



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

WRIT PETITION NO. 12466 OF 2023

Azad Education and Welfare Society
Parbhani through its Secretary .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri Rajendra H. Wagh, Advocate for the Petitioner.
Shri Nikhil S. Tekale, A.G.P. for the Respondent Nos. 1 to 3.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.
DATE : 09 OCTOBER 2024.**

FINAL ORDER (Per Shailesh P. Brahme, J.) :-

. Heard both sides finally at the admission stage.

2. The petitioner is seeking direction to reconsider its proposal dated 21.04.2023 by setting aside communication dated 01.08.2023 and further directions to respondent No. 2 to include name of its employee Mr. Laxmikant Madhukarrao Mule in the Shalarth Pranali.

3. The petitioner is a minority institute, which runs secondary school. Due to permanent vacancy, Mr. Laxmikant Madhukarrao Mule was transferred from unaided post to aided post. His transfer was approved by the respondent No. 3/Education Officer (Secondary), Zilla Parishad, Parbhani vide

letter dated 28.05.2021. For inclusion of his name in the online portal, the Education Officer recommended the proposal vide letter dated 03.06.2021. The proposal was forwarded to the respondent No. 2/Deputy Director of Education. It was turned down by the impugned communication dated 01.08.2023 on the ground that as per the staffing pattern the post in question was not admissible and no aided post was available.

4. The petitioner management submitted representation on 21.04.2023 to reconsider the proposal. The representation has not been decided by the respondent No. 2. The learned counsel submits that Mr. Laxmikant Mule was working on unaided post since 2012 and thereafter was transferred to an aided post, which was approved by the Education Officer. He would submit that in view of ratio laid down by this Court at Nagpur Bench in the matter of **Amol Baban Sangar Vs. State of Maharashtra vide judgment dated 21.02.2022 in Writ Petition No. 8966 of 2021**, the proposal could not have been be turned down on such a ground. It is further submitted that no opportunity of hearing was extended by the Deputy Director of Education, before turning down the proposal.

5. It reveals from record that Mr. Laxmikant Mule was earlier working on an unaided post. He was transferred to the aided post on or about 01.12.2020. His transfer was approved by the Education Officer on 28.05.2021. The approval was not challenged by anybody. While turning down the proposal vide impugned letter, for the first time, the Deputy Director of

Education recorded that the post of the concerned employee was not admissible as per the staffing pattern. We do not find that the decision is arrived at by extending an opportunity of hearing. The impugned order/communication impliedly overrides the approval granted by the Education Officer on 28.05.2020.

6. In view of ratio in the matter of **Amol Baban Sangar Vs. State of Maharashtra** (supra), it is not permissible for the Deputy Director of Education while deciding proposal for inclusion of the name in the Shalarth Pranali to review the approval. This can be possible as per the Government Resolution dated 10.06.2022, but the rider is to extend opportunity of hearing to all concern.

6. It is the case of the petitioner that it has adequate material to convince the Deputy Director of Education that the transfer of the employee concerned was on a sanctioned and aided post. If this is the situation, we are of the considered view that the ends of the justice would be sub served if the matter is relegated to the respondent No. 2/Deputy Director of Education to reconsider the proposal afresh by extending an opportunity. We, therefore, pass following order.

O R D E R

- i) The writ petition is partly allowed.
- ii) Impugned communication dated 01.08.2023 issued by the respondent No. 2/Deputy Director of Education, Aurangabad

Division, Aurangabad is quashed and set aside.

iii) The respondent No. 2/Deputy Director of Education shall reconsider the proposal for inclusion of name of Mr. Laxmikant Madhukar Mule in the Shalarth Pranali by extending due opportunity of hearing to the petitioner as well as concern teacher.

iv) The decision shall be take as early as possible and in any case within a period of six (06) weeks from today.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/Oct. 24