



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12057 OF 2021

Vikrant s/o Dhananjay Wagh
Age: 28 years, Occu.: Service
as Lab. Assistant,
R/o. Maliwada, Pathri,
District Parbhani.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education
(Secondary & Higher Secondary),
Maharashtra State, Pune-1.
3. The Deputy Director of Education,
Aurangabad Division, Bhadkal Gate,
Aurangabad.
4. The Education Officer (Secondary),
Zilla Parishad, Parbhani.
5. The Superintendent,
Pay and Provident Fund Unit
(Secondary Section),
Parbhani, District Parbhani.
6. Netaji Subhash Vidyalaya,
Maliwada, Pathri,
Tq. Pathri, District Parbhani,
Through its Headmaster.
7. Netaji Subhash Shikshan Sanstha,
Manwat, Tq. Manwat,
District Parbhani,
Through its Secretary

.. RESPONDENTS

...
Mr. V. S. Panpatte, Advocate for the petitioner.
Mr. P. S. Patil, AGP for respondent Nos.1 to 5 – State.
Mr. K. J. Suryawanshi, Advocate for respondent No.7.
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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 28th FEBRUARY, 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 order passed by respondent No.3 on 18.02.2020 and prays for directions to be issued to respondent Nos.3 to 5 to include the name of the petitioner in *Shalarth Pranali* and to release the arrears of his salary.

3. The facts which are not in dispute are that the petitioner was appointed to the post of Lab Assistant vide order dated 27.04.2012 by respondent No.7 in respondent No.6 – School. The said school receives 100% grant-in-aid. The petitioner was on probation for initial three years and for that purpose, his services were approved and after completion of probation, he was confirmed in the regular pay-scale from 27.04.2015. Permanent approval was also issued by respondent No.4 to him by order dated 23.05.2018. When a proposal was submitted for including his name in *Shalarth Pranali* and for releasing

salary from the government grants with all the necessary papers, the said proposal came to be rejected. In fact, the appointment of the petitioner was on a clear and vacant post and by adopting proper procedure. This is in fact the second round of litigation, as respondent Nos.4 and 5 had not submitted the proposal. He had approached this Court. Directions were then given. The petitioners had filed contempt petition, then the said proposal was submitted. In the impugned communication, it has been stated that when petitioner came to be appointed, at that time, *Shalarth Pranali* was not in operation, but when it became operational since that date, the proposal is at a belated stage. Further, his post was not sanctioned in *Aakrutibandh* and as per *Bindunamavali*. When there was vacant posts for reserve category, yet the petitioner's appointment is from open category. The petitioner contends that when he is the permanent employee, the Deputy Director of Education ought not to have considered those points which were beyond his jurisdiction.

4. Affidavit-in-reply has been filed on behalf of respondent No.3 by one Anil Sampatrao Sable, serving as Deputy Director of Education, Aurangabad Division, Aurangabad. It is stated that the proposal for inclusion of name of petitioner in *Shalarth Pranali* was received on 22.10.2019 and after detailed scrutiny of the said proposal, guidance from respondent No.2 was sought. The reply was received on

18.01.2020 from the office of respondent No.2 that it should be decided at his own level. He reiterates the same reasons in his affidavit-in-reply, which was given in the impugned order.

5. Heard learned Advocate Mr. V. S. Panpatte for the petitioner, learned AGP Mr. P. S. Patil for respondent Nos.1 to 5 – State and learned Advocate Mr. K. J. Suryawanshi for respondent No.7.

6. Learned Advocate Mr. V. S. Panpatte appearing for the petitioner reiterated the same statements in the petition and submitted that when proposal was only to include the name of the petitioner in *Shalarth Pranali*, it was beyond the jurisdiction of the Deputy Director of Education to consider whether the approval granted to the services of the petitioner was correct or not. He relies on the decision of this Court in **Chandrakant Pundlikrao Pawar Vs. State of Maharashtra and others, [Writ Petition No.12243 of 2014 with companion matters decided on 03.04.2017]**. Further, he relies on the decision of this Court in **Datta Govind Pawar Vs. The State of Maharashtra and others, [Writ Petition No.1412 of 2022 decided on 12.04.2022]** wherein the decision in **Abhijit Ashok Waje Vs. State of Maharashtra and others, [Writ Petition No.8881 of 2021 and other connected petitions decided on 21.01.2022]** has been reiterated, wherein the contention of the learned AGP that the approval granted by the Education Officer can be reviewed by the Deputy Director of Education at the time of entering

the data in *Shalarth Pranali* on the basis of the circular dated 29.03.2019 as per Government Resolution dated 06.02.2012, read with corrigendum dated 23.08.2017. It was held by this Court that the State Government has to review the approval granted and set aside the same on the ground that it was based on misrepresentation or fraud, the separate Government Resolution and procedure for that purpose are contemplated. The power cannot be exercised at the stage when it was not conferred. In **Datta Govind Pawar (Supra)** it has been held that the Government Resolution cannot be issued contrary to the provisions of the Act and, therefore, the Deputy Director of Education by virtue of those Government Resolutions has no power to interfere with the order of the Education Officer even at the stage of considering the proposal of the management to enter the name of the employee in *Shalarth Pranali* for online payment in furtherance of the approval granted by the Education Officer. Learned Advocate Mr. V. S. Panpatte for the petitioner further relied on the decision in **Amol Baban Sangar Vs. The State of Maharashtra and others [Writ Petition No.8966 of 2021 decided by this Court at Principal Seat on 21.02.2022]**, which is on the same line. He further relied on the decision in **Namita Narayan Jha and another, Vs. Education Officer and others, [2015 (1) Bom.C.R. 694]**, wherein it has been held that even if in this situation if the backlog of the reserved category existed, as petitioners have not been appointed against

backlog post or reserved posts, availability of backlog post cannot be the reason to deny approval.

7. As aforesaid, we have considered the undisputed facts in the matter first. The appointment of the petitioner is by order dated 27.04.2012. He was appointed from open category. His initial three years were on probation. Even at that time his services were approved by order dated 05.10.2014. He has also produced the Sanch Manyata of the relevant year which shows that there were vacant posts available. Further, when his probation was completed on 26.04.2015, the Headmaster had forwarded the proposal for approval for his confirmation by communication dated 06.05.2015. Accordingly, order came to be issued by the Education Officer (Secondary), Zilla Parishad, Parbhani on 23.05.2018 granting him permanent approval. It appears that the management thereafter was not forwarding the proposal for inclusion of the name of the petitioner in *Shalarth Pranali* and, therefore, he was required to approach this Court by filing Writ Petition No.12224 of 2017 and, thereafter, after it was directed that the management should take the steps, it appears that ultimately the proposal was forwarded. Thereafter, it appears that the respondent No.3 by communication dated 23.10.2019 had called upon the explanation as to how petitioner came to be appointed from open category, when there was backlog of the reserve category. The

explanation was given by respondent No.6 on 25.10.2019 and he has stated that even from the open category, the posts were vacant. Thereafter, it appears that respondent No.3 had sought guidance from respondent No.2. Even along with the affidavit-in-reply the reply to the said guidance sought letter has not been produced. Again it appears that explanation was given by respondent No.6 on 09.11.2019. It was specifically stated that as regards the Lab Assistant is concerned two posts were sanctioned. One of the posts, which was occupied by one Shri. D. N. Kulkarni, become vacant after his retirement on 31.01.2012 and, therefore, in his place, the petitioner came to be appointed. Therefore, his appointment was on the clear and vacant post. Thus, it is to be noted that in spite of complete explanation given by respondent No.6, yet the impugned order came to be passed.

8. The objections those were raised clearly mentions that note has been taken about initial approval as well as thereafter the permanent approval of the petitioner. Merely because at the time of his appointment the *Shalarth Pranali* was not operational cannot be a ground to reject his proposal. When it became operational, at that time, the petitioner was struggling with the management as the proposal was not forwarded and in spite of directions of this Court, it appears that there was delay. Non explanation of delay by the

management cannot be a ground to reject the proposal to include the name of the petitioner in *Shalarth Pranali*, when the Education Officer had granted permanent approval to his services. The further observation that the appointment is against *Aakrutibandh* is totally wrong, when it has been specifically mentioned that the appointment was in place of an employee who got retired. In fact, this point was and should have been considered by the Education Officer (Secondary) at the time of grant of first approval as well as the permanent approval. That means, on two earlier occasions, the Education Officer had the occasion to consider all those points as to whether the appointment is properly made or not and it is on clear vacant post. In such circumstance, in view of **Abhijit Waje (Supra)** and the other decisions cited above, respondent No.3 had no authority to review the order passed by the Education Officer and as regards the backlog is concerned, we also rely on the decision of this Court in **Namita Narayan Jha (Supra)**.

9. In our view, the Deputy Director of Education has acted totally without jurisdiction by interfering with the order passed by the Education Officer granting approval to the appointment of the petitioner. The school is 100% aided and, therefore, immediate actions were expected from respondent No.3. The impugned order passed by respondent No.3 on 18.02.2020 deserves to be quashed and set aside. Hence, the following order :-

ORDER

- I) The Writ Petition stands allowed in terms of prayer clauses 'B' and 'C'.
- II) Name of the petitioner shall be entered in *Shalarth Pranali* by respondent No.3 within a period of two weeks from the date of communication of this order. Even the petitioner is at liberty to communicate this order to respondent No.3.
- III) Deputy Director of Education shall release the due salary grants to the petitioner within a period of four weeks from today to enter his name in *Shalarth Pranali*.
- IV) Rule is made absolute in the above terms.
- V) No order as to costs.
- VI) Parties to act upon an authenticated copy of this order.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm