

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

Writ Petition No.1315/2022

Dilipkumar Patle and another V Deputy Director of Education, Nagpur
Division, Nagpur and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's Orders
or directions and Registrar's orders.

Mr. P.N. Shende, Advocate for petitioners.
Mr. M.J. Khan, AGP for respondent nos. 1 and 2.

**CORAM : DIPANKAR DATTA, CJ &
NITIN W. SAMBRE, J.**
DATE : SEPTEMBER 05,2022.

P.C.

1) This is a writ petition at the instance of Dilipkumar Babanlal Patle (hereafter "Dilipkumar", for short) and Ku. Maheshwari Sevakram Chaudhary (hereafter "Maheshwari", for short). The petitioners challenge a common common order dated 25-10-2021 issued by the Deputy Director, Education, cancelling approval of their services as Shikshan Sewak granted by the Education Officer, first by an order dated 31-12-2019 and then by an order dated 17-04-2020.

2) It is not in dispute that pursuant to an advertisement issued by the respondent no.3/School, Dilipkumar and Ku. Maheshwari had offered their candidature for appointment on the posts of 'Shikshan Sewak' in English and Science subjects, respectively. While

(Corrected as per Court's order dated 03-10-2022 passed in Civil Application (CAW) no.2151/2022)

Dilipkumar belongs to 'Other Backward Class' category and had applied for the post reserved therefor, Ku. Maheshwari had competed for an unreserved post. Both of them were selected, whereupon they were initially appointed on probation and subsequently confirmed in service. After approval of such confirmation in service was accorded by the Education officer, the Deputy Director, Education reopened the issue of such approval and upon extending an opportunity of hearing to the petitioners passed the impugned order cancelling the approval so granted.

3) During the course of hearing, it has been submitted on behalf of Dilipkumar by Mr. P.N. Shende, learned advocate that his approval was cancelled on the ground of non-production of caste validity certificate. After the order was passed by the Deputy Director, Education, Dilipkumar duly obtained the caste validity certificate issued by the District Caste Scrutiny Committee, District Gondia, dated 10-12-2021. According to Mr. Shende, the deficiency from which the appointment of Dilipkumar suffered stood cured thereby. Insofar as Ku. Maheshwari is concerned, Mr. Shende submits that her case is clearly covered by Government Resolution No.SSN/2683/178/SE-2, issued by the Education and Employment Department, Government of Maharashtra. Referring to clause (i) of paragraph 2 of the said Government Resolution, it is contended that the same ordains reservation along with carry forward reservation to be restricted to 50% of the total vacancies available on any one occasion of recruitment; and since two posts were advertised by the respondent no.3/ School, of which one was

reserved for the candidate belonging to the OBC, the terms of the said Government Resolution were in fact duly adhered.

4) Mr. Shende further relies on the decision of a coordinate Bench of this Court dated 30-03-2021, rendered on a bunch of writ petitions with Writ Petition No. 1380/2019 (Ansari Amina Muzhar Ali vs The State of Maharashtra and others) being the lead matter. We have read the decision and consider it appropriate to quote paragraphs 7 and 8 therefrom hereunder: -

"7. Here, we are concerned with the order passed inter-party. The Petitioners had approached this Court earlier, and with certain observations, the petitions were allowed. The Division Bench opined that it is a settled principle of law that unless the power of review, specifically or by necessary implication, is provided, the Authority cannot review its own order. Second, if there is a case of fraud or misrepresentation made out, there can be ground to recall the order. Another aspect that where a person has put in a long period of service, then such a review would be highly inequitable.

8. The State Government, by issuing Government Resolution dated 23 August 2017, after noting the observations, has laid down that when approval is to be cancelled, a show-cause-notice be issued, and an opportunity of hearing be given to the concerned and then the decision be taken. The observations made in the order dated 1 August 2017 in Writ Petition No. 10133/2016 and order dated 14 August 2017 referred to in the Government Resolution were not challenged, and we have not been shown any decision of any Court saying that this would not be the parameters. We have also not been shown any decision or Government Resolution that a full fledged review of all cases of approval is directed to be taken. We, therefore, do not

agree with the submission of the learned A.G.P. that the observations of the Court in the earlier Petitions were only in the context of the same officer recalling the order. The observations were not in the context of any officer but were prescribing the act of reviewing the earlier decisions, as such reviews after a long period of time when legitimate expectations arise, parties settle in life; are highly inequitable. Such powers would be arbitrarily used. The Division Bench, therefore, restricted the power of reconsideration/review in limited circumstances of fraud, suppression and misrepresentation. The phrases 'fraud', 'misrepresentation', and 'suppression' are not colloquial terms, but they have a judicially recognized ambit. These three factors need not be restricted to the acts of teachers and management alone, but they can be by the authorities and by way of collusion. In such cases, the review would be permissible. For that purpose, show cause notice should mention that these factors exist."

5) A bare perusal of the aforesaid decision would reveal that reference has been made to Government Resolution dated 23-08-2017. The Division Bench of this Court interpreted the said Government Resolution to include within its sphere of operation three steps viz. (i) issuance of show cause notice indicating the factors which, if proved, would entail adverse action against the noticee; (ii) opportunity of hearing to the noticee and (iii) the ultimate decision.

6) It has been brought to our notice by Mr. Shende that although the petitioners were given a hearing by the Deputy Director, Education prior to the impugned order 25-10-2021 being passed, there was no show cause notice indicating therein why all on a sudden, after a lapse of four years, the need arose to revisit the entire matter of appointment of the petitioners. Without there being any

show cause notice, he contends, the petitioners were completely unaware of the case that they were required to meet. A hearing in such circumstances was effectively reduced to a mere ritual. Without the requisite show cause notice preceding the hearing, prejudice to the petitioners being writ large cannot go unnoticed. The petitioners right to livelihood, according to him, has been abrogated without due process of law. It is also contended by Mr. Shende that this is a fit case, where the order of cancellation being in the teeth of the decision of the Division Bench of this Court, be set aside and the matter remanded to the Deputy Director, Education for a fresh decision and till such time, the petitioners be allowed to discharge their duties without payment from the Government grants.

7) Mr. Khan, learned Additional Government Pleader appearing on behalf of the respondent nos. 1 and 2 submits that there were large scale irregularities while granting approval of services of the petitioners as well as others and since the actions of the Education Officer bordered on fraudulent activities, the Deputy Director had no other alternative but to embark upon an enquiry to ascertain whether the procedure followed was in accordance with law or not. Having heard the petitioners, the Deputy Director, Education found that the appointments were not approved by the Education Officer in a legal manner leading to the impugned order being made. It is also contended that the impugned order being unexceptionable, the same ought to be upheld.

8) Reacting to the contention of Mr. Shende,

Mr. Khan contends that at the hearing given to the petitioners by the Deputy Director, Education, the point relating to non-issuance of show cause notice was not raised and it is too late in the day to contend that they were prejudiced by non-issuance of such notice. Mr. Khan, accordingly, prays for dismissal of the writ petition.

9) We have heard learned advocates for the parties and perused the materials on record.

10) The relevant Government Resolution is dated 23-08-2017, issued by the State Government. The decision in Ansari Amina Muzhar Ali (supra) itself is dated 30-03-2021. Notice of hearing was issued by the Deputy Director, Education on 11-10-2021. The impugned order was made on 25-10-2021. In our view, the Deputy Director must be presumed to have been aware of the said decision dated 30-03-2021 and could not have taken a course of action in deviation of the Government Resolution dated 23-08-2017. The Division Bench of this Court in the said decision also noted that the powers of reconsideration/review cannot be exercised unless it is conferred by a statute; of course, a case of fraud would stand on a different footing and, if indeed, fraud is proved to have been practiced, consequences would follow. 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 his interest is arrived at. This is more so, because the Government Resolution dated 23-08-2017 itself lays down the procedure to be followed which the Division Bench interpreted in its decision dated 30-03-2021. We respectfully concur with such opinion.

11) We, therefore, hold that in proceeding against the petitioners, the Deputy Director, 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 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.

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

(NITIN W. SAMBRE, J.)

(CHIEF JUSTICE)

Deshmukh