



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

28 WRIT PETITION NO.7109 OF 2022

Harshalkumar s/o Subhash Pawar,
Age: 29 years, Occu.: Service as
Shikshan Sevak, R/o. Shri Ram
Nagar, Dheku, Sim Road, Amalner,
Tq. Amalner, Dist. Jalgaon.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Nashik Division, Nashik.
3. The Education Officer (Secondary),
Zilla Parishad, Jalgaon.
4. The Superintendent (Secondary)
Pay and Provident Fund Unit,
Zilla Parishad, Jalgaon.
5. Gram Vikas Mandal, Nawalnagar,
Tq. And Dist. Dhule.
Through its Secretary.
6. Yogeshwar Madhyamik Vidyalaya,
Danger (Bk.), Tq. Amalner,
Dist. Jalgaon,
Through its Head Master.

.. RESPONDENTS

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Mr. V. S. Panpatte, Advocate for the Petitioner.
Mr. K. N. Lokhande, AGP for Respondent Nos.1 to 4 – State.
Mr. R. R. Bangar h/f Mr. B. P. Gonare, Advocate for Respondent Nos.5
and 6.

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

DATE : 10 JUNE 2024

ORDER :-

Heard both the sides.

2. The petitioner is aggrieved by the fact that in spite of grant of approval to his appointment as Shikshan Sevak by the order dated 22 October 2021, the selfsame Education Officer (Secondary), Zilla Parishad, Jalgaon (Respondent No.3) has taken a somersault merely within a period of two weeks and by the impugned order dated 3 November 2021, has revoked the approval granted by him, on the ground that the advertisement through which the petitioner was appointed was prescribing that the candidate should have cleared TET examination, but the petitioner had not done so.

3. Though certain other grounds have been raised to assail the impugned order like the appointment of the petitioner being from the reserved category and was for secondary school to which TET was not the requisite qualification, learned Advocate Mr. Panpatte restricts the challenge to the impugned order on the ground that the Education Officer has no power to review the approval granted by him at earlier point of time. He is relying upon the decision of the coordinate bench of this Court in the matter of **Mrs. Shivaneesh Prasanna Deshpande Vs.**

The State of Maharashtra and others, [Writ Petition No.10133 of 2016 and connected matters] decided at the Principal Seat on 1 August 2017 and particularly, paragraph No.6, which reads as under :-

"6. We find that it will not be necessary for us to go into the merits to find out as to whether the reasons given by the Education Officer in the affidavit are correct or not. We find that the petitions deserve to be allowed on short ground that by the impugned order, Respondent Education Officer has set aside the order passed by the earlier Education Officer. As such, the impugned order revokes the approval granted by the earlier order passed by the predecessor in the office of the Respondent Education Officer. 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 Petitioners have obtained their initial orders by fraudulent means. If the earlier Education Officer had granted approval to the Petitioners' 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 penalising them for no fault on their part."

4. In the light of above, when the selfsame Education Officer had granted approval after examining all aspects, he could not have

undertaken a fresh exercise and passed the impugned order revoking the approval, much less without even quoting any reason which prompted him to pass a fresh order cancelling the approval.

5. Only on this ground, the writ petition is allowed.

6. The impugned order is quashed and set aside.

7. The approval granted earlier vide order dated 22 October 2021 stands restored. The Deputy Director of Education - respondent No.2 shall now take a fresh decision for including petitioner's name in the Shalarth Pranali, as expeditiously as possible and in any case within a period of six weeks, on its own merits.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

scm