



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9946 OF 2017

Amol s/o Vaijnath Kamane,
Age: 35 years, Occu.: Assistant
Teacher with Shivneri Primary
School, Beed, Taluka and
District Beed.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
2. The Education Officer (Primary),
Zilla Parishad, Beed.
3. The Superintendent of Pay
and PF Unit,
Zilla Parishad, Beed.
4. Chakradhar Shikshan Va Samaj
Prasarak Manda, Beed,
Through its Secretary.
5. The Headmaster,
Shivneri Primary School,
Beed, Taluka and District Beed.
6. Anuradha d/o Raosaheb Gajare,
Age: 43 years, Occu.: Nil,
R/o. Kulswamini, Datta Nagar,
Beed, Taluka and District Beed.

.. RESPONDENTS

...

Mr. S. S. Thombre, Advocate for the petitioner.
Dr. Kalpalata Patil Bharaswadkar, AGP for respondent No.1 – State.
Mr. P. D. Suryawanshi, Advocate for respondent No.2.
Mr. M. S. Karad, Advocate for respondent Nos.4 and 5.
Mr. R. I. Wakade, Advocate for respondent No.6.

...

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

DATE : 19th MARCH, 2024.

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

. Rule. Rule made returnable forthwith. Heard learned Advocates for the appearing parties finally by consent.

2. The petitioner challenges the impugned order dated 05.07.2017 passed by respondent No.2 Education Officer (Primary), Zilla Parishad, Beed, thereby canceling the approval to the appointment of the petitioner and permanency granted to him on 30.05.2014 and 02.06.2014 respectively.

3. The factual matrix leading to the present petition are that the petitioner came to be initially appointed as Assistant Teacher with one Ganesh Primary School, Parli Vaijnath on 12.06.2010 and the Education officer has granted approval to his appointment on 12.10.2012. Thereafter, vide approval order dated 30.05.2014, the petitioner was confirmed and continuity was granted from 12.06.2010. Thereafter, he came to be appointed by respondent No.4 on 01.11.2013 to join his services with respondent No.5 – School. The Education Officer had granted approval on 02.06.2014 to his appointment from 01.11.2013 in place of one Sirsat S. M., as initially his services were confirmed with Ganesh Primary School. The

Education Officer had counted the continuity of his service, as his services with Ganesh Primary School were confirmed and approved. As per the corrigendum dated 12.07.2023 one post for D.Ed. and one post for Primary Graduate Teacher was sanctioned and then the petitioner came to be appointed by order dated 30.10.2013 and that is how he came to be appointed on 01.11.2013 with respondent No.5. The office of respondent No.5 approved the pay fixation of the petitioner by order dated 13.05.2015 taking into consideration the fact that the petitioner was initially appointed on 12.06.2010 with Ganesh Primary School and then joined with respondent No.5 on 01.11.2013. The petitioner further contends that respondent No.6 was the Headmistress with respondent No.5 School. She came to be dismissed by respondent No.4 and prior to that her services were suspended. She had challenged her suspension and dismissal before School Tribunal at Aurangabad by filing appeal. There was dispute between management and, therefore, she had made complaint against the petitioner stating that the petitioner has not been appointed by following due process of law. Upon her complaint with the Education Officer, the Education Officer had issued notice to the petitioner. It was replied by the petitioner. All these actions are for his harassment by respondent No.6. The Education Officer without considering the facts and the Government policy as well as the orders passed by himself in the past, passed the impugned order dated 05.07.2017

thereby setting aside the approval granted by him on 13.05.2014 and 02.06.2014 as well as directed the recovery of the salary from him. The representation was filed by the petitioner for the recall of the order on 05.07.2017. According to the petitioner, the impugned order is illegal and deserves to be set aside.

4. One Suhas Sharadchandra Page has filed affidavit-in-reply on behalf of respondent Nos.2 and 3. It is stated that the other facts are admitted. It is stated that the transfer from one institution to another institution appears to have been effected, but both the institutions are run by different trust and, therefore, that transfer is not permissible. At the time of appointment, respondent No.4 has not followed due procedure as required under Section 5 of the Maharashtra Employees Private School Act (for short "M.E.P.S. Act"). The vacancy ought to have been informed by respondent No.4 to respondent Nos.2 and 3. Giving advertisement to fill up the said post was without permission and, therefore, it cannot be allowed to sustain. It appears that the Education Officer had granted group approval by order dated 02.06.2014. The pay fixation is on the basis of said group approval, which cannot be made advantageous. Respondent No.6, therefore, filed complaint regarding the irregularities committed by respondent No.4 while appointing petitioner. Inquiry has been duly conducted and the report was submitted on 21.06.2016. Respondent No.6 had given

detailed representation on 09.03.2017. Taking into consideration the seriousness of the matter, the Education Officer had himself conducted a thorough inquiry. Opportunity of hearing has been given. By Government Resolution dated 06.02.2012 it was made compulsory that the prior permission of the Education Officer should be sought before giving advertisement. There was also ban on recruitment in view of Government Resolution dated 02.05.2012. Under the said circumstance, the impugned order is perfectly justified.

5. Respondent No.6 has filed her affidavit-in-reply. She has stated that the petitioner in collusion with respondent No.4 has shown the appointment of the petitioner with respondent No.5 School. The appointment of the petitioner is illegal and without following due procedure. It is also in violation to Sub Rule 8 of Rule 9 of M.E.P.S. Rules. She disputes that any advertisement was issued by the Management for filling up of the post. According to her, the petitioner has got the appointment letter by fraud.

6. At the outset, the facts which are not in dispute is that initially the petitioner was appointed with Ganesh Primary School, Parli Vaijnath on 12.06.2010 and his services were then approved for the initial period on 12.10.2012 by the Education Officer. Thereafter the appointment was confirmed by order dated 30.05.2014. It is the same authority who has now passed the impugned order. The further

fact is that the petitioner was then appointed on 01.11.2013 by respondent No.4 in respondent No.5 School. It is also not in dispute that he came to be appointed in place of the earlier employee, who had died. It is further not in dispute that respondent No.6 was serving as the Headmistress with respondent No.5 School, when the petitioner came to be appointed and when the proposals for the petitioner's approval were sent. At no point of time earlier, she had ever raised any objection regarding the appointment of the petitioner. Now, it appears that after her retirement, she has made a complaint.

7. Learned Advocate for the petitioner submits that this Court in **Mrs. Shivaneesh Prasanna Deshpande Vs. The State of Maharashtra and Ors.**, [Writ Petition No.10133 of 2016 with companion matters decided on 01.08.2017] has held that there are no powers of review with the Education officer and, therefore, he cannot reopen the matter and set aside his own order. He relies on the aforesaid decision as well as on the decision in **Tukaram s/o Bharat Dudile and Anr. Vs. The State of Maharashtra and others**, [Writ Petition No.3098 of 2017 decided by this Court on 31.01.2024]. This ground alone is sufficient to set aside the impugned order.

8. Per contra, the learned Advocate for respondent No.2 has submitted that though in **Mrs. Shivaneesh Prasanna Deshpande (Supra)** it is held that the Education Officer has no power of review, the fact

remains is that even in the writ petition, the petitioner has not demonstrated that his appointment is after following due procedure. When the appointment is without following due procedure, then it is *non est*. He relies on the decision in **Siddheshwar Shikshan Sanstha and another Vs. State of Maharashtra and others, [2016 DGLS (Bom.) 90]**, wherein it is held that “prior permission of Education Officer before issuing advertisement for making recruitment to any post either for open category or for reserved category is mandatory and not directory. Such prior permission is required to be strictly followed in view of Government Resolution dated 06.02.2012, which is in conformity with the provisions of Section 5(1) of M.E.P.S. Act.” When such prior permission is not taken, the appointment being in violation of Section 5(1) of the M.E.P.S. Act is illegal.

9. We are mainly on the point as to whether the Education Officer respondent No.2 had any power to review his own order. At the outset, we would say that when the matter was forwarded to him to accord approval to his appointment by respondent No.4 with respondent No.5 School, he was expected to go through each and every document and if certain documents are not coming forward, then he had the powers to get those documents. Granting approval is not a formality, but it requires application of mind and to consider whether the appointment is as per the procedure. Taking into consideration this basic

requirement, it is presumed that when approval was granted on 30.05.2014 to the appointment of the petitioner, it will have to be held that all those documents were considered by respondent No.2. Merely by later on saying that it was a group permission, respondent No.2 cannot get rid of his statutory duty. Further, the permanent approval has also been granted on 02.06.2014 by the same authority. That means, on two occasions, the proposal in respect of appointment of the petitioner was before the same authority. He ought to have gone through or had the opportunity to go through all the necessary documents. Now, on the third occasion, he cannot say that there was basic lacuna that has been left.

10. We are in total agreement with the decision in **Mrs. Shivaneer Prasanna Deshpande (Supra)** that unless the statute makes a specific provision for review, such authority cannot review its own order. Therefore, respondent No.2 ought to have refrained himself from making any inquiry, though respondent No.6 might have filed complaint. It appears to be obvious that respondent No.6's own suspension and termination has resulted or prompted her to file the said complaint. The option for respondent No.2 would have been to refer the matter to his higher authorities, if any procedural lacunas are pointed out. In view of the said findings, we hold that the impugned order dated 05.07.2017 is illegal. Hence, the following order :-

ORDER

I) The Writ Petition stands allowed.

II) The impugned order dated 05.07.2017 passed by respondent No.2 the Education Officer (Primary), Zilla Parishad, Beed, stands quashed and set aside.

III) Rule is made absolute in the above terms.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm