



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8762 OF 2023

SANDIP BAJRANG BHOPLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. V.S. Panpatte
AGP for Respondent Nos. 1 to 3 : Mr. R.S. Wani

...

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

DATE : 19.09.2024

PER COURT [*Shailesh P. Brahme, J.*] :

Heard both the sides finally at the admission stage.

2. The petitioner is challenging order dated 28.03.2023 passed by respondent no. 2 – Deputy Director of Education, refusing to incorporate his name in the online portal for disbursement of his salary. The petitioner is employee of respondent no. 5 – School. He is seeking mandamus for incorporation of his name in the portal and for disbursement of arrears and payment of salary.

3. Petitioner was appointed as ‘Assistant Teacher’ vide order dated 02.07.2012 for period of probation on non grant basis. His service was approved by the respondent no. 3 – Education Officer, vide order dated 02.05.2015. Thereafter, permanent approval was granted on 06.09.2018 by the respondent no. 3 – Education Officer.

4. It is the case of the petitioner that the respondent no. 5 – School forwarded a proposal to the Education Officer on

22.09.2016 and again on 20.10.2016 for incorporation of his name in the 'Shalarth Pranali'. The respondent no. 3 – Education Officer forwarded the same with recommendation on 30.09.2019 to respondent no. 2 who raised certain queries. An explanation was submitted by respondent no. 5 on 14.12.2022. Respondent no. 2 – Deputy Director of Education, rejected the proposal on the ground that his appointment was made when ban was in operation due to Government Resolution dated 02.05.2012.

5. Learned counsel for the petitioner submits that in view of law laid down in the matter of *Amol Baban Sangar Versus The State of Maharashtra and Others*, in Writ Petition No. 8966/2021, the Deputy Director of Education was not empowered to examine legality and validity of the approvals granted to the petitioner.

6. Learned AGP supports impugned order by relying on affidavit-in-reply filed in the matter. It is submitted that Deputy Director of Education is justified in rejecting the proposal as petitioner's appointment was made when ban was in operation, the proposal was not timely submitted and he was appointed prior to advertisement.

7. It reveals from the impugned order that the Deputy Director of Education embarked upon an enquiry into the legality of approval given to the petitioner. The appointment was recorded to be made even prior to the advertisement and approval was also stated to have been granted retrospectively. He further entertained a doubt for the delay in submitting the proposal for incorporation of the name in the Shalarth Pranali.

8. The appointment of the petitioner was approved by the Education Officer vide order dated 02.05.2015, on probation. Thereafter, permanent approval was granted on 06.09.2018. The Education Officer while forwarding the proposal of the petitioner recommended for inclusion the petitioner's name in the Shalarth Pranali. The correspondence was made by Management to remove the shortfall in proposal. We do not find that there is delay as such in submitting the proposal.

9. There is a consistent view being taking following ratio of *Amol Baban Sangar* (supra), that the Deputy Director of Education has no power to review the orders of approval while entertaining proposal for inclusion of names of employees in the Shalarth system. If the decision granting approval is to be reviewed then that has to be done by following due process of law. In that view of the matter impugned order is unsustainable and liable to be quashed. We, therefore, passe following order :

ORDER

- i. Writ Petition is allowed.
- ii. Impugned order dated 28.03.2023 passed by respondent no. 2 – Deputy Director of Education is quashed and set aside.
- iii. The respondent no. 2 – Deputy Director of Education shall incorporate the petitioner's name in Shalarth Pranali within a period of four weeks and consequentially disburse salary to him.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]