



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 11648 OF 2021**

Nagesh s/o Shivajirao Kale,
Age: 32 years, Occu: Service as
Assistant Teacher, R/o. At Kautha,
Tq. & 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. Late Bhausahab Bhosale Shikshan
Prasarak Mandal, Nanded, Tq. & Dist.
Nanded Through its President/Secretary.
 6. Shri. Dnyaneshwar Vidyalaya, Talni,
Tq. & Dist. Nanded
Through its Head Master.
- ..Respondents

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Mr. V. S. Panpatte, Advocate for the Petitioner.
Mr. S. K. Shirse, AGP for Respondent Nos.1 to 3.
Mr. T. S. Lodhe, Advocate for Respondent Nos.5 and 6.

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

**JUDGMENT RESERVED ON :- 02nd MAY, 2024.
JUDGMENT PRONOUNCED ON :- 09th MAY, 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 petitioners-Educational Institution approach this Court under Article 226 of the Constitution of India with following prayers:-

“B. To hold and declare that, the appointment of the petitioner w.e.f. 29.07.2013 as Shikshan Sevak in the Respondent No.6-School is legal and valid one;

C. By issue of Writ of Certiorari and or any other appropriate Writ, Order or Direction in the like nature, the order dated 23.07.2021 issued by the Respondent No.2-Deputy Director of Education, Latur at Exhibit “Q” may kindly be quash and set aside.

D. By issue of Writ of Mandamus and 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 restore the approval order dated 13.09.2019 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 the salary of the petitioner w.e.f. 29.07.2013 till today within a period of six weeks;”

3. The petitioner contends that respondent no.5 runs respondent no.6-School at village Talni, Taluka and District Nanded. It receives 100% grant-in-aid for 5th to 10th Standard. On 18.07.2013, respondent nos.5 and 6 issued an advertisement inviting applications from eligible candidates for the unreserved post of Shikshan Sevak. The petitioner being qualified and eligible, responded to the advertisement and after following due process of law, he came to be appointed w.e.f. 29.07.2013. On 13.09.2019, respondent no.6 submitted the proposal to respondent no.3 for grant of approval to the appointment of petitioner on the post of Shikshan Sevak. The respondent no.3 accorded such approval vide order dated 13.09.2019. Thereafter, the proposal for inclusion of the petitioner's name in the Shalarth Pranali was moved. The respondent no.3 recommended the proposal vide his order dated 21.11.2019. However, respondent no.2 raised certain

deficiencies vide his communication dated 13.10.2020, therefore, the fresh proposal was submitted after removing deficiencies with necessary clarification, as regards to the staffing pattern as on the date of the advertisement. The supporting documents were made part of proposal. The respondent no.2 directed respondent nos.5 and 6 to remain present for hearing on 13.07.2021, later on, passed impugned order dated 23.07.2021 canceling approval granted to the petitioner's appointment, so also rejected the proposal for inclusion of petitioner's name in the Shalarth Pranali.

4. Mr. Panpatte, learned Advocate appearing for the petitioner submits that the petitioner's appointment is made in accordance with staffing pattern, which shows that 14 posts of teachers, including Headmaster were available. He invites attention of this Court to the strength of students admitted in the school to contend that 14 posts of the teacher were admissible right from 2008 onwards. The respondent no.2 raised technical objection, although 14 posts were admissible and shown in the staffing pattern. Even it is assumed that 14 posts of teacher were not sanctioned technically, in terms of Government Resolution dated 13.09.1995, looking to the number of students, that many posts would be available. The petitioner has sincerely rendered services from the date of his appointment. The Education Officer had approved his appointment after considering the relevant aspects. Thereafter, proposal was moved for inclusion of the petitioner's name in Shalarth Pranali. At that stage, respondent no.2 exceeded his jurisdiction and canceled the approval granted by the Education Officer, so also rejected the proposal for entering the petitioner's name in the Shalarth Pranali. To buttress his submissions, he places reliance on the observations of the Division Bench of this Court in case of *Amol Baban Sangar Vs. The State of Maharashtra and Ors.* in *Writ Petition No.8966/2021* dated

21.02.2022 to contend that in absence of fraud or misrepresentation, the Deputy Director of Education cannot consider the issue of grant of approval, while entering the name of the school employees in the Shalarth Pranali. The Circular dated 29.03.2019 would not have force of law.

5. Mr. Shirse, learned A.G.P. appearing for respondent nos.1 to 3 supports the impugned order. He would submit that the staffing pattern of respondent no.6-School clearly puts note that no recruitment is permissible, unless additional post is sanctioned by the Government. At the time of the petitioner's appointment only 13 posts were sanctioned and there was no vacancy for issuing advertisement and carry forward recruitment on the post of teacher. He submits that there is nothing on record to show that the permission was obtained from the Competent Authority before issuance of advertisement. He points out that although the appointment of the petitioner is made in the year 2013, the proposal for grant of approval was moved in the year 2019. There is no explanation for such a delay. The Education Officer had also granted approval, overlooking availability of sanctioned posts as on the date of the advertisement. Even, reservation roster was not approved prior to the issuance of the advertisement. He would, therefore, submit that no fault can be found in impugned order. The petitioner's appointment is de-hors statutory provisions and regulations governing the recruitment of the teachers in the private schools.

6. We have considered the submissions advanced on behalf of the learned Advocates appearing for the respective parties. We have gone through the record tendered into service for our consideration. It cannot be disputed that the petitioner responded to the advertisement issued by respondent nos.5 and 6. He holds

requisite qualification for appointment on the post of Shikshan Sevak. Consequently, after going through the selection process, he has been appointed vide order dated 29.07.2013. Unfortunately, the proposal for approval was moved after 6 years and Education Officer accorded the same vide his order dated 13.09.2019. The difficulty arose when the proposal for inclusion of the petitioner's name in the Shalarth Pranali was recommended for consideration of respondent no.2-Deputy Director of Education. The impugned order dated 23.07.2021 shows that it has been passed after giving opportunity of hearing to the petitioner, the school management and also the Education Officer. The crux of the impugned order is based on availability of sanctioned posts on school establishment at the time of advertisement. Apparently, for Academic Year 2009-10 to 2012-13 only 13 posts were sanctioned and additional work load for one post was available, but there was no technical sanction for 14th post. The staffing pattern for 2013-14 shows 14 posts, but there is nothing to show that such post was approved/sanctioned by the Government. Apparently, at the time of the petitioner's appointment, although post is shown in the staffing pattern, it had not received sanction from the Government. Therefore, *prima facie*, the observations made by respondent no.2 in the impugned order appears to be in tune with the record.

7. The correspondence made by respondent nos.3, 5 and 6 with respondent no.2 shows that right from the year 2009 onward, there was sufficient strength of the students in the school, by which 6 posts of graduate teacher for 9th to 10th Standard and 6 posts of graduate teacher for 6th to 8th Standard can be sanctioned, in addition to the post of Headmaster and a post of undergraduate teacher. However, impugned order is silent about strength of students as on the date of advertisement and consequential work load as per guidelines in the Government Resolution dated

13.09.1995 and 19.06.1995. If the post is admissible on the basis of the impeccable record and if the petitioner has rendered services for last 10 years from the date of his appointment, respondent no.2 could have considered to cure technical defect by sanctioning additional post in tune with admissible work load. However, for such a technical reason the approval granted to the appointment of the petitioner could not have been canceled after 10 years of service. We have noted some defects in the process of appointment undertaken by respondent nos.5 and 6 and also noted unexplained delay of more than 6 years for forwarding proposal seeking approval to the appointment of the petitioner. We deem it appropriate to relegate the matter for re-consideration by respondent no.2 in light of the aforesaid observations with expectation that in case, the petitioner's appointment is found in tune with the MEPS Rules and other procedural aspects and if the post of graduate teacher is found admissible on school establishment on the basis of work load, respondent no.2 would take pragmatic view of the matter and pass fresh order in accordance with law.

8. Resultantly, we proceed to pass following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The impugned order dated 23.07.2021 passed by respondent no.2-Deputy Director of Education, Latur is hereby quashed and set aside.
- c. The respondent no.2-Deputy Director of Education, Laur shall re-examine the aspect of work load as on the date of the advertisement and consequential appointment of the petitioner with respondent no.6-School and if the post is admissible, take

steps to sanction the same. In case the post is sanctioned based on work load, respondent no.2 shall examine other relevant aspects of the matter and pass consequential orders to enter the petitioner's name in the Shalarth Pranali and release salary.

d. The respondent no.2 shall undertake the aforesaid exercise within a period of eight (08) weeks from the date of order and communicate his decision to the concerned parties within a period of two weeks thereafter.

e. Writ Petition is disposed of.

f. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE