

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

WRIT PETITION NO.4917 OF 2021

1. Marwadi Yuvak Mandal,
Gondia,
Taluka and District Gondia,
Through its President
2. Rajasthan Kany Vidyalaya and
Junior Art College, Krushnapura Ward,
in front of Motwani Chamber, Gondia,
Through its Head Master
3. Aruna Bhumraj Rehmatkar,
Aged 41, Major, Occ. Service,
R/o Office at Shri Rajasthan Kanya
Vidyalaya and Junior Art College,
Krushnapura Ward, in front of
Motwani Chamber, Gondia,

... Petitioners.

-vs-

1. State of Maharashtra,
Thr. Secretary, Dept. of
School Education, Mantralaya,
Mumbai
2. Commissioner Education,
Commissionerate, Maharashtra State,
Pune
3. Deputy Director of Education,
Nagpur Division, Nagpur
4. Education Officer (Secondary)
Zilla Parishad, Gondia

... Respondents

Shri N. S. Warulkar, Advocate for petitioners.

Shri D. P. Thakare, Additional Government Pleader for respondents.

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

DATE : NOVEMBER 14, 2022

P.C.

Rule. Rule made returnable forthwith and heard the learned

counsel for the parties.

The petitioner No.3 came to be appointed on the post of 'Shikshan Sewak' at the petitioner No.2-school that is run by petitioner No.1-Trust. The appointment of the petitioner No.3 came to be approved on 22/01/2020 for a period of four years from 01/01/2020 to 31/12/2023. Thereafter the name of petitioner No.3 was included in Shalarth Pranali. On 07/10/2021 a notice came to be issued by the Deputy Director of Education, Nagpur Division, Nagpur requiring the petitioner to remain present for hearing since the Deputy Director of Education desired to re-examine the order of approval. The petitioners on 22/10/2021 issued a communication to the Deputy Director of Education and sought supply of documents that were referred in the show cause notice. It is the case of the petitioners that without supplying these documents, the order of approval granted earlier came to be cancelled on 12/11/2021. It is also urged that the petitioner No.3 was not heard when this order was passed.

2. We have heard the learned counsel for the parties and we have perused the documents on record. It is seen that in the notice dated 07/10/2021 issued by the office of the Deputy Director of Education reference was made to the communications dated 23/08/2017 and 22/02/2021 as the basis for issuing the show cause notice. The petitioners demanded the said documents but the same were not supplied to them. The impugned order records the absence of the petitioners during the course of hearing. The impugned order thus has been passed without supplying the documents that were referred to in the show-cause notice dated 07/10/2021. The petitioners were also not heard in the matter. The impugned order is thus unsustainable.

3. We find that a similar issue was considered by the co-ordinate Bench of this Court in Writ Petition No.1315/2022 (*Dilipkumar Patle and anr. vs. Deputy Director of Education, Nagpur Division, Nagpur and ors.*) decided on 05/09/2022. This Court has directed that the issue of re-opening of the matter of grant of approval should be undertaken only for reasons to be indicated in the show cause notice. Therein the impugned order came to be set aside and directions to re-consider the matter were issued. We find that the petitioners would be entitled to similar directions as issued in the aforesaid writ petitions. For sake of convenience, the directions issued therein are reproduced as under :

“ (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 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 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, 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 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, 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."*

4. In view of aforesaid, the following order is passed :

- (a) The order dated 12/11/2021 passed by the Deputy Director of Education, Nagpur Division, Nagpur is set aside.
- (b) Consequently, directions (ii) to (viii) of the order dated 05/09/2022 in Writ Petition No.1315/2022 shall operate.
- (c) It would be open for the petitioner No.3 to seek release of her regular salary.

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

(M. W. Chandwani, J.)

(A. S. Chandurkar, J.)