

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11536 OF 2023

Priyanka d/o Karbhai Hivarde,
Age 37 years, Occu. Service,
R/o. Bajaj Nagar, Waluj,
Tq. Gangapur, Dist. Aurangabad.

...Petitioner.

Vs.

1. The State of Maharashtra,
Through : Secretary,
Education Department (Secondary),
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
Tq. & District Aurangabad.
3. The Panch Committee,
Khandoba Mandir Trust, Gangapur,
Tq. Gangapur, Dist. Aurangabad.
Through : It's Secretary.
4. Head Master,
Chatrapati Vidyalyaya,
Guru Dhanora, Tq. Gangapur,
District Aurangabad.
Tq. & Dist. Aurangabad.

...Respondents.

Mr. D.J. Choudhary, Advocate for petitioner.

Mr. P.S. Patil, AGP for respondent Nos. 1 & 2.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ.
& ARUN R. PEDNEKER, J.**

DATE : 15th SEPTEMBER, 2023.

P.C. :

1. Heard the learned counsel for the petitioner and the
learned AGP representing respondent Nos. 1 and 2.

2. The proceedings under Article 226 of the Constitution of India have been instituted, challenging the order dated 4th November 2020, passed by the respondent No. 2 - Education Officer (Secondary), Zilla Parishad, Aurangabad, whereby earlier approval accorded to the appointment of petitioner as Assistant Teacher vide order dated 10th December 2018 has been cancelled.

3. Submission of the learned counsel for the petitioner is that once the order of approval was passed on 10th December 2018, pursuant to which the petitioner was appointed as Assistant Teacher in Chatrapati Vidyalaya, Guru Dhanora, Taluka Gangapur, District Aurangabad, certain rights got vested in her and the same could not have been taken away by passing the impugned order dated 4th November 2020, without affording any opportunity of hearing to the petitioner. Further submission made by the learned counsel for the petitioner is that the Education Officer (Secondary) does not have any authority available to him under law to review his own order.

4. On the other hand, the learned AGP has opposed the prayer made in the writ petition by submitting that it is true that an administrative authority does not have any power to review his earlier orders passed or decisions taken on administrative

side, however, such rule has an exception and as per the said exception, in case the administrative authority is of the opinion that the order passed earlier by him is based on some misrepresentation of facts and it has been procured fraudulently, the earlier order can be cancelled.

5. However, the issue that the petitioner ought to have been given an opportunity of hearing before passing the impugned order assumes significance in this matter. The learned AGP could not refute the submission of the learned counsel representing the petitioner that before passing the impugned order dated 4th November 2020, the petitioner was not afforded any opportunity of hearing.

6. In view of the aforesaid submissions and the facts of the case, what we find is that the reasons indicated in the impugned order dated 4th November 2020 for cancelling the approval granted to the appointment of the petitioner is that the approval order was never passed by the signatory of the said order, neither was it issued from his office. In view of these facts, it appears that the ground taken by the Education Officer (Secondary), while passing the impugned order dated 4th November 2020, is that the order dated 10th December 2018, where the approval to appointment of the petitioner was granted,

is a fraudulent order. In this view, we are of the opinion that the Education Officer (Secondary) could have passed the order impugned in this writ petition. However, having observed as above, we are also of the opinion that since on the basis of the approval order dated 10th December 2018, the petitioner was appointed and has been working as Assistant Teacher and has been drawing her salary, as such, before passing the order dated 4th November 2020, she was entitled to be given an opportunity of hearing and explaining her case.

7. Having not done so, the Education Officer (Secondary) has, thus, flagrantly violated the principles of natural justice. On account of non observance of the principles of natural justice before passing of the order dated 4th November 2020, the Education Officer (Secondary) has erred in law. On the basis of approval accorded to the appointment of the petitioner vide order dated 10th December 2018, since she was appointed and has been working on the post of Assistant Teacher, in our opinion, certain rights had vested in her, which could not have been taken away without following the principles of natural justice.

8. For the reasons aforesaid, the writ petition is allowed and the order dated 4th November 2020 passed by the Education Officer (Secondary), Zilla Parishad, Aurangabad is hereby

quashed.

9. We, however, direct the Education Officer (Secondary), Zilla Parishad, Aurangabad to pass a fresh order within three months from the date of production of certified copy of this order, after giving notice to the petitioner and affording her an opportunity of hearing in the matter.

10. There shall be no order as to costs.

(ARUN R. PEDNEKER, J.)

(CHIEF JUSTICE)

ssc/