

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10444 OF 2022

Mr. Wasim Nijam Purkar

Age : 36 years, Occupation : Service,

R/o. House No.1519, Kakar Tale Mohalla,

Mahad, Tal.District – Raigad.

.. Petitioner

Vs.

1. The State of Maharashtra

Through Department of School Education,
having Office at Mantralaya, Mumbai.

2. The Deputy Director of Education

Mumbai Division, Mumbai.

3. The Education Officer (Secondary)

Zilla Parishad Raigad, Dist.Raigad.

4. Education Society Lower Tudil,

Lower Tudil, Raigad Tal : Mahad,
Dist. Raigad,

Through its President/Secretary,

5. Hasan Khan Deshmukh and Pasha

Miya Khatib High School and Junior
College of Arts, Science and Commerce,
Lower Tudil, Raigad Tal : Mahad,
Dist : Raigad,

Through its Head Master.

....Respondents

- Mr. Chetan Patil a/w. Mr. Mandar G. Bagkar, for the Petitioner.
- Ms. A.A. Purav, AGP for Respondent Nos.1 to 3.

**CORAM : SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ**

DATE : 30th AUGUST, 2023

ORAL JUDGMENT : (PER : SUNIL B. SHUKRE, J.)

1. Heard. Rule. Rule made returnable forthwith by consent of learned counsel for the respective parties.

2. Petitioner is a Junior Clerk appointed w.e.f. 01.07.2013 in Respondent No.5-School. His appointment as Junior Clerk has received approval from Respondent No.3 on 19.03.2020. However, when it came to inclusion of the name of petitioner in Shalarth Identity system for the purpose of payment of salary, the case of petitioner was put on hold and it was decided to review the approval granted to the appointment of petitioner. Accordingly, a notice was issued on 11.02.2022 to the Education Officer (Secondary) and also to the petitioner by Respondent No.2 for showing a cause as to why the approval so granted to the appointment of petitioner be not withdrawn. Hearing was held on 12.09.2022 and thereafter by the impugned order passed on 06.10.2022, the approval so granted to the appointment of petitioner was withdrawn. Being aggrieved by this order, the petitioner is before this Court.

3. The approval has been withdrawn on the ground that the petitioner's appointment was made during the period when there was a

ban on recruitment and it was made on a post which was not sanctioned by the Director of Education.

4. According to the learned counsel for the petitioner, the impugned order is absolutely bad in law as it was passed in violation of the law settled by this Court in several judgments. Learned AGP for the State, however, disagrees to the same; but she also submits that as per her instructions, Respondent No.2 has decided to withdraw the impugned order and after holding a detailed hearing in the matter, pass a comprehensive order which is likely to be of withdrawing the approval granted to the appointment of petitioner on some more grounds.

5. In our view, the impugned order dated 11.02.2022 passed by Respondent No.2 is absolutely bad in law as rightly submitted by the learned counsel for the petitioner for several reasons. Firstly, there is a settled view taken by several benches of this Court that recruitment ban does not apply to the minority institutions and one such case is the case of *Shital Kumar Patil Vs. The State of Maharashtra & Ors., in Writ Petition No.4273 of 2019 decided on 16.07.2021*; whereby in Paragraph 17 the Coordinate Bench (Coram : R.D. Dhanuka & R.I. Chagla, JJ.) of this Court has held that neither the Government Resolution dated 23.10.2013, nor the Government Resolution dated 12.02.2015 were applicable to the minority institutions. It may be noted here that these are the Government Resolutions whereby the State Government has imposed ban on recruitment for a temporary period of time as described therein. Secondly, this Court has taken a view in several cases including the case of *Amol Baban Sangar Vs. The State of Maharashtra & Ors., in Writ Petition No.8966 of 2021 decided on*

21.02.2022 that it is not open to the Education Officer or Deputy Director, Education to review the approval already granted to the appointment of school employees at the time of consideration of their applications for inclusion of their names in Shalarth system. This Court, in the case of *Amol Baban Sangar (supra)* has also held that there is no power of review granted to any officer of the State to once again consider the approval already granted to the school employees and revoke the same. This Court has particularly observed that once an approval is granted by the Education Officer to the appointment of school employees, the Deputy Director, Education would have no jurisdiction to refuse to enter the name of school employees in the Shalarth system much less withdraw the approval granted by the Education Officer. This Court has also expressed its displeasure over the approach adopted by the Deputy Director, Education in refusing to enter names of eligible school employees in Shalarth system for the purpose of online payment of their salary and review the order of approval passed by the Education Officer. Thirdly, the appointment of petitioner having been made w.e.f. 01.07.2013 was not in any case covered by the period mentioned in the Government Resolution dated 12.02.2015, and therefore, in any case it was not affected by the ban on recruitment placed by the State Government at the time when the appointment was made. Fourthly, the objection taken by the Deputy Director that appointment of the petitioner was made on a post which was not sanctioned, also loses its force because initially the Education Officer had granted his approval to such appointment.

6. Thus, we find that the impugned order dated 11.02.2022 passed by Respondent No.2 is illegal and it must go.

7. As regards the submission that now Respondent No.2 would like to withdraw the impugned order and pass a more comprehensive order; we must say that while liberty can be granted to Respondent No.2 to withdraw the impugned order, no further liberty can be granted to Respondent No.2 to once again pass another order so as to withdraw the approval granted to the appointment of petitioner by Respondent No.3, for the reasons stated earlier.

8. This petition thus deserves to be allowed and it is allowed accordingly with following directions:-

(i) The Petition is allowed.

(ii) The impugned order dated 11.02.2022 passed by Respondent No.2 is hereby quashed and set aside.

(iii) We direct Respondent Nos.2 and 3 to include name of the petitioner in Shalarth system for the purpose of online payment of salary to the petitioner within four weeks from the date of this order.

9. Rule is made absolute in the above terms.

10. Writ Petition is disposed of. No costs.

[FIRDOSH P. POONIWALLA, J.]

[SUNIL B. SHUKRE, J.]