

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

WRIT PETITION NO.4530 OF 2008

Ajay Vitthalrao Bhoyar
Age about 37 years, Occ: Service,
R/o Khadse Layout, Bachelor Road, Arvi
Naka, Wardha

...PETITIONER

---VERSUS---

1. State of Maharashtra,
through its Secretary, Education
Department, Mantralaya, Mumbai-32.
2. The Deputy Director of Education, Nagpur
Division, Nagpur.
3. The Education Officer, Secondary Zilla
Parishad, Wardha.
4. The Teachers Career Union Education
Society, Wardha, through its Secretary,
C/o vikas Vidyalaya, Gandhi Nagar,
Wardha, Dist. Wardha.
5. Vikas Vidyalaya, through its Headmaster
Gandhi Nagar, Wardha.
6. Bhaskar Pundlikrao Bhange
Aged about 34 years, Occ: Service, R/o
Sane Guruji Nagar, Wardha No.2, Wardha,
Tah & Dist. Wardha.

...RESPONDENTS

Shri A.D. Mohgaonkar, Advocate for the petitioner.
Shri Amit Madiwale, AGP for respondent nos.1 to 3.
Shri S.V. Ghude, Advocate h/f Ms Smita Dashputre Advocate for respondent
nos.4 and 5.
Shri A.B. Patil, Advocate for respondent no.6.

CORAM : AMIT B. BORKAR, J.
DATED : 6th JULY, 2022.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the parties.

2. By this writ petition under Articles 226 and 227 of the Constitution, the petitioner is challenging the orders dated 03.05.2008 and 21.05.2008 (Annexure-44) canceling the approval granted to him. The petitioner is also seeking consequential relief of benefit of seniority and arrears of difference for the relevant period. The relief of seniority of the petitioner in category 'C' qualification held by him.

3. Petitioner was appointed on 20.01.1997. On the date of appointment petitioner was holding qualification of B.Sc. B.Ed. The petitioner was initially granted pay-scale 1200-2040. The Education Officer by order dated 17.12.1997 approved the appointment of petitioner. On 07.02.2004, the petitioner was upgraded in pay-scale of Rs.5,500-175-9000 with effect from 12.02.2004.

4. The Education Officer by order dated 10.11.2004 sanctioned two posts under 25% quota. The Education Officer by

order dated 17.07.2004 approved the up-gradation of petitioner under 25% quota.

5. The Education Officer by order dated 03.05.2008 and 21.05.2008 recalled the order of approval granted in favour of the petitioner.

6. Insofar as cancellation of approval of teacher is concerned, the law is settled by the Division Bench of this Court in the case of **Mrs.Shivanee Prasanna Deshpande Vs. The State of Maharashtra and others** in Writ Petition No.10133 of 2016. This Court has held that the Education Officer has no power to review unless order of grant of approval obtained exercising fraud, misrepresentation or suppressing. In that view of the matter, the order of cancellation of approval cannot be sustained.

7. The next relief sought by the petitioner is, to release benefit under 25% quota as per his seniority and qualification and pay arrears. In view of setting aside review order of approval of the petitioner, as a consequence petitioner shall be entitled to the benefits of 25% quota as his appointment on the said post was approved by the Education Officer. Advocate for the petitioner fairly states that he would claim benefits from 17.07.2004

to 07.10.2011. The statement is accepted.

8. Insofar as issue of deciding the seniority of petitioner in category 'C' in Schedule 'F' is concerned, undisputedly the petitioner holds the qualification of B.Sc. B.Ed. If that be so, the petitioner is entitled to seniority from the date of acquisition of his qualification. Undisputedly, the respondent no.6 has acquired qualification after acquisition of qualification by the petitioner. Therefore, it is necessary that the Education Officer to be directed to decide the seniority of petitioner in category 'C'.

9. In view of the reasons stated above, I pass the following orders:

- i. The impugned orders dated 03.05.2008 and 21.05.2008 passed by the Education Officer (Secondary), Zilla Parishad, Wardha are quashed and set aside.
- ii. The Education Officer is directed to release the benefits of 25% of quota from 17.07.2004 to 07.10.2011.
- iii. The Education Officer (Secondary), Zilla Prishad, Wardha is further directed to hold seniority of petitioner in category 'C' as per his qualification from the date of his appointment i.e. from 20.01.1997.

iv. Considering the facts of the case, the Education Officer shall comply with the order within a period of six weeks from the date of receipt of this order.

v. Rule is made absolute in above terms. No costs. Pending civil application (s), if any, stand disposed of.

JUDGE

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