



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 12022 OF 2019**

Shital Gopalkrishna Deshmukh,
Age: 30 Years, Occupation: Service,
R/o.: Krishnakund, Jalalpur Road,
Madhavbag, Parli-Vajinath, Taluka: Parli-Vajinath,
District: Beed. ..Petitioner

Versus

1. The Deputy Director of Education,
Aurangabad Division, Aurangabad,
Taluka & District: Aurangabad.
2. The State of Maharashtra,
Through it's Secretary,
School Education & Sport Department,
Mantralaya, Madam Cama Road,
Hutatma Rajguru Square,
Mumbai - 400 032.
3. The Education Officer (Primary),
Zilla Parishad, Beed,
Taluka & District: Beed.
4. Vaidyanath Prathamik Vidyalay,
Parli-Vajinath, Taluka: Parli-Vajinath,
District: Beed, Through it's Headmaster. ..Respondents

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Mr. T. M. Venjane, Advocate for the Petitioner.
Mr. P. S. Patil, Addl. GP for Respondent Nos.1 and 2.
Mr. K. B. Jadhavar, Advocate for Respondent No.3.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 08th 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 petitioner impugns the order dated 06.07.2019 passed by the Deputy Director of Education, Aurangabad-respondent no.1, thereby cancelling approval to appointment granted by the Education Officer-respondent no.3 vide order dated 28.08.2014.

3. Mr. Venjane, learned Advocate appearing for the petitioner submits that the petitioner possessed the qualification as HSC D.Ed. She was eligible for the appointment as Assistant Teacher. The respondent no.4 issued an advertisement inviting applications from the eligible candidates for appointment on the post of Assistant Teacher. The petitioner being qualified and eligible, responded to the advertisement. After going through the selection process, she has been appointed vide order dated 28.08.2014. The proposal seeking approval to the petitioner's appointment was forwarded to the Education Officer-respondent no.3, who accorded his approval as Shikshan Sevak for the period from 28.08.2014 to 27.08.2017.

4. Mr. Venjane, learned Advocate would further submit that respondent no.3 served notice to Headmaster of the school informing that hearing is arranged in the office of respondent no.1 as regards to the approval accorded to the appointment of the teaching and non-teaching staffs of the school. Pursuance to such notice, respondent no.1 passed impugned order dated 06.07.2019, thereby cancelling approval granted to the appointment of the petitioner. Mr. Venjane, learned Advocate would submit that the impugned order is *ultra-virus* as well as inconsistent of principles of natural justice. Therefore, he urges to quash and set aside the impugned order and restore the approval.

5. Mr. Patil, learned A.G.P. appearing for respondent nos.1 and 2 referring to the affidavit-in-reply filed by Mr. Ravindra

Bapusaheb Wani submits that the impugned order is passed after giving due opportunity of hearing to all the concerned. He would submit that respondent no.3 had wrongly granted approval to the appointment of the petitioner. Therefore, in exercise of powers conferred under Government Resolution dated 23.08.2017, the individual approval granted to petitioner was examined. It was found that the appointment of the petitioner was made de-hors the rules and regulations. He would submit that the advertisement was not preceded by the permission from the Competent Authority. The reservation roster was not updated. Even, the petitioner is not compliant with TET qualification. Consequently, the order granting approval has been canceled.

6. We have considered the submissions advanced by the learned Advocate appearing for the respective parties. It appears that, the petitioner has been appointed in respondent no.4-School w.e.f. 28.08.2014 and her appointment was approved by the Education Officer as Shikshan Sevak for the period from 28.08.2014 to 27.08.2017. Thereafter, the Headmaster of the school was served with the notice of hearing dated 11.09.2018 arranged in the office of respondent no.1 as regards to approval granted to the employees working in the school. In pursuance of the said hearing, the approval granted to the petitioner's appointment has been cancelled.

7. The impugned order appears to have been passed by respondent no.1 in exercise of powers conferred under Government Corrigendum dated 23.08.2017, which refers to observations of this Court in Writ Petition No.10133/2016, which reads as under:

"By now, it is settled principle of law that unless the power of review is specifically or by necessary implication provided, the authority cannot review its own order. No doubt, if an order is obtained by exercising fraud, it would stand vitiated.

However, it is not the case of the respondent Education Officer that the petitioners have obtained their initially orders by fraudulent means. It is further observed in the said order as under if the earlier Education Officer had granted approval to the petitioners' appointment, may be erroneously, the same cannot be made a ground to recall the same and pass contrary order, unless a case of fraud, misrepresentation or suppression is made out. Particularly, when most of the petitioners have already put in their services for 11 years, the impugned orders would amount to penalising them for no fault on their part."

8. Pertinently, the statutory provisions under MEPS Regulations or Rules framed thereunder do not vest powers akin to the Appellate Authority to examine the correctness of the orders passed by the Education Officer granting approval to the appointment of the teaching or non-teaching staffs in the private schools. Therefore, looking to the observations of this Court as quoted above, respondent no.1 can deal with order of approvals obtained by adapting fraudulent means. However, such powers are not expected to be exercised, when order granting approval is merely irregular or erroneous to certain extent. Similar view is taken by this Court in case of ***Pramod Prabhakar Pokale Vs. State of Maharashtra***¹.

9. Turning back to the facts of the present case, the petitioner has been appointed in the year 2014 and discharged her duties as Shikshan Sevak till 10.04.2017. She has been paid remuneration for her services during period of three years as Shikshan Sevak. The formatted information recorded in the impugned order depicts that there was no backlog of reservation. The cancellation of approval is ordered giving reasons that the copy of advertisement is not produced, the reservation roster is not updated and the petitioner is not compliant with TET qualification. We find that the aforesaid reasons may constitute irregularities, however,

¹ 2019 (3) Bom. C.R. 273.

cannot form ground for cancellation of the approval already granted by the Education Officer. As observed, the petitioner's appointment is not against the reserved post or there is no backlog of reservation. He holds requisite qualification for the appointment as an Assistant Teacher. So far as the TET qualification is concerned, petitioners appointment and continuation can be made subject to the final decision of the Supreme Court in the pending matter regarding applicability of TET qualification and for that purpose appropriate undertaking can be taken from the petitioner that she would abide by the orders of the Supreme Court and in case, TET qualification is held to be mandatory for every appointment, she would not claim any equity.

10. In that view of the matter, we are inclined to allow the Writ Petition. Hence, proceed to pass following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 06.07.2019 passed by the Deputy Director of Education, Aurangabad-respondent no.1 is quashed and set aside.
- c. The order of approval granted by the Education Officer-respondent no.3 to the appointment of the petitioner vide order dated 28.08.2014 is restored subject to condition that she files an undertaking in the following terms:

[a] The petitioner would tender an undertaking that, she would abide by the conclusions that would be drawn by the Hon'ble Supreme Court, and if the verdict is adverse to those teachers who do not have the TET qualification or have cleared the TET after 31.03.2019, or as the case may

be, she would abide by the same without raising any cause of action.

[b] Let such affidavit undertaking be filed in this Court within 15 days from today and a copy be tendered to the concerned Education Officer within the same timeline.

[c] The proposal of petitioner would be considered for continuation or entering her name in the 'Shalarth-ID' on its own merits, save and except, the reason that she is not TET qualified.

[d] If an adverse order is passed by the Hon'ble Supreme Court, the State Government would not recover the salaries already paid to her, since she has worked for those tenures and she has earned her salary for performing her duties.

[e] In the event, the candidate like petitioner is protected by the Hon'ble Supreme Court's conclusions and she is held to be qualified to continue in employment, she would be entitled for all service benefits like promotions, increments, etc.

d. Writ Petition is disposed of.

e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE