



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7641 OF 2022

Smt Trupti D/o Jayantrao Lalsare

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Additional Chief Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-32
- 2] The Director of Education
[Secondary and Higher Secondary]
Maharashtra State, Pune-1
Central Building Pune No.1
- 3] The Divisional Deputy Director of Education,
Aurangabad Division, Aurangabad
- 4] The Education Officer (Secondary)
Zilla Parishad, Aurangabad
- 5] The Suburban Education Society,
Shivshankar Colony, Aurangabad
Through its Secretary
- 6] The Head Master,
Sanskar Prabodhani Prashala,
Shivshankar Colony, Aurangabad

.. Respondents

...

Advocate for petitioner : Mr. Vithal G. Salgare
AGP for the respondent – State : Mr. Ruchir S. Wani
Advocate for respondents no. 4 and 5 : Mr. S.Y. Mahajan

...

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

DATE : 13 JUNE 2024

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard both the sides.

2. The petitioner who was granted approval as Shikshan Sevak by the Education Officer, is aggrieved by the fact that when the proposal was put up for including her name in the online portal known as 'Shalarth Pranali' for disbursal of salary, the same Education Officer has passed the impugned order dated 17-12-2021 refusing to grant approval to her continuity in the service for the reasons mentioned therein inter alia that she was appointed from the open category when there was a backlog of the reserved category candidate.

3. Pertinently, even the Divisional Deputy Director of Education, Aurangabad by the impugned communication dated 11-08-2021 has refused to include petitioner's name in the Shalarth Pranali for the reasons mentioned therein, *albeit*, he has expressly observed that the then Education Officer had granted approval to her appointment by order dated 11-01-2021.

4. Irrespective of the above state-of-affairs, it appears that the management vide separate communications addressed to the Education Officer (Secondary) and the Divisional Deputy Director of Education was trying to bring to their notice the supervening events inter alia regarding occurrence of vacancies and subsequent refusal to grant approval to some other staff. It appears that the Divisional Deputy Director of Education by his impugned communication dated 12-05-2022 apparently refused to take into consideration such

supervening events and has replied by pointing out that already the proposal for inclusion of the petitioner in the Shalarth Pranali was turned down and nothing could be reconsidered.

5. It is trite that once the approval was granted by the Education Officer, he becomes *functus officio* and cannot undertake any review and recall the earlier approval, which seems to have happened in the matter in hand. Under the guise of considering the request for inclusion of name in the Shalarth Pranali, he seems to have reconsidered all the aspects which apparently tantamount to recalling of the order granting approval. If such is the state-of-affair, the impugned decision dated 17-12-2021 of the Education Officer (Secondary) would be unsustainable in law irrespective of the facts averred therein and the law discussed by him.

6. It appears that the matter was not subsequently considered by the Divisional Deputy Director of Education who being a superior officer could have undertaken that exercise as has been observed by Full Bench of this Court in the matter of **Namdeo Vishnu Sase V. State of Maharashtra and others; 2023 OnLine Bom 571** (Judgment dated 03-03-2023 in writ petition no. 3273 of 2022).

7. Additionally, as is mentioned herein-above, even the supervening events in the form of subsequent vacancies were brought to his notice and Divisional Deputy Director of Education seems to

have overlooked it. In our considered view, taking into account all the afore-mentioned facts and circumstances, the Divisional Deputy Director could have undertaken an enquiry into all the afore-mentioned aspects and also could have considered the supervening events regarding occurrence of the vacancies subsequently. Instead, he has refused to consider these aspects.

8. The decision taken by the Divisional Deputy Director of Education by the impugned communication dated 11-08-2021 does not expressly decide the issue regarding grant of approval to the petitioner's appointment. He seems to have independently examined that aspect and refused to include her name in the Shalarth Pranali. It would have been appropriate for him to have objectively examined the approval granted to the petitioner's appointment initially by the Education Officer.

9. In the circumstances, in our considered view, it would be appropriate that both these impugned orders i.e. one passed by the Education Officer and the other by the Divisional Deputy Director of Education are quashed and set aside and the matter is relegated to respondent no. 3 - Divisional Deputy Director of Education calling upon him to consider all the afore-mentioned aspects including the supervening events pointed out to him by the communication dated 10-02-2022.

10. The writ petition is partly allowed in terms of prayer clause (B).

11. Respondent no. 3 - Divisional Deputy Director of Education shall in the light of the above observations hear the petitioner and the management and shall pass appropriate order touching all the aspects including the subsequent vacancies as pointed out in the communication dated 10-02-2022. The decision shall be taken as expeditiously as possible and in any case within eight weeks.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/