



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2027 OF 2023

Ashvini Guatam Magare .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. S. Thombre, Advocate for the Petitioner.

Shri P. P. Dawalkar, A.G.P. for the Respondent Nos. 1 to 3.

Shri S. V. Jadhav, Advocate for the Respondent Nos. 4 and 5.

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

DATE : 01 JULY 2024.

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard both the sides finally at the admission stage.

2. Being aggrieved by rejection of proposal for inclusion of the name of the petitioner in the Shalarth Pranali present petition is filed *inter-alia* challenging order dated 09.09.2021 passed by the respondent No. 2/Deputy Director of Education, Aurangabad Division, Aurangabad.

3. Learned counsel for the petitioner seeks to rely upon judgment laid down rendered in the matters of **Amol Baban Sangar Vs. The State of Maharashtra and others in Writ Petition No. 8966 of 2021** as well as judgment dated 10.07.2017 in the matter of **Smt. Munoli Rajashri**

Karabasappa Vs. State of Maharashtra and others in Writ Petition No. 8587 of 2016. According to him, the reasons stated in the impugned order are unsustainable when her appointment has been approved earlier by the respondent No. 3/Education Officer on 15.10.2020.

4. Learned Assistant Government Pleader repels the submissions of the petitioner. He submits that appointment of the petitioner is not in accordance with law and it was open for the Deputy Director of Education to look into the legality of the procedure adopted. He would submit that petitioner was not holding qualification of TET at the relevant time. In view of the Government Resolution dated 23.06.2017 and the law laid down by this Court in the matters of **Pravin Bodhu Kasbe Vs. The State of Maharashtra and others in Writ Petition No. 3142 of 2020 vide judgment dated 03.08.2021**, the respondent No. 2/Deputy Director of Education is justified in rejecting the proposal.

5. The issue involved in this matter is no more *resintegra* in view of the judgment **Amol Baban Sangar Vs. The State of Maharashtra and others** (supra). It has been laid down by the coordinate bench in the matter of **Amol Baban Sangar Vs. The State of Maharashtra and others in Writ Petition No. 8966 of 2021** (supra) that the purport of the incorporation of an employee in the Shalarth system is completely different. For considering such proposals, it would not be open for the officers of the Education Department to dig out the orders of approval. No

power of review can vest with Deputy Director of Education to examine legality of the approval. It is further held that it is not contemplated by the Government Resolution dated 07.11.2012, which pertains to Shalarth Pranali to look into the approval of the teacher.

6. It reveals from the record that the petitioner was appointed on 31.10.2017 as a Shikshan Sevak. She belongs to the scheduled caste category. Her appointment was approved by the Education Officer vide order dated 15.10.2020. The respondent No. 2/Deputy Director of Education examined validity of the appointment and rejected the proposal.

7. We have taken a view vide **order dated 10.06.2024 in Writ Petition No. 13150 of 2022** in the matter of **Shaikh Jaweria Khadarsab Vs. The State of Maharashtra and others** that policy of recruitment through online portal has not been put to desired use. Appointment cannot be faulted for not following G. R. dated 23.06.2017.

8. Petitioner belongs to the scheduled caste category. The post in question was reserved for S.T. category. It is not that candidate of scheduled caste cannot at any rate be appointed to the post reserved for scheduled tribe. Therefore, when appointment of the petitioner has been approved, it is not permissible for the Deputy Director of Education to raise objection in this regard. The issue as to whether TET would be mandatory or not is *subjudice* before the Supreme Court in S.L.P.

No. 8300 of 2021. We find that approval granted to the appointment of the petitioner cannot be faulted for any reason.

9. In the light of above, we allow the writ petition partly, quash and set aside the impugned communication dated 09.09.2021 issued by the respondent No. 2/Deputy Director of Education, Aurangabad. The respondent No. 2 shall re-consider the aforementioned aspects and pass a fresh order on the proposal regarding inclusion of the petitioner's name in the Shalarth Pranali as expeditiously as possible and in any case within a period of three (03) weeks from today. It shall not be rejected on the grounds stated in impugned order.

10. This order would be subject to the outcome of the Special Leave to Appeal No. 8300 of 2021.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/July 24