



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

WRIT PETITION NO. 6712 OF 2020

Archana d/o Pandurang Kore,
Age: 37 years, Occu. Service as
Assistant Teacher,
R/o. Shiradhon,
Tq. Kandhar, District Nanded.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. Deputy Director of Education,
Latur, Division Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Nanded.
4. Bhimashankar Shikshan Society,
Shiradhon, Taluka Kandhar,
District Nanded.
Through Secretary.
5. Shri Bhimashankar Secondary and
Higher Secondary School, Shiradhon,
Taluka Kandhar, District Nanded.
Through Headmaster.

..Respondents

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Mr. V. D. Gunale, Advocate for the Petitioner.
Mr. N. S. Tekale, AGP for Respondent Nos.1 to 3.
Mrs. S. L. Pansambal, Advocate for Respondent Nos.4 and 5.

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

**JUDGMENT RESERVED ON :- 21st FEBRUARY 2024.
JUDGMENT PRONOUNCED ON :- 21st MARCH 2024.**

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India impugning the orders dated 10.11.2020 and 09.09.2022 passed by 2nd Respondent-Deputy Director of Education thereby refusing to include her name in Shalarth Pranali and canceling the approval to the appointment of the petitioner as a Shikshan Sevak, granted by the Education Officer (Secondary), Zilla Parishad, Nanded.

3. The petitioner contends that she is qualified as B.A., B.Ed.. She belongs to reserved category i.e. Nomadic Tribe. The 4th Respondent runs 5th Respondent-School. On retirement of Shri. G. M. Kanakdande, Assistant Teacher a vacancy was caused at 5th Respondent-School. The 4th Respondent made communication to the Education Officer regarding vacancy in the School. However, there was no response. The 4th Respondent issued an advertisement in 'Daily Prajawani' dated 21.06.2018 inviting candidature for the appointment as an Assistant Teacher. The petitioner responded to the advertisement and she was interviewed by the School Committee. She being meritorious and eligible candidate, 4th Respondent issued an appointment order in her favour as Shikshan Sevak from NT-C category. The proposal for approval to the petitioner's appointment was forwarded to 3rd Respondent i.e. Education Officer, who approved proposal vide order dated 03.02.2019. Consequently, the proposal was moved for inclusion of her name in the Shalarth Pranali. The 2nd Respondent

vide his communication dated 10.11.2020 refused to accord the approval.

4. The petitioner approached this Court by filing present writ petition. During the pendency of this petition, a communication dated 10.11.2020 issued by 2nd Respondent-Deputy Director of Education is placed on record. It is stated that petitioner's appointment is not in tune with the Government Resolution dated 23.07.2017, hence approval cannot be granted to her appointment. Further during the pendency of the petition, 2nd Respondent on his own motion arranged the hearing of all the concerned on 06.09.2022 and passed second impugned order dated 09.09.2022 thereby canceling approval to the petitioner's appointment granted by 3rd Respondent-Education Officer vide his order dated 03.02.2019.

5. Mr. Gunale, learned Advocate appearing for the petitioner submits that the appointment of the petitioner was made after following due procedure. The Education Officer had approved her appointment. However, when proposal for inclusion of her name in the Shalarth Pranali was moved to 2nd Respondent, the impugned orders have been passed. He would submit that the management had made communication to the Education Officer before advertising the vacancy. However, no response was given. In the interest of the students, the management took steps to fill up the post. The petitioner possesses the requisite qualification and eligibility. She has been appointed by following due process of law. The Pavitra Portal was not in operation at the relevant time. The Education Officer did not recommend appointment of any surplus teacher against vacancy. The reservation roster was followed. Considering all such aspects, the Education Officer was

pleased to grant approval to the petitioner's appointment. Then proposal was moved for entering petitioner's name in the Shalarth Pranali in pursuance of the approval granted by the Education Officer. However, same has been turned down and finally the approval itself is cancelled by 2nd Respondent, who do not possess the authority to cancel such approval granted by the Competent Authority i.e. Education Officer. He would submit that from the impugned order it can be gathered that no fraud or misrepresentation has been alleged against the petitioner or management in securing approval to the appointment. In absence of such exigencies, 2nd Respondent does not get jurisdiction to disturb approval orders in terms of the Clause 3.2 of the Government Resolution dated 10.06.2022. He would, therefore, urge to quash and set aside the impugned orders and restore the approval granted in favour of the petitioner with further direction to include her name in the Shalarth Pranali.

6. The learned A.G.P. supports the impugned orders. He would point out that the impugned irregularities have been noted while examining the proposal for inclusion of the petitioner's name in the Shalarth Pranali. He would point out that the advertisement was published without permission from the Education Officer. The reservation of SC and OBC was shown in the advertisement. However, the petitioner who belongs to NT category has been appointed, which is contrary to the reservation roster. Already there are two teachers for Marathi subject. The petitioner is appointed for the same subject in absence of any vacancy. The 2nd Respondent after granting sufficient opportunity to the concerned, passed the impugned order dated 09.09.2022 and for the reasons so recorded cancelled the illegal approval granted by the Education Officer.

7. We have heard the learned Advocate for the respective parties. We have perused the record tendered into service. It appears that on 02.01.2018 the Headmaster i.e. 5th Respondent communicated the Education Officer regarding retirement of Mr. Sakdande w.e.f. 31.12.2017 and sought permission to advertise the vacancy. The document at Page No.20-B, Exhibit-E shows the acknowledgment dated 18.01.2018 by the Inward Clerk from the office of 3rd Respondent. The vacancy was advertised in 'Daily Prajawani' which is approved as widely circulated newspaper as per Government Resolution dated 10.06.2022 for District Nanded. The reservation roster depicts vacancy of backlog for NT-C category. The petitioner in response to the said advertisement, subjected her candidature and after going through the selection process she has been appointed w.e.f. 29.06.2018. The Education Officer approved the petitioner's appointment as Shikshan Sevak w.e.f. 29.06.2018. Thereafter, the proposal was forwarded to the office of 2nd Respondent for entering her name in the Shalarth Pranali, which has been introduced for release of salary.

8. The 2nd Respondent had initially communicated to 3rd Respondent that since the petitioner's appointment is after 23.07.2017 without following procedure under Pavitra Portal, her name cannot be entered in the Shalarth Pranali. It appears that, during the pendency of this petition, 2nd Respondent called all the stakeholders for hearing and not only rejected the proposal to enter name in Shalarth Portal, but also cancelled approval under the impugned order dated 09.09.2022. It is well settled that the Education Officer is competent authority to grant approval of the appointment. The 2nd Respondent is not Appellate Authority and even by considering the scope of his jurisdiction prescribed by Government Resolution dated 10.06.2022, he can interfere in the

order granting approval only when fraud, misrepresentation or suppression of facts are surfaced. Looking to the reasons recorded in the impugned order, there is nothing to depict that the petitioner or respondent-management exercised fraud or misrepresented Education Officer while obtaining approval to petitioner's appointment. This Court in the matters of ***Datta S/o Govind Pawar Vs. The State of Maharashtra and Ors***¹ and ***Padmin D/o Sonerao Hande Vs. the State of Maharashtra and Ors.***² observed that the Deputy Director of Education is neither Appellate Authority nor he has jurisdiction to cancel the approval granted by the Competent Authority.

9. Taking into consideration the aforesaid observations of this Court, it is apparent that 2nd Respondent has exceeded his jurisdiction. Consequently, the impugned order is not sustainable in law and liable to be quashed and set aside. Hence, the following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 09.09.2022 passed by 2nd Respondent-Deputy Director of Education is hereby quashed and set aside.
- c. The approval dated 03.02.2019 granted by 3rd Respondent-Education Officer (Secondary), Zilla Parishad, Nanded to the appointment of the petitioner is restored.

1 2022 (4) AIR Bom R 131.

2 2022 DGLS (Bom.) 636.

- d. The 2nd Respondent is directed to include the name of the petitioner in the Shalarth Pranali and take necessary steps to release of the salary.
- e. Writ Petition is disposed of.
- f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Devendra/March-2024