



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 9696 OF 2021**

anan S/o Baburao Holge,
Age: 31 years, Occ: Service as
Shikshan Sevak, R/o. Loha,
Tq. Loha, Dist. Nanded.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
 2. Deputy Director of Education,
Latur, Division Latur.
 3. The Education Officer (Secondary),
Zilla Parishad, Nanded.
 4. The Superintendent (Secondary),
Pay Unit, Zilla Parishad, Nanded.
 5. Shri. Vitthaleshwar Shikshan Prasarak
Mandal, Vitthalwadi, Tq. Loha, Dist. Nanded,
Through its President/Secretary.
 6. Late. Vishwanathrao Nalge Secondary &
Higher Secondary Schoo, Loha,
Tq. Loha, Dist. Nanded,
Throug its Head Master.
- ..Respondents

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Mr. V. S. Panpatte, Advocate for the Petitioner.
Mr. S. K. Shirse, Addl. GP for Respondent Nos.1 to 3.
Mr. B. P. Gonare, Advocate for Respondent Nos.5 and 6.

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

**JUDGMENT RESERVED ON :- 07th MARCH 2024.
JUDGMENT PRONOUNCED ON :- 18th 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 thereby assailing order dated 23.07.2021 passed by respondent no.2-Deputy Director of Education, Latur thereby cancelling approval order dated 28.01.2021 issued by respondent no.3-Education Officer (Secondary), Zilla Parishad, Nanded and also rejecting proposal to include the petitioner's name in the Shalarth Pranali.

3. The petitioner contends that he is qualified as M.A., B.Ed., D.Ed. and belongs to the Other Backward Class. The respondent no.5-Educational Institution runs a school namely Late. Vishwanathrao Nalge Secondary and Higher Secondary School at Loha. There were vacancies of Assistant Teachers on the establishment of the school as per approved staffing pattern. The respondent no.5 invited applications from the qualified candidates through advertisement dated 11.10.2017 to fill up the vacant posts. On 16.10.2017 the petitioner was interviewed by the school committee. Being suitable and meritorious candidate, an appointment order dated 06.11.2017 came to be issued in his favour. The petitioner joined the services.

4. The proposal for the appointment of the petitioner was forwarded to respondent no.3-Education Officer, who after recording his satisfaction as regards to the qualification and procedure of appointment granted approval dated 28.01.2021 as a Shikshan Sevak from the date of his appointment. The Headmaster of the school had forwarded the proposal for inclusion of the petitioner's name in the Shalarth Pranali. It was duly recommended by the Education Officer. However, respondent no.2-Deputy Director of Education issued a communication directing the petitioner and respondent-management to remain present alongwith record and finally passed order dated 23.07.2021, thereby cancelling the approval to the appointment of the

petitioner. Consequently, rejecting the proposal to enter the petitioner's name in the Shalarth ID. According to the petitioner, only reason given is non-observance of the procedure of appointment in terms of the Government Resolution dated 23.06.2017 by which the Pavitra Portal has been introduced as a system for appointment of the teachers in the schools and colleges run by the private management. According to the petitioner, in fact the Pavitra Portal was not in existence, when he was appointed. There is no allegations of fraud or misrepresentation in the matter of his appointment. The sole ground for the cancellation of the approval is contrary to the observation of this Court in the various orders. Further, respondent no.2-Deputy Director of Education possesses no jurisdiction to cancel the approval granted by the Education Officer.

5. Affidavit-in-reply is filed on behalf of respondent no.2 supporting the impugned order. It appears that, respondent no.2 endeavours to support the impugned order not only for the reasons recorded by him in the impugned order, but on various other reasons which are not part of the impugned order.

6. Mr. Panpatte, learned Advocate appearing for the petitioner vehemently submits that the petitioner has been appointed in the year 2017. The management has followed due procedure as per MEPS Act and Rules framed thereunder. The advertisement was issued. The petitioner was interviewed by the school committee. Since he holds the requisite qualification, the appointment is made against clear vacancy as per staffing pattern. The Education Officer after applying his mind to all the aforesaid aspects accorded approval to the appointment and forwarded the proposal to include the petitioner's name in the Shalarth ID for release of the salary. However, respondent no.2-Deputy Director of Education exceeded his jurisdiction and examined the approval

granted in favour of the petitioner, as if he is an Appellate Authority and thereby cancelled the approval and rejected the proposal to include the petitioner's name in the Shalarth ID.

7. Mr. Shirse, learned AGP for the respondent nos.1 to 3 relying upon the contents in the affidavit-in-reply supports the impugned order. He submits that the Deputy Director of Education is empowered to examine the correctness of the approval by the administrative circulars. In case of any illegality, he being the higher officer can set right the things before the name of the employee is recorded in the Shalarth ID. In the present case, the appointment is de-hors the system of the Pavitra Pranali that has been set up to up-bring the education system and impart quality education. Therefore, he seeks to reject the petition.

8. Having considered submissions advanced by the learned Advocate appearing for the respective parties and after going through the record, it is not in dispute that the appointment of the petitioner was approved by the Education Officer, who is the Competent Authority. After examining the requisite record, the proposal to include the name of the petitioner in the Shalarth ID was forwarded. However, at this stage, respondent no.2-Deputy Director of Education presented the issue regarding validity of the approval, invited the parties for making submissions before him and passed final order of cancellation of the approval and consequent rejection of the proposal to enter the name of the petitioner in the Shalarth ID. Admittedly, the appointment of the petitioner has been made in pursuance of the advertisement dated 11.10.2017. There is nothing on record to indicate that the Pavitra Portal was in operation when the petitioner was appointed, although it has been brought in existence vide Government Resolution dated 23.06.2017.

9. The Shalarth Pranali has been brought in existence from the Government Resolution dated 07.11.2012 with an object to streamline the payment of salary to the employees through hassle free, uniform and transparent system by all the schools. This Court after referring to the contents of the Government Resolution dated 07.11.2012 observed that the said Government Resolution does not create any power of review in Deputy Director of Education and, therefore, the Deputy Director of Education in any case cannot examine legality or otherwise of the approval granted to the appointment of any school employees, on the pretext of deciding question of inclusion of the name of the employee in the Shalarth system. The proper course for him to confine himself to parameters of the said Government Resolution and satisfy himself as to whether or not the employee fulfills the condition of the Government Resolution. Once he is satisfied about the fulfillment, he must direct inclusion of the name of such employee in the system (*please refer to the order dated 21.02.2022 passed at Principal Seat at Bombay in Writ Petition No.8966/2021 in the matter of Amol Baban Sangar Vs. The State of Maharashtra and Ors.*). Similar view is reiterated by this Court.

10. In the present case, respondent no.2 has not observed that the petitioner or the management of the school indulged in any fraudulent activities or created false record by which the approval has been secured. There is nothing to indicate that the petitioner or the management was served with any show cause notice for cancellation of the approval on the ground of fraud or misrepresentation. Even from the impugned order, no inference can be drawn that the cancellation of the approval was for the reason like fraud or misrepresentation that will vitiate the ground of approval itself. Only reasons that is supplied in the impugned order is that the appointment is not processed through Pavitra Portal. In that view of the matter, we have no hesitation to

hold that respondent no.2 exceeded his jurisdiction while threshold cancelling approval, so also rejecting proposal for inclusion of the petitioner's name in the Shalarth Pranali. Hence, we proceed to pass following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 23.07.2021 passed by respondent no.2-Deputy Director of Education, Latur is hereby quashed and set aside with further direction to respondent no.2-Deputy Director of Education to include the name of the petitioner in the Shalarth Pranali and release the pay bills in accordance with law.
- c. Writ Petition is disposed of.
- d. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE