



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.145 OF 2023

- 1 The Secretary,
Bharat Balaji Amre,
Age 30 yrs., Occ. Agri. & Secretary
of Shri. Shambhu Shikshan Sanstha,
Sambhunagar, Latur,
Tq. & Dist. Latur.
- 2 The Head Master,
Ram Venkajirao Patil,
Age 50 yrs., Occ. Head Master
of Shri. Sambhaji Madhyamik Vidyalaya,
Ghonshi, Tq. Jalkot, Dist. Latur.

... Petitioners

... Versus ...

- 1 The State of Maharashtra
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2 The Deputy Director of Education,
Latur Division, Latur.
- 3 The Education Officer (Secondary),
Zilla Parishad, Latur, Dist. Latur.
- 4 Smt. Rukmin d/o Bhagwan Sawargave,
Age 39 yrs., Occ. Service,
R/o Ghonshi, Tq. Jalkot,
Dist. Latur.

... Respondents

...

Mr. G.D. Kale, Advocate for petitioners
Mr. S.J. Salgare, AGP for respondent Nos.1 to 3
Mr. R.K. Ashtekar, Advocate for respondent No.4

...

WITH

WRIT PETITION NO.11411 OF 2022

WITH

**CIVIL APPLICATION NO.825 OF 2023
IN/WP/11411/2022**

Smt. Rukmin d/o Bhagwan Sawargave,
Age 39 yrs., Occ. Service,
R/o Ghonshi, Tq. Jalkot,
Dist. Latur.

... **Petitioner**

... **Versus** ...

- 1 The State of Maharashtra
Through it's Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
- 2 The Deputy Director of Education,
Latur Division, Latur.
- 3 The Education Officer (Secondary),
Zilla Parishad, Latur,
Dist. Latur.
- 4 The Secretary,
Shri. Shambhu Shikshan Sanstha,
Sambhunagar, Latur,
Tq. & Dist. Latur.

5 The Head Master,
Shri. Sambhaji Madhyamik Vidyalaya,
Ghonshi, Tq. Jalkot, Dist. Latur.

... **Respondents**

...

Mr. R.K. Ashtekar, Advocate for petitioner

Mr. S.J. Salgare, AGP for respondent Nos.1 to 3

Mr. G.D. Kale, Advocate for respondent Nos.4 and 5

Mr. R.D. Biradar, Advocate for applicant in CA

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : 21st MARCH, 2024

PRONOUNCED ON : 07th MAY, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates
for the parties finally, by consent.

2 Writ Petition No.11411 of 2022 is filed by the employee/teacher,
whereas Writ Petition No.145 of 2023 is filed by the Management. Both the
petitions challenged the order passed by respondent No.2 – Deputy Director
of Education, Latur Division, Latur dated 10.10.2022, whereby the

permanent approval granted in favour of the employee/teacher by the Education Officer (Secondary), Zilla Parishad, Latur on 02.12.2021 came to be set aside. Therefore, henceforth we would like to address the petitioner in Writ Petition No.11411 of 2022 as 'employee/teacher' and the petitioners in Writ Petition No.145 of 2023 as 'petitioners/Management'.

3 The facts which are not in dispute are – the petitioners/Management runs a school at Ghonshi, Tq. Jalkot, Dist. Latur. The said school has been granted permission to run 5th to 10th classes on 100% grant-in-aid basis by the competent authority. The staff was sanctioned by order dated 18.10.2011 and subsequent thereto. There are 11 sanctioned posts of teachers. The bifurcation is one Head Master, seven trained graduate teachers and three D.Ed. Teachers i.e. under graduate. One post of D.Ed. i.e. under graduate teacher has been declared as surplus. Two of the teachers from the school had retired by superannuation. One teacher came to be appointed on compassionate ground. Thereafter on 21.01.2012 one teacher by name Daulatrao Sudhakar Jantine died and because of his death one post of teacher from open category had fallen vacant. The petitioners/Management had sought permission by communication dated 23.01.2012 to respondent No.3 to fill the vacant post. Respondent No.3 had not responded to the said communication. Ultimately the Management went

ahead with the recruitment process, gave advertisement in daily newspaper, adopted the procedure and then appointed employee/teacher by order dated 09.02.2012. Proposal was forwarded on 27.08.2013 to accord approval to her appointment as Shikshan Sevak. Respondent No.3 had granted the approval by order dated 28.12.2013. Later on even the salary came to be given to the employee/teacher. After completion of three years probation, the Management had issued the order of continuation of service and forwarded proposal for grant of permanent approval by communication dated 08.04.2015. Reminder was also then given, but when no decision was taken, the employee/teacher had filed Writ Petition No.9628 of 2017 seeking permission against respondent No.3 to decide the said proposal. Thereafter respondent No.3 had rejected the said proposal by order dated 20.12.2018. The said order came to be challenged before this Court once again in Writ Petition No.1337 of 2019. The said writ petition was decided on 08.09.2021. The matter was relegated back to respondent No.3 to decide the proposal in the light of the observations made by this Court in the order. Thereafter respondent No.3 had granted the approval in favour of employee/teacher on 02.12.2021. However, one Dattatraya Maruti Ghodke filed complaint before respondent No.2 stating that the approval granted in favour of employee/teacher (respondent No.4) is illegal. Thereupon, respondent No.2 conducted the inquiry and passed the impugned order.

4 Heard learned Advocate Mr. G.D. Kale for
petitioners/Management, learned AGP Mr. S.J. Salgare for State and learned
Advocate Mr. R.K. Ashtekar for the employee/teacher, in both petitions.

5 The learned Advocate for petitioners/Management has
vehemently submitted that the impugned order has been passed without
jurisdiction and power. When the Education Officer had the occasion to
consider the factual aspect involved including - whether the appointment is
proper, against vacant post, as per the roaster etc. and was guided by the
observations of this Court, then the Deputy Director ought not to have
interfered only on account of a complaint by a person who had nothing to do
with the approval of the services of the employee/teacher.

6 The learned Advocate for the employee/teacher is relying on the
decision of this Court at Principal Seat in **Mrs. Shivaneesh Prasanna Deshpande
vs. The State of Maharashtra and others** with companion matters [Writ
Petition No.10133 of 2016] decided on 01.08.2017, wherein it has been
observed that - *“Unless the power of review is specifically or by necessary
implication is provided, the authority cannot review its own order or
interfere with the order passed by competent authority.”* Further reliance is
on the decision in **Kalpna Ramkrishna Gavande vs. The State of Maharashtra**

and others with companion matters [Writ Petition (Stamp) No.92916 of 2020] decided by Single Judge of this Court on 06.01.2021, wherein under the similar circumstances and taking note of the decision in **Shivaneesh Deshpande** (supra) it is observed that “*respondent No.2 – Deputy Director of Education was not empowered to cancel the approval which was already granted on the ground that the appointments were made without filling in the quota of the reserved category.*”

7 Per contra, the learned AGP by relying upon the affidavit-in-reply of Dr. Ganpat Shankarrao More, the Deputy Director of Education, Latur Division, Latur submits that in fact in the school run by the petitioners/Management till academic year 2008-2009 in all 10 posts of teachers were sanctioned. As regards the addition of the posts, a specific note was given that unless the staffing pattern is sanctioned by the State Government, additional post cannot be filled in. Therefore, at the time of appointment of the employee/teacher there was no vacancy available and, therefore, the approval ought not to have been granted by the Education Officer. The said mistake has been corrected by respondent No.2.

8 As aforesaid, the facts are clear enough to indicate that the employee/teacher’s initial appointment was earlier approved by order dated

28.12.2013. At that time there was no challenge to that order by anybody before any authority. Even the salary was allowed to be withdrawn between October, 2014 to February, 2015 by the appropriate authority. Thereafter respondent No.3 had rejected the proposal for permanent approval of the employee/teacher, which was challenged before this Court in Writ Petition No.1337 of 2019. Taking into consideration all the aspects involved, it was observed by this Court that the employee/teacher will have to be considered from the graduate teachers category and the staffing pattern demonstrate that for the year 2014-2015 there were seven posts of graduate teachers sanctioned. The employee/teacher would be seventh, but then it was observed that the roster would required to be considered as to whether the backlog of ST category was meant for particular or under graduate or a graduate teacher and, therefore, the matter was again relegated to respondent No.3. Thereupon, the permanent approval came to be granted.

9 It is to be noted that respondent No.2 has reopened the file on the basis of complaint made by one Dattatraya Maruti Ghodke. Now, what *locus standi* he had to make that complaint, is a question. Thereafter, the explanations have been given by the petitioners/Management. Now, while rejecting the approval it is said that there was backlog of the ST category. Important point to be noted is that in that context it can be said that the post

was there but according to respondent No.2 it was for reserved category. At the same time, the further explanation given by the Head Master has not been considered.

10 The first and the foremost fact to be noted is that there is no provision under M.E.P.S. Act or Rules which would empower respondent No.2 to reopen the approvals those are granted by the Education Officer. No doubt, he is the superior authority to the Education Officer, but it cannot be *ipso facto* provision or arrangement to recall or review order passed by the subordinate authority assuming himself to be the appellate authority. We would also rely upon the decision in **Shivaneesh Deshpande** (supra), wherein it is observed in respect of backlog of reserved category that - *“If the Education Officer is of the view that in some of the schools backlog of reserved category candidates is not properly maintained, the Education Officer would always be empowered to insist that hereinafter no candidate belonging to open category shall be filled in unless the quota of reserved category candidates, as per the requirement of MEPS Act Rules, is fulfilled.”* That means, respondent No.2 has no power to cancel the approval granted to the employee/teacher on the ground that the employee/teacher’s appointment from the open category was, in fact, without filling in the quota of reserved category.

11 Now, we are constrained to observe that in spite of **Shivaneesh Deshpande**'s decision was pronounced on 01.08.2017; yet, we are coming across such assumption of powers by respondent No.2 in the subsequent period like the present one. When the Act does not empowers so the Deputy Directors of Education are required to be careful in assuming such powers. The exercise of such power is permissible in **Shivaneesh Deshpande** (supra) only when there is a fraud, misrepresentation or suppression by the petitioners/Management or the employee/teacher. We hope and trust that henceforth all the Deputy Directors of Education would take note of the decision in **Shivaneesh Deshpande** (supra) and other decisions in which the decision in **Shivaneesh Deshpande** has been followed and then would act accordingly.

12 Since the impugned order dated 10.10.2022 passed by respondent No.2 is without jurisdiction and power, it deserves to be set aside, so also the letter issued by respondent No.3 dated 20.10.2022 deserves to be set aside, thereby then restoring the permanent approval granted to the employee/teacher's appointment by order dated 02.12.2021 by respondent No.3. Hence, following order.

ORDER

- i) Both the Writ Petitions stand allowed in terms of prayer clause 'B' in both the writ petitions.
- ii) No order as to costs.
- iii) The Government Pleader attached to this Bench is directed to circulate the copy of Judgment in **Shivani Deshpande** (supra), copy of this Judgment and other such important Judgments, in which the point or subject is involved, to all the Deputy Directors of Education throughout the Maharashtra and to take note of the observations in paragraph No.11 of this Judgment.
- iv) Civil Application stands disposed of.
- v) Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)