



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

922 WRIT PETITION NO.3076 OF 2022

Shrinivas Rajabhau Gadkar,  
Age 32 yrs., Occ. Service as Lab Assistant,  
R/o Lokmitra Nagar, Nanded,  
Tq. & Dist. Nanded.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra  
Through it's Secretary,  
Education Department,  
Mantralaya, Mumbai – 32.
- 2 Deputy Director of Education,  
Latur Division, Latur.
- 3 The Education Officer (Secondary),  
Zilla Parishad, Nanded.
- 4 Janta Shikshan Prasarak Mandal,  
Umardari, Tq. Mukhed, Dist. Nanded.  
Through it's President/Secretary.
- 5 Narsinha Vidya Mandir,  
Secondary and Higher Secondary School,  
Mahaveer Society, Nanded,  
Tq. & Dist. Nanded.  
Through it's Head Master.

... Respondents

...

Mr. V.S. Panpatte, Advocate for petitioner  
Mr. P.S. Patil, AGP for respondent Nos.1 to 3

Mr. R.C. Bramhankar, Advocate h/f Mr. B.P. Gonare, Advocate for respondent  
No.4

Respondent No.5 – Served.

...

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

**DATE : 04<sup>th</sup> APRIL, 2024**

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

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

2 The petitioner challenges order dated 06.01.2022 passed by respondent No.2 – The Deputy Director of Education, Latur Division, Latur, thereby rejecting the proposal to include the name of the petitioner in Shalarth Pranali and pay the arrears as well as salary of the petitioner with effect from 13.01.2015.

3 Heard learned Advocate Mr. V.S. Panpatte for the petitioner, learned AGP Mr. P.S. Patil for respondent Nos.1 to 3 and learned Advocate Mr. R.C. Bramhankar holding for learned Advocate Mr. B.P. Gonare for respondent No.4.

4            Learned Advocate for the petitioner is relying on the decision by this Court in **Pandharinath Shivajirao Jogdand vs. The State of Maharashtra and others** in Writ Petition No.9688 of 2022 decided on 22.02.2024, wherein reliance was placed on **Datta vs. State of Maharashtra and others** [2022 (4) AIR Bom R 131] regarding the absence of powers to Deputy Director of Education to interfere with the order passed by the Education Officer wherein approval was already granted.

5            The facts which are not in dispute are that the petitioner is handicapped person, who came to be appointed on the post of Lab Assistant on the basis of advertisement dated 03.01.2015 issued by respondent Management. The educational qualification of the petitioner is B.A., D.Ed., D.M.L.T.. The order for his appointment was given on 12.01.2015 and the petitioner joined his duties on 13.01.2015. His proposal for approval submitted to the office of Education Officer on 20.04.2015. The said approval was pending with the office of Education Officer, however, in the meantime, the petitioner completed three years probation period successfully. After the scrutiny of the documents and also the undertaking given by the Management the approval came to be granted on 28.01.2021. Thereafter the proposal was submitted for the approval for inclusion of the name of the petitioner in Shalarth Pranali and it was recommended by Education Officer.

Respondent No.2 by letter dated 08.03.2021 informed respondent No.5 to comply with the deficiencies. Accordingly, respondent No.5 has complied with the deficiencies by letter dated 05.05.2021, 21.05.2021 and 11.08.2021. Respondent No.2 gave hearing to all the concerned, but ultimately respondent No.2 by impugned order 06.01.2022 refused to include the name of the petitioner in the Shalarth Pranali. It was then contended that as per the roaster there is backlog of one post of Other Backward Class and the appointment of the petitioner is from open category and the open category post is not vacant, therefore, the said proposal cannot be allowed.

6           The petitioner contends that the Management had explained that though there was vacancy from S.T. class, an undertaking was given by the Management that it would be filled when another employee viz. Gajanan Uke would retire from May, 2022. The objection, therefore, taken is not proper and when the appointment of the petitioner is approved by the Education Officer, the same point cannot be gone into by respondent No.2 when the proposal for inclusion of name of petitioner in Shalarth Pranali is before him.

7           Per contra, the learned AGP strongly objected on the ground that when there was no post vacant available from open category; yet, the petitioner came to be appointed without following the due procedure,

especially getting the roaster verified, then the petitioner cannot seek the writ of mandamus.

8           At the outset, it is to be noted that the petitioner came to be appointed in 2015. The staffing pattern/Sanch Manyata for the said year 2015-16 would show that there is one post of Lab Assistant. Further, it appears that the earlier Lab Assistant Mr. Vyankatesh Alladwad stood retired on 31.10.2014. The copy of the resolution passed in school Committee of respondent No.5 would show that proposal was sent to Education Officer, Zilla Parishad, Nanded on 20.11.2014 for the appointment of Lab Assistant and then the advertisement was given in the daily newspaper dated 03.01.2015. Interviews came to be held on 10.01.2015, wherein the present petitioner came to be selected. Now, it is to be noted that the said post is a single post. In the impugned order respondent No.2 has not come with a case that for the single post also there is a reservation. In fact, he is the same Officer (Dr. Ganpat More, Deputy Director of Education, Latur Division, Latur), who had given letter dated 08.03.2021 to Education Officer (Secondary), Zilla Parishad, Nanded during the same course of inclusion of the name of the petitioner in Shalarth Pranali that upon the perusal of the proposal there is vacancy of one post of S.T. category. Now, in the impugned order he says that one post from Other Backward Class as per roaster is the

backlog. That means, the same Officer named above is in confusion or not sure as to from which category and for which post the reservation was applicable and backlog is there. Further, it appears that respondent No.2 had not taken into consideration the various Government Resolutions which are applicable to a handicapped candidate. Even if the said single post may not be reserved post; yet, if a person who is handicapped is appointed, then that should have been a welcoming step.

9           Another important point to be noted is that a communication dated 20.11.2014 was made by respondent No.5 to the Education Officer about the intention of Management to fill up the said vacant post. Perusal of the said letter dated 20.11.2014 would clearly show that it was so informed to Education Officer (Secondary) that the post has become vacant and if there are surplus candidates for the post of Lab Assistant, then they may be accommodated with respondent No.5 before 01.12.2014 and if no candidate is sent before 01.12.2014, then respondent No.5 would be at liberty to give the advertisement. When this communication dated 20.11.2014 is not responded by the Education Officer (Secondary) – respondent No.3, then the advertisement and the selection of the petitioner will have to be taken as – ‘as per the procedure’.

10            Respondent No.3 approved the appointment of the petitioner by order dated 28.01.2021. Respondent No.3 was duty bound to consider all the requirements regarding the procedure for appointment that was adopted, roster, staffing pattern etc.. Unless it is proved that respondent No.3 had not resorted to the procedure prescribed for him while granting the approval, respondent No.2 cannot sit as an appellate authority and then take objection in respect of backlog and appointment of the petitioner from the open category; as hurdle. Respondent No.2 was, in fact, required to consider while dealing with procedure of inclusion of the name of the employee in Shalarth Pranali that the appointment is approved and there are no *mala fides* in the appointment. Relying on the decision in **Datta** (supra) in **Pandharinath Shivajirao Jogdand** (supra), therefore, this Court has concluded that the Deputy Director of Education has no power to interfere with the order passed by the Education Officer granting the approval to the appointment of the petitioner and further held that the appointment was not in compliance with the provisions of law. In **Datta** (supra) even additional point was considered regarding transfer of the employee from unaided division to aided division. It was further held that unless there are allegations of fraud or manipulation against the petitioner or against the Management, the Deputy Director of Education cannot reject the proposal for entering the name of the said employee in the Shalarth Pranali. Therefore, taking into consideration the

facts of this case, the impugned order deserves to be set aside as every procedure is properly complied with in respect of the appointment of the petitioner and, therefore, he should get the salary. Hence, following order.

**ORDER**

1           The Writ Petition stands allowed.

2           The impugned order dated 06.01.2022 passed by respondent No.2 – Deputy Director of Education, Latur Division, Latur is hereby quashed and set aside.

3           Respondent No.2 shall include the name of the petitioner in Shalarth Pranali as per the proposal submitted by respondent No.5, within a period of four weeks, and he should issue directions to release the salary of the petitioner by ascertaining the period from when it becomes due.

4           Respondent No.3 to act in view of the directions to be given by respondent No.2 thereafter.

5           Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

( SMT. VIBHA KANKANWADI, J. )