



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8470 OF 2022

Bharde Saksharata Prasarak
Mandal, Shevgaon,
Through its Authorized Member of Trust,
Harish Shyamsundar Bharde,
Age: 48 years, Occu.: Member of Trust &
Agri. R/o. Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.

2. The Dy. Director (Education)
Pune Division, Pune-1.

3. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar

.. RESPONDENTS

...

Mr. K. M. Nagarkar, Advocate for the petitioner.
Mrs. M. N. Ghanekar, AGP for the respondents – State.

...

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

DATE : 6th MAY, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. Present petition has been filed challenging the impugned order dated 22.11.2021 passed by respondent No.2 to the Deputy Director, Pune Division, Pune, thereby rejecting the proposal to include the

name of Sau. Sapana Baburao Deshmukh in Shalarth Pranali.

2. The present petitioner is an Education Institution, which runs school. There were two vacant posts of Assistant Teacher since 2011. There was no policy of the State Government during that period to permit to fill up the post of teaching and non teaching staff. Thereafter, in due course, four posts became vacant of the Assistant Teacher for different subjects in 2017. It created acute need for the appointment of the Assistant Teachers and, therefore, Education Institution had filed an application on 10.03.2017 to respondent No.3 for the permission. Thereafter, the petitioner had given an advertisement on 12.05.2017 in daily newspaper for the interview of the eligible candidates. One Sau. Sapna Baburao Deshmukh came to be appointed as Shikshan Sevak for three years from 15.06.2017. Accordingly, the appointment order was issued. Proposal was sent for grant of approval to her appointment on 17.12.2018. It was containing the name of two teachers including said Sau. Sapna Baburao Deshmukh. Approval was granted on 27.04.2020 by respondent No.3 to the appointment of those two teachers. Thereafter, further proposal was sent for inclusion of name of Sau. Sapna Baburao Deshmukh in Shalarth Pranali for the purpose of salary. The said proposal was sent by respondent No.3 to Deputy Director, Pune Division, Pune. There was deficiency which was cleared, but ultimately by order dated

22.11.2021, respondent No.2 rejected the said proposal on the ground that the appointment of Sau. Sapna Baburao Deshmukh is not through Pavitra Portal in view of Government Resolution dated 24.08.2018.

3. Heard learned Advocate Mr. K. M. Nagarkar for the petitioner and learned AGP Mrs. M. N. Ghanekar for the respondent – State. In order to cut short, it can be said that both of them have made submissions in support of their respective contentions.

4. At the outset, we would like to say that the approval has been granted to the appointment of Sau. Sapna Baburao Deshmukh by order dated 27.04.2020, but prior to that the Upper Secretary, Government of Maharashtra, had sanctioned the said approval by letter dated 17.12.2018 and had taken into consideration the date of appointment of the said employee as 15.06.2017. In view of the said fact, i.e. on its own conduct of respondent No.1, it can be said that when government is accepting the date of appointment of Sau. Sapna Baburao Deshmukh as 15.06.2017, then the Government Resolution dated 24.08.2018 cannot be made applicable retrospectively to her appointment. Another fact is that said Upper Secretary had the occasion to consider whether proper procedure has been adopted or not at the time of appointment of employee and opined that since the appointment is by not taking permission, the authorities to ensure that the compliance is done. Now, we can consider that application was

given by the petitioner on 10.03.2017 to respondent No.3 seeking permission to advertise. It was for four posts. The respondents have not stated as to why respondent No.3 had not responded to the said application. Now, thereafter, respondent No.3 had accorded approval to the appointment of Sau. Sapna Baburao Deshmukh by order dated 27.04.2020 and her date of appointment has been taken as 15.06.2017. Again, at the cost of repetition, for that purpose, the Deputy Director of Education ought not to have made the effect of Government Resolution dated 24.08.2018 applicable retrospectively to the appointment of Sau. Sapna Baburao Deshmukh.

5. Another fact regarding Pavitra Portal is concerned, there is nothing on record to show that Pavitra Portal was in operation on the date of appointment of the petitioner or the date of advertisement issued by the respondent management. As observed by this Court in various judgments, based on affidavits filed on behalf of Education Officer, it has been surfaced that **Pavitra Portal became operative on 20.06.2019**. If that was the scenario, there is no reason to blame the management of the school for making appointments without resorting to the Pavitra Portal. The inclusion of the said employee's name in view of the proposal submitted by the petitioner on 22.06.2021 was also recommended by respondent No.3 on 21.07.2021. Therefore, there is no reason to again raise clouds of doubt regarding legality of

the appointment of Sau. Sapna Baburao Deshmukh and, therefore, the impugned order dated 22.11.2021 deserves to be set aside. Though the consequential reliefs have not been specifically prayed in order to avoid multiplicity of litigation, we are taking note of the same and passing order. Hence, the following order :-

ORDER

- I) The Writ Petition is hereby allowed.
- II) The impugned order dated 22.11.2021 passed by respondent No.2 – Deputy Director (Education), Pune Division, Pune, is hereby quashed and set aside.
- III) Respondent No.2 is directed to include the name of Sau. Sapna Baburao Deshmukh in Shalarth Pranali and release the arrears of salary of the said employee as per law, in two installments of having duration of three months. The first installment to start from 27.05.2024 and the second installment would be due three months thereafter.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm