



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5639 OF 2020

1. Dnyaneshwari Balaji Mirkute
age 24 years, Occ. Service,
R/o Babanagar, Nanded,
Tq. & Dist. Nanded. Petitioner

VERSUS

1. The State of Maharashtra,
Through it's Secretary,
School Education and Sports
Department, Mantralaya,
Mumbai.
2. The Director of Education,
(Primary), Maharashtra State,
Dr. Anni Besant Road,
Central Building, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Primary),
Zilla Parishad, Nanded.
Tq & Dist. Nanded.
5. Saraswati Primary School,
Balirampur, Tq. & Dist. Nanded.
Through it's Head Master.
6. Maratha Ekatmata Shikshan Sanstha,
MIDC, Balirampura, Nanded.
Through President
Balaji Govindrao Mirkute,
age 49 years, Occ. Business,
R/o Babanagar, Nanded. Respondents.

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Advocate for the Petitioner : Mr. P.P. More h/f Mr V.S. Panpatte

AGP for Respondent no.1 to 3 : Mr. N.S. Tekale

Advocate for Respondent no.4 : Mr S.V. Dixit h/f Mr. N.S. Kadam

Advocate for the Respondent no.5 : Ms. S.L. Pansambal

Advocate for the Respondent no.6 : Mr. V.D. Gunale

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CORAM	:	SMT. VIBHA KANKANWADI & S. G. CHAPALGAONKAR, JJ.
Reserved on	:	April 03, 2024
Pronounced on	:	May 07, 2024.

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FINAL ORDER :- (Per S.G. Chapalgaonkar, J.)

1. The petitioner has approached this Court under Article 226 of the Constitution of India, thereby impugning the order dated 19.3.2020 passed by the Deputy Director of Education, Latur - Respondent no.3, thereby canceling the approval granted to the appointment of the petitioner by the Respondent no.4- the Education Officer (Primary), Zilla Parishad, Nanded.

2. The petitioner contends that one Suresh Kondiba Mirkute, who was working with respondent no.5 School resigned from his post. Consequently, the Management made communication dated 11.7.2014 to the Education Officer seeking permission to advertise vacancy and fill-up the post. On 17.7.2014 Education Officer accorded permission to advertise the post. Management issued an advertisement dated 18.7.2014. The petitioner responded to said advertisement and after going through the selection process, she came to be appointed as an Assistant Teacher vide order dated 5.9.2014. In pursuance of her appointment, the Education Officer granted approval vide his order dated 17.10.2014. Petitioner is continuously discharging her duties as assistant teacher with respondent no.5 School.

3. Petitioner further contends that the Management moved proposal for inclusion of her name in the 'Shalarth

System'. Proposal was forwarded to office of respondent no.2, who accorded approval for inclusion of petitioner's name in 'Shalarth System' vide order dated 4.6.2019. However, because of some miscommunication made by the Respondent no.4- Education Officer, the order dated 28.6.2019 came to be withdrawn without hearing the petitioner. Thereafter, Education Officer issued notice informing that hearing as regards to appointment and approval of petitioner is scheduled in the office of Deputy Director of Education – Respondent no.3. Petitioner could not remain present. In her absence, respondent no.3 passed the impugned order dated 19.3.2020 directing cancellation of approval granted to her appointment as Assistant Teacher.

4. According to the petitioner, her appointment was made by following due process of law. Then Education Officer had approved her appointment in the year 2014, which has been cancelled under impugned order after six years. The order is passed without giving sufficient opportunity of hearing to her. As such, it is in defiance of the principles of natural justice. Further, order is inconsistent with factual matrix of the matter. It is further contended that order passed by the Director of Education – Respondent no.2 regarding canceling inclusion of petitioner's name in 'Shalarth' System is independently challenged by the Management in Writ Petition no.9327 of 2019 and she proposes to rely upon the grounds and documents filed in that petition in support of her contentions.

5. Respondent no.3 – Deputy Director of Education filed affidavit-in-reply in support of the impugned order stating that the Director of Education, Latur has cancelled the order of

allotment of 'Shalarth ID' to petitioner and further directed him to hear the respective parties as regards to validity of approval granted to petitioners appointment. Accordingly, hearing was arranged on 3.7.2019, 13.8.2019 and 28.2.2020 at his office. The petitioner failed remain present despite service of notice. She had simply forwarded the application seeking adjournment however, the Head Master of the School Mr. Sunil Handevar, Management representative Mr. Balaji Mirkute (i.e.father of present petitioner), Education Officer (Primary) were present. They submitted relevant documents and after examination of the record, following facts were surfaced :-

- i. Advertisement was issued without intimation to the office of the Education Officer, no permission was granted to advertise the post.
- ii. Reservation Roaster has not been verified by the Management.
- iii. Procedure for appointment of the assistant teacher is not followed in terms of the MEPS, Rules.

6. Petitioner filed rejoinder and endeavors to point out that requisite procedure is followed and her appointment is against clear vacancy that arose on account of resignation given by Mr. Suresh Kondiba Mirkute.

7. Mr. P.P. More h/f Mr. Panpatte, learned advocate appearing for the petitioner vehemently submits that appointment of the petitioner was approved vide order dated 17.10.2014 and said approval has been abruptly cancelled under impugned order passed in year 2020. He would invite attention of this Court to the correspondence between Management and Education Officer to contend that the vacancy was informed by the Management. Thereafter,

permission was granted to advertise the post. Petitioner possessed requisite qualification and she has been appointed by following due process of law. Consequently, her services were approved by the Education Officer vide order dated 17.10.2014. He would therefore submit that the reasoning adopted in the impugned order is contrary to record. He would further submit that the Deputy Director of Education erroneously assumed jurisdiction to cancel the approval accorded by Education officer, in absence of allegations of fraud, misrepresentation or concealment of material facts against the Management or petitioner. He would therefore urge to set aside the impugned order.

8. Mr. N.S. Tekale, learned AGP appearing for respondent nos.1 to 3 relying upon contents of the affidavit-in-reply supports the impugned order. He would invite attention of this Court to the communication dated 11.7.2014 submitted by the Secretary of Management to the Office of the Education Officer, which states that the Management has decided to appoint the petitioner as assistant teacher and, therefore, seeks permission to advertise the post. He would further submit that communication granting permission to advertise the post placed at page 18 and order of approval placed on page no.22 does not find place in the record of the Education Officer. Outward numbers mentioned therein does not corresponds with the original record available in the office of the Education Officer. He would therefore contend that the impugned order is justified. Mr. Tekale would further point out that the petitioner is, in fact, daughter of the President of the School Management who prepared false record to accommodate her on the post of Assistant Teacher.

9. We have considered the submissions advanced on behalf of the learned advocates appearing for the respective parties. We have perused the record tendered into service. It is not in dispute that respondent no.3-School is run by respondent no.6-Educational Institution. The petitioner is daughter of the President of Respondent No.6. Although, averments in the affidavit-in-reply filed on behalf of the respondent no.4 raises doubt as regards to genuineness of the order granting approval to appointment of the petitioner and correspondence made by the office of the Education Officer, the impugned order does not refer to any such contentions. Similarly, affidavit-in-reply filed on behalf of respondent no.3 nowhere suggests that the documents are forged. It simply stipulates that outward numbers do not match with the original record. Apparently petitioner was not personally heard before passing the impugned order.

10. Turning back to the reasons recorded in the impugned order, it can be gathered that petitioner's approval has been cancelled as "reservation roster" was not verified and documents pertaining to selection process were not submitted with proposal forwarded by management, consequently approval is said to be granted ignoring fundamental requirements. Pertinently, there are no allegations like fraud or misrepresentation against management or petitioner in process of getting approval to appointment.

11. Respondent no.3-Deputy Director of Education assumed jurisdiction to cancel approval granted by Education officer in terms of the Government Resolution dated 23.8.2017, issued in pursuance of the observations of this Court in Writ Petition No.10133 of 2016, which reads thus :-

“By now, it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. No doubt, if an order is obtained by exercising fraud, it would stand vitiated. However, it is not the case of the respondent Education Officer that the petitioners have obtained their initially orders by fraudulent means. It is further observed in the said order as under if the earlier Education Officer had granted approval to the petitioner’s appointment, may be erroneously, the same cannot be made a ground to recall the same and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out. Particularly, when most of the petitioners have already put in their services for 11 years, the impugned orders would amount to penalizing them for no fault on their part.”

12. If the purport of the Government Resolution is based on the aforesaid observations, respondent no.3 could not have cancelled the approval granted in favour of the petitioner merely observing certain irregularities on the part of the then Education Officer, who granted approval to petitioners appointment. It is trite that once approval is granted by the competent authority, the Deputy Director, who is High Rank Officer, is not supposed to act as an Appellate Authority and examine the correctness of the order passed by the Education Officer. Such jurisdiction would be available to him only when the order is obtained by exercising fraud or misrepresentation. The procedural lapses on the part of the Education Officer while granting approval in favour of the petitioner cannot be used as a weapon against her after laps of six years from date of approval.

13. Resultantly, the impugned order cannot be sustained in law. Hence, we proceed to pass the following order.

ORDER

- i. Writ Petition is allowed.
- ii. The impugned order dated 19.3.2020 passed by the Deputy Director of Education - Respondent no.3 cancelling approval to the petitioner's appointment is hereby quashed and set aside.
- iii. The order of approval dated 17.10.2014 accorded by the Education Officer (Primary) - respondent no.4 to the appointment of the petitioner is hereby restored.
- iv. The Education Officer (Primary) - respondent no.4 shall take further steps for release of salary and consequential benefits to the petitioner.
- v. Writ Petition is accordingly disposed off. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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