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wp 10155.21 R.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 10155 OF 2021

Pranitkumar S/o. Balajirao Ankade
Age 29 years. Occ. Service as
Shikshan Sevak R/o. Kandhar
Tq. Kandhar, 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. Bhartiya Asinik Sahhayak Dal, Vijay Gad
Kandhar, Tq. Kandhar, Dist. Nanded
through its President/Secretary.
6. Shri Ganpatrao More School, Vijay Gad,
Kandhar, Tq. Kandhar, Dist. Nanded.
Through its Head Master.

.. Respondents.

Mr. V.S. Panpatte, Advocate for petitioner
Mr. P.S. Patil, AGP for respondent Nos. 1 to 4
Mr. I.D. Maniyar, Advocate for respondent Nos. 5 and 6

CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.

DATE : 1st MARCH, 2024.

JUDGMENT [PER S.G. CHAPALGAONKAR, J]:-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties. The petitioner approached this Court under Article 226 of the Constitution of India with the following prayers :-

“[B]. To hold and declare that, appointment of the petitioner w.e.f. 1.11.2017 as Shikshan Sevak in the respondent No.6 School is legal and valid;

[C] By issue of Writ of Certiorari or any other appropriate writ, order of direction in the like nature, the order dated 23.7.2021 issued by the respondent No. 2 – Deputy Director of Education, Latur at Exhibit “I” may kindly be quashed and set aside;

[D] By issue of Writ of Mandamus or any other appropriate writ, order or direction in the like nature, the respondent No.2 – Deputy Director of Education, Latur may kindly be directed to restore the approval order dated 31.12.2019 issued by the respondent No.3 – Education Officer (Secondary) and to include the name of the petitioner in the “Shalarth Pranali” and release the arrears of salary of the petitioner w.e.f. 1.11.2017 till today within a period of six weeks;

[E] By issue of Writ of Mandamus or any other appropriate writ, order of direction in the like nature, the respondent No.2 – Deputy Director of Education, Latur may kindly be directed to include the name of the

petitioner in the “Shalarth Pranali” forthwith and further direct the respondent Nos. 3 and 4 to release his salary from 1.11.2017 till today.”

2. The petitioner contends that the petitioner is qualified as B.A. B.Ed. The post of Assistant Teacher was vacant with respondent No.5 and 6 because of retirement of Mr. S.N. Konale w.e.f. 31.10.2017. Consequently, they punished an advertisement dated 6.10.2017 and invited applications from the eligible candidates. The petitioner responded to the said advertisement and undergone the selection process. Since he was a meritorious and suitable candidate, the Selection Committee recommended his name for appointment as Shikshan Sevek to teach English Subject. The petitioner was appointed by the school management. The proposal for grant of approval to his appointment was submitted to the Education Officer i.e. respondent No.3. On his satisfaction regarding legality of the Selection Process, the respondent No.3 approved services of the petitioner vide order dated 31.12.2019 w.e.f. 1.11.2017. the petitioner is discharging his duties as per his appointment.

3. On 23.11.2020, the Head Master of the respondent No.6 school forwarded the proposal for inclusion of the petitioner’s name in Salarth Portal. The respondent No.3 recommended the said proposal and forwarded it to the respondent No.2. However, respondent NO.2, vide impugned order dated 23.7.2021, not only rejected the proposal for inclusion of the petitioner’s name in Shalarth Portal but also cancelled the order of approval dated 31.12.2019 passed by the respondent No.3 Education Officer. Such an action is taken on the ground that the

appointment of the petitioner is not made through Pavitra Portal as per the Government Resolution dated 26.3.2023.

4. Mr. Panpatte, learned advocate for the petitioner submits that although Pavitra Portal has been introduced for appointment of Teachers in the private schools under Government Resolution dated 23.6.2017, it was not made fully functional till 2019. The management of the school made correspondence with education officer seeking permission for issuing advertisement and recruiting teachers against vacant posts, however, those were not responded. He would, therefore, submit that the appointment of the petitioner which has been approved by the Education Officer cannot be faulted for the reasons given in the impugned order. He would further submit that the respondent No.2 has no jurisdiction to cancel the approval granted by respondent No.3. In support of his contention, he relies upon the judgment of this Court in the case of *Ku. Sunanda Wadje Vs. State of Maharashtra (W.P. No. 5186 of 2004)*. He has further relied upon the observations of this Court in the case of *Lalit Shinde vs. State of Maharashtra (W.P. No. 10270 of 2019 and Anilkumar Boinwar Vs. State of Maharashtra (W.P. No. 3945 of 2017)* .

5. Mr. P.S. Patil, learned AGP appearing for the State supports the impugned order. He would submit that **Pavitra Portal** was brought into existence in view of various directions issued by this Court to secure appointments of meritorious teachers. The Government Resolution dated 23.6.2017 was made applicable for that purpose. Any appointments made de-hors the procedure laid down under Government Resolution dated 23.6.2017 cannot be approved.

6. We have considered the submissions advanced on behalf of the respective parties and gone through the material pressed into service. Apparently, there is no dispute that the petitioner was appointed on 1.11.2017 in pursuance of the advertisement dated 6.10.2017 issued by the management. The petitioner holds B.A. B.Ed. Qualification and eligible to teach English subject. The respondent No.3 Education Officer approved the appoint of the petitioner as Shikshan Sevak from the date of his appointment against the vacancy occurred on retirement of Shri S.N. Konale. The respondent No.3 also recommended to include the petitioner's name in the Shalarth Portal for the purpose of release of salary. At this stage, the respondent No.2 raised objection to the appointment, approval and continuation of the petitioner, raising the ground that the petitioner's appointment is not processed through **Pavitra Portal**. Consequently, hearing was arranged and finally, the impugned order came to be passed by which the proposal for entering the petitioner's name in Shalarth Portal is rejected, so also, approval granted in his favour by the Education Officer is cancelled.

7. Pertinently, 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 20.6.2019**. 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. In the present case, representation was made by the School Management to the Education Officer regarding the vacancies. Thereafter, advertisement was issued

and petitioner's appointment was approved finding him to be eligible and appointment. The inclusion of the petitioner's name in Shalarth Portal was also recommended by the Education Officer. Therefore, there is no reason to again raise clouds of doubt regarding legality of the petitioner's appointment.

8. So far as cancellation of petitioner's approval by respondent No.2 is concerned, this Court has held that the Deputy Director has no authority to cancel the approval granted by the Education Officer. Only exception would be the appointments involving fraudulent elements. The impugned order or reply affidavits on behalf of respondents nowhere depict that the petitioner has exercised fraud while obtaining approval. Even such allegations against management are absent. Resultantly, we are of the considered view that the impugned order cannot be sustained in law. Hence, we proceed to pass the following order :-

O R D E R

- [A] The writ petition is allowed;
- [b] Rule is made absolute in terms of prayer clauses (B)(C)(D) and (E) mentioned above.
- [c] No orders as to costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-