoulgaon Raja Shikshan Samiti, (Added as per Hon'ble Court's
Deoulgaon Raja through its President, order dated 21.03.2022)
Tq. Deoulgaon Raja, District Buldhana.

..... **RESPONDENTS**

Shri Anand Parchure, Advocate for petitioner.

Ms H. N. Jaipurkar, Assistant Government Pleader for respondent nos. 1 & 2.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.

DATE :- OCTOBER 11, 2022

ORAL JUDGMENT (Per A.S.CHANDURKAR, J.)

The petitioner pursuant to an advertisement issued on 02.04.2012 came to be appointed as Assistant Teacher at the respondent No.4-School run by the respondent No.3-Society. The petitioner's appointment came to be approved by the Education Officer on 20.09.2012 with effect from 10.04.2012 as a Shikshan Sevak. On 05.04.2017 the Education Officer (Secondary) proceeded to cancel the order dated 20.09.2012 granting approval to the petitioner's appointment. The said order dated 05.04.2017 has been challenged in the present writ petition.

2. It is seen that by way of an ad-interim relief it was directed that no coercive steps be taken against the petitioner consequent upon the cancellation of the order of approval. During the pendency of the proceedings, the respondent no.6-Deputy Director of Education on

29.06.2018 again passed an order and upheld the cancellation of grant of approval. The writ petition came to be amended raising a challenge to that order also. After considering the stand of the respondents, this Court on 18.09.2018 protected the services of the petitioner and noted that if any attempt was made to remove the petitioner by creating any artificial vacancy, serious view of the matter would be taken. Thereafter on 27.11.2018 the Education Officer (Secondary) passed an order absorbing the services of the petitioner at the respondent no.7-School. Pursuant thereto, the petitioner is presently discharging duties as Assistant Teacher.

3. After hearing the learned counsel for the parties, we find that insofar as the initial order dated 05.04.2017 passed by the Education Officer (Secondary) is concerned, the same is unsustainable for the reason that there is no power of review with the Education Officer (Secondary) to re-visit the order granting approval. This position is made clear in the decision of this Court in **Writ Petition No. 3057 of 2017** (*Nilesh S.Jawanjal and others Vs. State of Maharashtra and others*) with connected writ petition decided on 14.09.2017. The order dated 05.04.2017 passed by the Education officer (Secondary) reviewing his earlier order dated 20.09.2012 is therefore not sustainable.

4. As regards the subsequent order passed by the Deputy Director of Education on 29.06.2018 is concerned, we note that in a recent decision the Division Bench in **Writ Petition No.1315 of 2022** (*Dilipkumar Patle and another Vs. Deputy Director of Education, Nagpur Division, Nagpur and others*) on 05.09.2022 has considered the effect of Government Resolution dated 23.08.2017 and has prescribed modalities of re-consideration of the grant of approval. We find that the present situation can also be governed by the directions issued therein inasmuch as only if it is *prima facie* found by the Joint Director of Higher Education that the approval granted earlier is vitiated on account of any fraudulent activity, the matter can be re-considered.

5. In the light of aforesaid, the following order is passed :

(i) The order dated 05.04.2017 passed by the Education Officer (Secondary), Zilla Parishad, Buldhana is set aside since there is no power of review with the said Authority.

(ii) The order dated 29.06.2018 passed by the Deputy Director of Education, Amravati Division, Amravati is also set aside with liberty to the said Authority to re-consider the matter in the light of the directions issued in *Dilipkumar Patle and another* (supra). Only on being *prima facie* satisfied that the approval granted on 20.09.2012 is vitiated on account of fraud, the

matter can be again looked into.

(iii) Since the order dated 29.06.2018 has been set aside the notice issued on 30.07.2018 by the respondent nos. 4 and 5 would no longer survive.

(iv) The petitioner is entitled to the benefit of the order dated 27.11.2018 by which her services have been absorbed at the respondent no.7-School.

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

(M.W.CHANDWANI, J.)

(A.S.CHANDURKAR, J.)

Andurkar..