

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION 158 OF 2022

1. Pradnya Shikshan Sanstha,
Yerandi/Navegaon Bandh,
Tahsil – Arjuni/Mor,
District Gondia,
through its Secretary

2. Dr. Babasaheb Ambedkar Vidyalaya,
Navegaon Bandh, Tahsil Arjuni/Mor,
District Gondia, through its Headmaster

3. Nitin Pralhad Dongarwar,
Aged yrs, Occ. Service,
C/o. Dr. Babasaheb Ambedkar Vidyalaya,
Navegaon Bandh,
Tahsil Arjuni/Mor, District Gondia.

....PETITIONERS

...V E R S U S...

1. Deputy Director of Education,
Nagpur Division, Nagpur.

2. The Education Officer (Sec.),
Zilla Parishad, Gondia

..RESPONDENTS

Mr. P. N. Shende, counsel for petitioners.
Mr. N.S. Rao, AGP for respondent 1/State.

CORAM:- ROHIT B. DEO & Y.G. KHOBRAGADE, JJ.
DATE : 08.02.2023

JUDGMENT (Per: Rohit B. Deo, J.)

The Issue involved is short and common.

2. The approval which is granted to the Petitioner 3 – Junior Clerk by the Education Officer is cancelled by the Deputy Director of Education, Nagpur.

3. The cancellation of approval is broadly based on the alleged irregularities or illegalities in appointments and/or infraction of the extant Government policy.

4. We need not delve deeper.

5. A similar situation is considered in Writ Petition 1315/2022. While the Deputy Director of Education did hear the Teachers whose approval was cancelled, the hearing was not proceeded by show cause notice, with the result that the Teachers did not have the opportunity of effectively representing their case. The co-ordinate Bench in paragraphs 10 and 11 observed thus:-

“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. ...”

6. Even in the present matters, while the petitioners are heard, the hearing is not proceeded by show cause notice/s articulating the alleged irregularities or illegalities or violation of policy as would have given the petitioners the opportunity of

meting the case against them.

7. We, therefore, quash the orders of cancellation of approvals.

8. The effect of such setting aside of the impugned orders 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.

9. Instead of the Deputy Director of 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(s) to the petitioners if, at all, it is his/her prima facie view that such approvals stand vitiated due to fraudulent activities. Requiring the Joint Director to consider the matters, is with the purpose of obliterating any bias that the petitioners right apprehend.

10. The show cause notice(s) must indicate the tentative reasons for taking a relook on the issue of approval of the petitioner 3.

11. The petitioners shall have a weeks' 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 the appropriate orders.

12. If the orders are favourable to the petitioner 3, he will be entitled to continuity of service as if the approval of services granted to him had never been cancelled. In such an event, petitioner 3 will be entitled to back wages for services that he claim to have been discharging despite the order of cancellation.

13. Should the orders be adverse to the interest of the petitioner 3, he shall immediately step down from the respective post of Junior Clerk and the petitioners 1 & 2 shall be under an obligation to proceed in accordance with the law for making recruitment on the said post.

14. If the Joint Director, Secondary and Higher Secondary Education, Maharashtra State, Pune does not issue the show cause notice(s) within a month of receipt of a copy of this order, it will be presumed that there is no reason to proceed against the petitioner 3 and in such eventuality, the order of approval of the

petitioner 3's services will revive and he shall be entitled to all service benefits.

15. The writ petition stand disposed of. No costs.

(Y.G. KHOBRADE, J.)

(ROHIT B. DEO J.)

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