



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2926 OF 2022

SUJIT PRABHAKARRAO DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

WITH
WRIT PETITION NO. 2982 OF 2022

RAMKISAN GORAKH MUNDE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. V.S. Panpatte
AGP for Respondent Nos. 1 to 3 : Mr. P.J. Bharad

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.
DATE : 19.09.2024

PER COURT [*Shailesh P. Brahme, J.*] :

Heard both the sides finally at the admission stage.

2. The petitioners are employees of respondent no. 4 – School. Relevant facts and circumstances are identical in both the matters. We propose to decide both the matters by common order.

3. The petitioners are challenging common order dated 09.11.2021 passed by respondent no. 2 – Deputy Director of Education, refusing to incorporate their names in the online portal for disbursement of their salary. They are seeking mandamus for incorporation of their names in the portal and for disbursement of arrears and payment of salary.

4. Petitioner Sujit was appointed as ‘Assistant Teacher’ vide order dated 07.01.2014 for period of probation on non grant

basis. His service was approved by the respondent no. 3 – Education Officer, vide order dated 26.06.2014. Thereafter, he was appointed on aided post. Accordingly, the appointment order was issued on 14.06.2016. The respondent no. 3 – Education Officer granted him approval from 15.06.2016.

5. In case of petitioner Ramkisan, he was appointed on 17.01.2012 as ‘Shikshan Sewak’ for three years. His service was approved by the Education Officer vide order dated 26.06.2014. After completion of period of three years, he was appointed as ‘Assistant Teacher’ on permanent basis on 17.01.2015. The respondent no. 3 – Education Officer granted approval vide order dated 20.04.2016.

6. It is the case of the petitioners that the respondent no. 4 – School forwarded their joint proposal to the Education Officer vide covering letter dated 07.07.2016 for incorporation of names in the ‘Shalarth Pranali’. The respondent no. 3 – Education Officer recommended the proposal on 27.07.2016 and forwarded it to Director of Education on 13.12.2017. Director of Education remitted the proposal to the respondent no. 2 – Deputy Director of Education as he was empowered to consider the same. By impugned order their proposal was rejected.

7. Learned counsel for the petitioners submits that in view of law laid down in the matter of *Amol Baban Sangar Versus The State of Maharashtra and Others*, in Writ Petition No. 8966/2021, the Deputy Director of Education was not empowered to examine legality and validity of the approvals granted to the petitioners.

8. Learned AGP supports impugned order by relying on affidavit-in-reply filed in both the matters. It is submitted that Deputy Director of Education is justified in returning the proposal as the proposal was not received from office of Education Officer. Outward no. 24826/65 dated 03.12.2017 was bogus. It is submitted that surplus teachers were found to be working in the school on the sanctioned posts and the appointments of the petitioners were suspicious.

9. It reveals from impugned order that respondent no. 2 / Deputy director of Education entertained a doubt for the petitioners' claim on the ground of delay. It is further stated that only 24 post of assistant teachers were sanctioned and on the online portal 42 teachers were shown. The proposal is stated to have been not recommended by the Education Officer. There is no dispute that the initial appointment of both the petitioners were approved by the Education Officer on 26.06.2014. Thereafter, further approvals were granted by the Education Officer on 24.06.2016 and 20.04.2016, respectively. The proposal of both the petitioners was forwarded by the School to the Education Officer on 07.07.2016. Respondent no. 3 – Education Officer recommended the proposal vide letter dated 27.07.2016. These undisputed facts would indicate that there were approvals to the appointments of the petitioners and the Education Officer recommended for incorporating their names in online portal for payment of salary.

10. We find that through proper channel the proposal reached respondent no. 2 – Deputy Director of Education. In paragraph no. 6 of the affidavit-in-reply, a suspicion is raised for

the outward number and date of receipt of proposal. The proposal dated 13.12.2017 bearing outward no. 24826/65 appears to have been forwarded by respondent no. 2 – Deputy Director of Education to Director of Education. The doubt expressed in the reply is misplaced.

11. There is a consistent view emanating from *Amol Baban Sangar* (supra), that the Deputy Director of Education has no power to review the orders of approval while entertaining proposal for inclusion of names of employees in the Shalarth system. If the decision granting approval is to be reviewed then that has to be done by following due process of law. In that view of the matter , impugned order in both the matters, are unsustainable and liable to be quashed. We, therefore, passed following order :

ORDER

- i. Writ Petitions are allowed.
- ii. Impugned orders dated 09.11.2021 passed by respondent no. 2 – Deputy Director of Education are quashed and set aside.
- iii. The respondent no. 2 shall incorporate names of both the petitioners in Shalarth Pranali within a period of four weeks and consequentially shall disburse salary to them.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]