

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8285 OF 2022

1. Smt. Tarabai Bapurao Jadhav,
Age 47 years, occ.Service as
Headmaster,
2. Chaya Ganpat Ghodke,
Age 37 years, occ.Service as
Assistant Teacher,
3. Digvijay Bharatbhushan Gaikwad,
Age 35 years, occ.Service as
Assistant Teacher,
4. Shivkant Vitthal Ansapure,
Age 40 years, occ.Service as
Assistant Teacher,
5. Vijaykumar Ramchandra Dakore,
Age 42 years, occ.Service as Junior
Clerk,
6. Sanjiv Uttamrao Hambarde,
Age 34 years, occ.Service as Peon,
7. Sanjay Sadaba Rodekar,
Age 31 years, occ.Service as Peon,

All Working at Late Narayanrao Patil Kadam
Madhyamik Vidyalaya Sangvi Tq. Naigaon
(Kh), Dist. Nanded.

...Petitioners

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department
Mantralaya, Mumbai-32.

2. The Dy. Director of Education,
Latur Division, Latur.
3. The Education Officer (Secondary)
Zilla Parishad, Nanded.
4. The Superintendent Officer,
Pay Unit and GPF Officer (Secondary)
Nanded.
5. Anandibai Shikshan Prasarak Mandal,
Potal Tq. Naigaon, Dist. Nanded,
Through it's President/Secretary.
6. Late Narayanrao Patil Kadam
Madhyamik Vidyalaya Sangvi
Tq. Naigaon (kh.), Dist.Nanded,
Through it's Head Master.

...Respondents

Advocate for Petitioners : Mr. Sachin S. Deshmukh i/b
Mr. V. S. Panpatte
AGP for Respondent-State: Mr. S. K. Tambe
Advocate for Respondent No.4 : Mr. K. P. Rodge

**CORAM : MANGESH S. PATIL &
SHAILESH P.BRAHME, JJ.**

DATE : 19th June, 2023

ORDER : (SHAILESH P. BRAHME, J.)

1. Heard the learned Counsel for the parties. With their consent the matter is taken up for final hearing at the admission stage. The respondent No.3 filed affidavit in reply on 12/10/2022. The

respondent No.4 filed affidavit in reply on 13/02/2023.

2. The petitioners are the members of teaching and non-teaching staff of the respondent No.5 School run by the respondent No.4. They have approached this Court initially challenging the order dated 28/02/2002 passed by respondent No.3 Education Officer. By the order the recommendation was made for revocation of the approvals granted in their favour. It is also prayed by the petitioners to direct the respondents to pay the arrears of the salary.

3. The petitioners had filed civil application for the amendment. The said application was allowed on 20/09/2022. By way of amendment certain additional pleadings and documents are placed on record. It was additionally prayed to quash and set aside the order dated 12/07/2022 passed by respondent No.2 the Deputy Director of Education.

4. Few facts are undisputed in this matter. The petitioner Nos.1 to 3 were appointed as Teachers. The petitioner No.5 was appointed as a Clerk whereas petitioner Nos.6 and 7 were appointed as Peons. The appointments were approved by the respondent No.3 Education officer by issuing distinct orders of approval which are placed on

record at Exhibit "C". The appointments and the approvals were on non-grant basis. At the relevant time the school in question was not receiving any grant in aid.

5. There is no dispute that the school in question was admissible to 20 % of grant since 2018. Thereafter, it was admissible to the 40 % of the grants at the time of filing of the petition.

6. A complaint was made against the petitioners objecting their appointments and the approvals. Emanating from the same, Writ Petition No.13912 of 2018 was filed. The petition was disposed of on 28/01/2019 directing the respondent No.2 to consider the grievances and to take the appropriate decision.

7. It is the case of the petitioners that they were appointed in accordance with law as contemplated by Section 5 of the Maharashtra Employees of Private Schools Act, 1979 and Rules framed thereunder. The respondent No.3 examined the proposals of the approval and granted approval to their appointments. They were given continuity. There were disputes in the management. The disgruntled elements who were against the appointing authority of the petitioners had objected the appointments and the approvals

issued in favour of the petitioners.

8. In view of the orders passed by High Court in Writ Petition No.13912 of 2018 the respondent No.2 conducted hearing on 09/04/2019. The respondent No.2 directed the respondent No.3 to examine the objections to the appointments of the petitioners as well as need to appoint the administrator.

9. In view of the hearing conducted by the respondent No.2 on 09/04/2019 and the decision on 30/05/2019, the Education officer conducted hearing. On 28/02/2022, he held that the validity of the appointments of the petitioners and their entry in the Shalarth system was illegal and a recommendation was made to the respondent No.2 Deputy Director of Education to cancel the same.

10. In the wake of the decision dated 28/02/2022 referred above and in view of the repeated objections to the appointments of the petitioner an inquiry was conducted by the respondent No.2. By order dated 12/07/2022, the Deputy Director of Education accepted the recommendation made by the Education Officer and cancelled the approvals dated 28/10/2013, 26/12/2014 and 12/10/2017. By amending the petition, the order dated 12/07/2022 is also

challenged in the present petition.

11. The learned Counsel for the petitioners submitted that they were appointed by following due procedure of law. After considering the proposal, the approvals were granted. They were continuously rendering the services and their performance was satisfactory and they had successfully completed the period of probation. It was further submitted that the objection to their appointments was made after the school in question started receiving grant of 20 %. There were mala fides in objecting their appointments and approval.

12. It was further submitted that there were disputes in the management and competent authority was seized with the proceedings. It was further pointed out that the initial impugned order dated 28/02/2022, issued by the respondent No.3 Education Officer, was patently illegal and it was beyond the scope determined by the High Court in Writ Petition No.13912 of 2018. It was further pointed out that due to the sincerity and the efforts of the petitioners, the school was being run satisfactorily and the grant was made admissible to it.

13. The petitioner further assailed the order passed on 12/07/2022

on similar grounds. Additionally it was contended that the petitioners were not responsible for the disputes in the management.

14. The respondent Nos.3 and 4 contested the writ petition by filing affidavit in reply. Their grounds of objections were identical. According to them the appointments of the petitioners were not in accordance with law. There was no advertisement, interview and resolution passed by the management for the appointment of the petitioners. There was no transparency in selection process. The office bearers were not competent to undertake the process of recruitment.

15. It was contended by the respondent No.3 that the last impugned order was passed after considering material on record and hearing the parties. The appointments were not in accordance with law, and therefore, the same were cancelled.

16. Considering the rival submissions of the parties we are called upon to decide the focal issue regarding validity of the appointment of the petitioners and the approvals granted to them. It is necessary to mention that the issue of appointment of administrator,

the relocation of the school etc. were not seriously addressed by the parties.

17. It is relevant to notice that the respondent Nos.3 and 4 objected the appointments of the petitioners on the ground that statutory procedure as contemplated by Section 5 of the Act and Rule 9 was not followed. The petitioners did not choose to file any rejoinder to the affidavit in reply filed by the respondent Nos.3 and 4. No documents were placed on record by the petitioners to show that there was permission for the recruitment, advertisement, interview and the appointment in furtherance of resolutions. The petitioners had every opportunity to place relevant material on record to dislodge the objections.

18. There was no transparency in the selection process. We are of the opinion that the appointments were illegal and back door entries. Once the entry of the petitioners in the service is held to be illegal then further consequences of the approval, number of years put in by them, their further continuation and their eligibility for receiving salary through Shalarth Pranali are inconsequential.

19. It is noticed that the Education Officer while conducting the

inquiry had recorded in the order dated 28/02/2022 in paragraph No.3 that the appointments of the petitioners were not in accordance with law. The officer examined the record and came to the conclusion and recommended for cancellation of the approvals. The respondent No.2 vide impugned order confirmed the finding and upheld that the appointments were liable to be cancelled.

20. In that view of the matter, we do not find any reason to interfere in the orders passed by the Education officer on 28/02/2022 and orders passed by Deputy Director of Education on 12/07/2022. Both the authorities had arrived at the conclusions on the basis of record produced before them.

21. There was no grievance regarding violation of principles of natural justice. So far as the submissions of the petitioners regarding raising objection to their appointments and approvals after receiving grants, the mala fides due to the disputes in the rival groups, do not persuade us to hold anything in favour of the petitioners.

22. Lastly, it was tried to be argued by the Counsel for the petitioners that the school in question was shifted and the

petitioners would be rendered surplus, and therefore, there was no reason to invalidate their appointments and the approval. This argument cannot be countenanced for the reasons recorded earlier regarding illegal appointments of the petitioners and violation of the statutory provisions for recruiting them.

23. We are fortified in our view by the Judgment of Hon'ble Apex Court rendered in the matter of State of Karnataka V. Umadevi, reported in (2006) 4 SCC 1. We therefore, hold that the petition is sans merit and hence we pass the following order.

ORDER

1. The Writ Petition is dismissed.
2. There shall be no order as to costs.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

vjg/-