



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9688 OF 2022**

Adharinath S/o. Shivajirao Jogdand,
Age: 35 years, Occu. Service as Assistant Teacher,
R/o. C/o. Shivaji Vidyalay CIDCO, Nanded,
Tq. and Dist. Nanded.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Latur Division, Latur,
Dist. Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Nanded,
Dist. Nanded.
4. Janta Shikshan Prasarak Mandal, Umardari,
Ta. Mukhed, Dist. Nanded,
Dist. Nanded.
5. Shivaji Vidyalay, CIDCO, New Nanded,
Tq. And Dist. Nanded,
through its Headmaster.

..Respondents

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Mr. A. V. Indrale Patil, Advocate for the Petitioner.
Mr. P. S. Patil, Addl. GP for Respondent Nos.1 to 3.

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

JUDGMENT RESERVED ON :- 09th FEBRUARY 2024.

JUDGMENT PRONOUNCED ON :- 22nd FEBRUARY 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 with following prayer:

“B. By issuing writ of mandamus or any other appropriate writ, order or directions the impugned order dated 29.08.2022 passed by the respondent no.2 be quashed and set aside. Consequently, the petitioner’s name be included in ‘Shalrth Pranali’ as per such proposal and the petitioner be paid arrears of salary as well as regular salary and for that purpose necessary directions be issued.”

3. The petitioner contends that he is qualified as B.A. B.Ed. In Marathi and Geography subjects. In pursuance of advertisement dated 25.08.2017 issued by respondent nos.4 and 5 for filling up post of Shikshan Sevak/Assistant Teacher, he had submitted his candidature. He was interviewed by the selection committee, being a meritorious candidate, he was selected and appointed vide order dated 05.09.2017. According to the petitioner his appointment is made against a permanent vacant post, as per staffing pattern approved by the competent authority. The proposal for approval was forwarded to Education Officer by the management. The respondent no.3 Education Officer granted approval to the appointment of the petitioner vide order dated 31.12.2019. On completion of three years of service as Shikshan Sevak, a permanent approval dated 31.12.2020 has been conferred by the Education Officer.

4. The respondent management, then forwarded the proposal for inclusion of name of the petitioner in Shalrth Pranali for purpose of the release of the salary. However, the respondent no.2-Deputy Director of Education rejected the said proposal on the ground that the appointment of the petitioner is made after issuance of Government Resolution dated 23.06.2017 by which ‘Pavitra Portal’ has been introduced as a mode of appointment of Teachers in ‘Aided Schools’. Aggrieved by the order of the Deputy Director of Education, the petitioner had filed Writ Petition No.8575/2021 before this Court. This Court. After considering the fact that the Pavitra Portal was not in operation at the time of appointment of the petitioner, this court

quashed and set aside the order passed by the respondent no.2-Deputy Director of Education. After disposal of writ petition, State of Maharashtra and others filed Civil Application No.10623/2021 seeking review/modification of the order dated 09.08.2021 passed in Writ Petition No.8575/2021. This Court after considering rival submissions disposed of the said application with direction that respondent no.2 will consider the proposal for grant of approval on its own merits, but not reject on the ground of alleged non-compliance of Government Resolution dated 23.06.2017.

5. The respondent no.2-Deputy Director of Education vide impugned order dated 29.08.2022 again rejected the proposal for inclusion of name of the petitioner in 'Shalarth Pranali' by giving following reasons:

1. The approval to appointment is granted by Education Officer in absence of verification of the roster.
2. Although applicant is appointed against the vacancy occurred on account of retirement of Mr. S. K. Ghogare, no prior permission has been obtained for filling up the post.
3. The Inward register maintained by the Education Officer (Higher Education, Zilla Parishad, Nanded) nowhere shows entry of proposal for period from 11.01.2018 to 28.02.2018.
4. The advertisement for recruitment of the post is published only in one newspaper i.e. 'Shramik Ekjut' instead of two widely circulated newspapers.

6. According to the petitioner, the Deputy Director of Education exceeded his jurisdiction while rejecting proposal, when his earlier order was set aside by this Court in Writ Petition No.8575/2021 dated 09.08.2021. According to the petitioner, respondent no.2 was not authorized to delve into the question of validity regarding approval

granted by the Education Officer. The reasons given in the impugned order are contrary to the directions given by this Court in Writ Petition No.8575/2021 and Civil Application No.10623/2021.

7. Per contra, respondent no.2 in his affidavit-in-reply contends that the Government Resolution dated 23.06.2017 prescribes the procedure for recruitment of the teachers. The Rule 9(2-A) and (2-B) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 by which amendment has been introduced pursuant to the judgment in Public Interest Litigation dated 24.06.2015 mandates publication of advertisement besides Pavitra Portal in two widely circulated newspapers, out of which, one should be local newspaper having wide circulation in the region. However, this Rule has been violated in present case. It is further contended that in case of the vacancy on account of retirement or death of any employee, it was necessary for management to obtain the necessary permission from the office of the Education Officer. In present case, no such permission was obtained before publication of advertisement. It is further contended that although the advertisement is dated 05.09.2017, the approval has been granted on 31.12.2019 and there are no traces of submission of any proposal in the record of the Education Officer. Evidently, a back dated order of appointment has been issued to the petitioner. It is further contended that the management in connivance with the Education Officer created false record. It is further pointed out that the reservation roster was not updated before granting approval in favour of the petitioner. For aforesaid reasons the impugned order is justified.

8. Mr. Indrale Patil, learned Advocate appearing for the petitioner vehemently contends that the appointment of the petitioner is made against the clear vacancy as per staffing pattern approved by the competent authority. He would submit that the petitioner is duly qualified to be appointed as teacher. He responded to the

advertisement issued by the management and after going through the process of selection, he has been appointed. His appointment as Shiksan Sevak was duly approved by the Education Officer and after completing the period of three years as a Shikshan Sevak, the permanent approval is accorded in his favour on 31.12.2020. The proposal for inclusion of the name of the petitioner in Shalarth Pranali was forwarded to the office of respondent no.2-Deputy Director of Education. However, it was rejected only on the ground that the appointment was made after promulgation of Government Resolution dated 23.06.2017. However, this Hon'ble in Writ Petition No.8575/2021 quashed and set aside the order passed by respondent no.2. Therefore, the grounds regarding the appointment of the petitioner de-hors the procedure laid down under Government Resolution dated 23.06.2017 was no more available for consideration. He would submit that the grounds which have been depicted in the impugned order are inconsistent with the directions issued by this Court in earlier round of litigation. He would further submit that once the Education Officer had granted the approval to the appointment of the petitioner as Shikshan Sevak and then final approval as the Assistant Teacher, it was not open for respondent no.2 to enter into the other aspects regarding appointment of the petitioner. Therefore, he would submit that the impugned order be quashed and set aside and direction be issued to respondent no.2 to include the name of the petitioner in the Shalarth Pranali and release the consequential benefits.

9. The learned AGP strongly opposes the contentions. He would submit that the Deputy Director of Education is the appropriate authority to consider the proposals for entering the name of the teachers in the Shalarth Pranali. It is the duty of the Deputy Director of Education to look into the legality of the appointments. In this applause in the procedure, it is within the domain of the Deputy Director of Education to reject the proposal for inclusion of name in the

Shalarth Pranali. He would submit that there are as many as five reasons why the proposal of the petitioner has been turned down. The petitioner has no explanation as regards to the observations made by respondent no.2 in the impugned order. Therefore, he would urge to reject the petition.

10. Having considered the submissions advanced, it can be noted that there is no controversy as regards to the availability of vacancy in respondent no.5-School at the time of issuance of the advertisement. The petitioner came to be appointed against such vacancy. Even there is no dispute that the petitioner holds the requisite qualification for appointment of Assistant Teacher. The Education Officer is the competent authority to grant approval to the appointments. Initially, the petitioner has been granted approval as Shikshan Sevak and after completion of three years of service, the permanent approval is accorded in his favour. The proposal was routed for entering the name of the petitioner in the Shalarth Pranali for purpose of disbursement of the salary.

11. It can be gathered from the order dated 09.08.2021 passed in Writ Petition No.8575/2021 that the proposal of the petitioner was rejected only on the ground that his appointment is made after issuance of the Government Resolution dated 23.06.2017 and the procedure as laid down in the said Government Resolution for appointment through the Pavitra Portal is flouted. This Court observed that the Pavitra Portal was not in operation when the appointment of the petitioner was made. It is a matter of record that the Pavitra Portal was not in operation till June-2019. In that view of the matter, the order of Deputy Director of Education came to be quashed and set aside. Even the subsequent Civil Application No.10623/2021 filed by the respondent-Authority was disposed of with clarification that respondent no.2 will consider the proposal for grant of approval and shall not reject

the same on the ground of alleged non-compliance of the Government Resolution dated 23.06.2017.

12. Perusal of the impugned order depicts that the respondent no.2 entered into the larger enquiry, as if he is considering an appeal against the order granting approval in favour of the petitioner. Out of the four reasons mentioned in the impugned order it can be observed that all these grounds were available for consideration to respondent no.2, when at first instance proposal of the petitioner was rejected. However, rejection was only for the reason that the procedure laid down under Government Resolution dated 23.06.2017 was not followed. The said reason is no more available for consideration in view of the order passed by this Court in earlier round of litigation. In this background, apparently it can be noted that respondent no.2 has dug out the grounds, which were not subject matter of his earlier order.

13. This Court in many matters has laid down that the Deputy Director of Education while considering the proposal for entering the name of teacher in the Shalarth Pranali does not exercise the powers akin to the Appellate Authority. In present case, when the Education Officer had granted approval to the appointment of the petitioner as Shikshan Sevak and after completion of three years granted permanent approval, further grounds which are based on the procedure laid down in the Government Resolution dated 23.06.2017 could not have been reopened by the Deputy Director of Education. Reliance can be placed on the judgment of this Court in case of ***Datta Vs. State of Maharashtra and Others***¹. This Court observed as under:

“6. In our view, the Deputy Director of Education has no power to interfere with the order passed by the Education Officer already granting approval to the appointment of the petitioner and thereafter for transfer from unaided division to aided division, on the ground that the said appointment as well as the said transfer was not in compliance with the provisions of law. There were no allegations of fraud or manipulation against the petitioner or

¹ 2022 (4) AIR Bom R 131.

against the Management by the Deputy Director of Education while rejecting the proposal for entering the name of the petitioner in Shalarth Pranali for online payment.”

14. So far as grounds of rejection mentioned in impugned order is concerned, apparently there is nothing on record to indicate that the appointment of the petitioner is in violation of reservation roster. Further when management had made the communications before the advertisement with the office of the Education Officer no surplus teachers were made available. Even impugned order does not indicate that surplus teachers were available for appointment when advertisement was issued by the respondent management. Therefore, on consideration of the merits of the matter, it is difficult to accede with the reasoning adopted by respondent no.2. We are therefore, inclined to set aside the impugned order and issue consequential direction. Hence, we proceed to pass following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 29.08.2022 passed by respondent no.2 is hereby quashed and set aside.
- c. The respondent no.2 shall include the name of the petitioner in the Shalarth Pranali as per proposal and issue necessary direction for release of his salary.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE