



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11581 OF 2022**

Smt. Yogita Prabhakar Damekar,
Age 35 yrs. Occ. Service,
R/o. Shikshak Colony Sonkhede,
Tq. Loha, Dist. Nanded.

..Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department
Mantralaya, Mumbai-32
 2. The Dy. Director of Education,
Latur Division, Latur.
 3. The Education Officer (Secondary)
Zilla Parishad, Nanded
 4. Shri Shivaji Mofat Education Society,
Kandhar Tq. Kandhar, Dist. Nanded,
Through it's President/Secretary.
 5. Shri. Secondary and Higher Secondary School,
Manik Nagar, Nanded, Tq. & Dist. Nanded.
Through it's 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. B. P. Gonare, Advocate for Respondent Nos.4 and 5.

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

JUDGMENT RESERVED ON :- 07th MARCH 2024.

JUDGMENT PRONOUNCED ON :- 16th APRIL 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 prayers:

“B. By issue of Writ of mandamus or Order or direction in the like nature, the impugned order dated 05/04/2022 (Exh.I) passed by the Respondent No. 2 Dy. Director of Education Latur, may kindly be quashed and set aside.

C. By issue of Writ of mandamus or Order or direction in the like nature, the respondent no. 2 Deputy Director of Education, Latur may kindly be directed to include names of petitioner in Shalarth Pranali with further directions to restore her approval order granted earlier by the Education Officer.

D. By issue of Writ of mandamus or Order or direction in the like nature, the respondent no. 3 Education Officer (Secondary), Nanded may kindly be directed to pay the arrears and salary of the petitioner forthwith.”

3. Mr. Panpatte, learned Advocate appearing for the petitioner submits that respondent no.4 is an Educational Institution and runs respondent no.5-School. It receives 100% grant-in-aid. On 31.12.2016 Mr. N. S. Kandhare, Librarian working on the establishment of respondent no.5-School retired on attaining age of superannuation. Therefore, the Management had published an advertisement dated 24.12.2016, inviting applications from the qualified candidates to fill up vacancy. The petitioner responded to the said advertisement and after undergoing selection process came to be appointed vide order dated 06.01.2017. The proposal seeking approval to the petitioner's appointment was forwarded to respondent no.3-Education Officer, who granted approval vide his order dated 31.12.2020. Consequently, proposal was forwarded to the office of respondent no.2 for including petitioner's name in the Shalarth Pranali. However, respondent no.2 issued notice of hearing to all the concerned and finally rejected the proposal for entering petitioner's name in the Shalarth Pranali and also cancelled the approval granted by respondent

no.3-Education Officer, for the reason that as per roster the post for OBC category was not available. The petitioner's appointment is made when the issue of staffing pattern was under consideration of the Government and recruitment was banned.

4. Mr. Panpatte, learned Advocate would submit that respondent no.2 had no jurisdiction to cancel the approval granted to the appointment of the petitioner by the Competent Authority i.e. respondent no.3-Education Officer. He would submit that the petitioner's appointment was made as a special drive, where employees could be appointed from the reserved category. He would submit that the petitioner is otherwise qualified and she is appointed against the vacancy occurred on retirement of the teacher on the same post. Therefore, he urges to quash and set aside the impugned order and issue further directions to restore the approval and release the consequential benefits.

5. Mr. Shirse, learned A.G.P. appearing for respondent nos.1 to 3 relying upon the affidavit-in-reply filed by respondent no.2 submits that after receipt of the proposal seeking inclusion of the petitioner's name in the Shalarth Pranali, the scrutiny was made and it was noted that the appointment of the petitioner is illegal. Accordingly, the notices were issued to all the concerned and hearing was arranged on 10.02.2022 in the office of respondent no.2. After granting due opportunity of hearing, the final decision is taken to reject the proposal and also cancel the approval granted by the Education Officer. It was observed that the petitioner's appointment is made from OBC category, when the post of Full Time Librarian was not available for such reservation category. Further the appointment is made on the basis of the advertisement that was published in the local newspaper having meager circulation. He would further point out that the Government

Resolution dated 28.01.2019 has been issued for fixing staffing pattern of non-teaching staff in private aided schools. The petitioner is appointed contrary to the said Government Resolution.

6. We have considered the submissions advanced on behalf of the learned Advocates appearing for the respective parties. We have perused the record tendered into service alongwith petition and affidavit-in-reply filed by the respondents. The petitioner possessed the qualification of HSC, LTD alongwith Graduation in Arts faculty (BA) and also possessed MS-CIT certificate. Admittedly, she belongs to OBC category. It appears that, the petitioner has been appointed in pursuance of the advertisement dated 24.12.2016 published in "Daily Times of Gourav", which depicts that the post was advertised for OBC category. The petitioner's appointment was approved by the Education Officer vide order dated 31.12.2020. She is granted approval retrospectively w.e.f. 06.10.2017 for the period of three years on consolidated pay and proposal for inclusion of her name in the Shalarth Pranali was forwarded to the office of respondent no.2. The enquiry was conducted by respondent no.2 after giving notices to all the concerned and certain defects were noted in the appointment of the petitioner and consequential approval by the Education Officer.

7. We find that there is nothing on record to show that the petitioner's appointment was contrary to the reservation roster. It appears that, there was one post of Full Time Librarian on the establishment of the School as per staffing pattern and there is nothing to indicate that such post was allocated to any other reservation category. The record shows that on retirement of Mr. N. S. Kandhare on 31.12.2016, the petitioner is appointed to fill up

the vacancy. The impugned order simply refers that as per reservation roster there is no backlog of OBC category. However, that itself would not render the appointment of the petitioner invalid. The second reason given in the impugned order is that the staffing pattern is finalized as per the Government Resolution. Pertinently, the appointment of the petitioner is dated 06.01.2017. The stipulation in the Government Resolution dated 28.01.2019 would not be retrospectively applicable to the appointments already made. From the contents of the impugned order no support to the aforesaid conclusion can be drawn. Therefore, we are of the considered view that the conclusion drawn in the impugned order sans requisite reasons. Such an unseasoned administrative order would not pass the test of natural justice, hence would be rendered invalid.

8. One more aspect that requires consideration in the present case is as to whether the Deputy Director of Education could have dig out the reasons to cancel the approval granted by the Education Officer, when the proposal for inclusion of the petitioner's name in the Shalarth Pranali was subject matter before the Deputy Director of Education. In fact the issue is no more *res-integra*. This Court in case of ***Amol Baban Sangar Vs. The State of Maharashtra and Ors*** in ***Writ Petition No.8966/2021*** delivered the judgment dated **21.02.2022** and observed in paragraph no.5 as under:

“When the aforesaid facts are not in dispute, we see no reason for the Deputy Director, Education to again dig out the issue of grant of approval to the appointment of the Petitioner to aided post upon his transfer from unaided post, when it comes to inclusion of the name of the Petitioner in the Shalarth system. The Shalarth system has been initiated for facilitating the online payment of salary to the school employees by streamlining the whole system. When such is the object of the Shalarth system, the Deputy Director, Education cannot again look into the irregularity

or otherwise caused in granting the approval to the appointment of the school employees by the Education Officer.”

9. In light of the aforesaid observations, particularly in absence grounds like fraud, misrepresentation or suppression of material fact at the hands of the Management or the petitioner, the respondent no.2-Deputy Director of Education could not have cancelled the approval granted by the Education Officer to petitioners appointment. We are, therefore, inclined to quash and set aside the impugned order and proceed to pass order in the following terms:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 05.04.2022 passed by the respondent no.2-Deputy Director of Education, Latur is hereby quashed and set aside.
- c. The approval to the appointment of the petitioner granted by respondent no.3-Education Officer vide order dated 31.12.2020 is hereby restored. The respondent no.2-Deputy Director of Education shall include the petitioner's name in the Shalarth Pranali and take further steps for release of her salary and consequential benefits as per approval to her appointment.
- d. Writ Petition is disposed of.
- e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE