



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

33 WRIT PETITION NO.15481 OF 2023

- 1 Dnyan Sandeep Shikshan Sanstha,
Triratna Sadan, 5/11/257,
Dr. Ambedkarnagar, N-7, CIDCO,
Aurangabad.
Through its Secretary,
Prakash Tukaram Sonawane,
Age 56 yrs., Occ. Service,
R/o Ambedkar Nagar,
Jalgaon Road, Aurangabad.
- 2 Harshal Gangadhar Pagare,
Age 30 yrs., Occ. Service,
R/o Subhanpur, Tq. Bhokardan,
Dist. Jalna.

... Petitioners

... Versus ...

- 1 The State of Maharashtra,
Through it's Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 32.
- 2 The Director of Education,
(Primary), Pune.
- 3 The Deputy Director of Education,
Aurangabad Division, Aurangabad
- 4 The Education Officer (Primary),
Zilla Parishad, Aurangabad.

... Respondents

...

Mr. S.S. Kazi, Advocate for petitioners
Mr. P.S. Patil, AGP for respondent Nos.1 to 3
Mr. P.R. Nangre, Advocate for respondent No.4

...

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

DATE : 11th MARCH, 2024

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioners have filed the present writ petition for following reliefs :

“(B) By issuing writ of mandamus or any other writ or direction in the like nature, impugned order / communication dated 16.08.2021 passed by respondent No.3 addressed to respondent No.4 be quashed and set aside and the respondents be directed to consider the proposal / representation dated 11.09.2023 issued by the headmaster requesting the Education Officer to grant continuation and enter the name of petitioner No.2 in Shalarth ID/Pranali.

(C) By issuing writ of mandamus or any other writ or direction in the like nature, the respondents be directed to consider the proposal submitted by the headmaster dated 11.09.2023 and grant

continuation in favour of petitioner No.2 as Assistant Teacher and pay all the back wages and regular salary henceforth.”

3 The petitioners have come with a case that petitioner No.1 is a minority institution. Petitioner No.2 came to be appointed by petitioner No.1 after following due procedure of law as Assistant Teacher with effect from 12.02.2018. It is stated that one Assistant Teacher by name Omprakash Sanjabrao Saulatkar was removed/dismissed from service as per M.E.P.S. Act and Rules. Thereafter, on the said vacant post petitioner No.2 came to be appointed. It is stated that prior to the appointment of petitioner No.2, petitioner No.1 had sought permission vide letter dated 28.11.2016 to make a fresh appointment and then the advertisement came to be published on 06.02.2018. Petitioner No.1 thereafter sent a proposal for the appointment of petitioner No.2. The Education Officer had conducted the inquiry and granted approval by communication dated 19.09.2019 as Assistant Teacher for a period of three years with effect from 12.02.2018. It was stated that the approval was conditional in view of the writ petition pending before this Court challenging the Judgment and order passed by School Tribunal in favour of said Omprakash Saulatkar. It is stated that after the approval was granted, petitioner No.1 had requested the Education Officer to release the salary of petitioner No.2, which was receiving 100% grant-in-aid. Since it was not released, the petitioner No.1 had come before this Court to include

the name of petitioner No.2 in Shalarth Pranali. The Deputy Director of Education by communication dated 02.01.2020 to Education Officer (Primary), Zilla Parishad, Aurangabad stated that the proposal for entering the name of petitioner No.2 be re-sent. The Education Officer by order dated 30.06.2021 was pleased to issue continuation in favour of petitioner No.2 for only one year which is upon the result of Writ Petition No.33734 of 2018. Again a proposal was sent for considering his name in Shalarth Pranali and then petitioner No.1 was required to approach this Court by filing Writ Petition No.9623 of 2017. This Court by order dated 19.03.2018 disposed of the writ petition by observing that if petitioner No.1 has already given application on 28.11.2016 and the Education Officer has not responded to it, then it should be re-considered and the Education Officer will have no right to reject the said proposal on the ground that prior permission was not obtained. The further event that has taken place is that said employee Omprakash Saulatkar expired during the pendency of his Writ Petition No.11511 of 2019. The Death Certificate of said employee is produced on record. Respondent No.3 by communication dated 16.08.2021 addressed to Education Officer refused to enter the name of petitioner No.2 in Shalarth Pranali. The petitioners were not aware about the said order and they could not approach this Court as the writ petition by said Omprakash was still pending. Now, in view of death of said Omprakash on 20.01.2023 petitioner

No.1 has again requested by way of representation dated 11.09.2023 that the said proposal be re-considered.

4 Heard learned Advocate Mr. S.S. Kazi for petitioners, learned AGP Mr. P.S. Patil for respondent Nos.1 to 3 and learned Advocate Mr. P.R. Nangre for respondent No.4. In order to cut short, it can be said that they have argued in support of their respective contentions.

5 We have taken note of the orders passed by this Court on the earlier occasions. It can be clearly seen that the conditional approvals were given to respondent No.2 in view of the fact that the writ petition filed against earlier employee Omprakash Saulatkar by petitioner No.1 was pending in this Court. The petitioners have stated that petitioner No.2 came to be appointed in place of Omprakash Saulatkar after he was terminated. Even if we consider that at that time it would have been a question, as to whether the said post can be said to be a clear post or not; yet, the fact remains that services of Omprakash were terminated, he had approached School Tribunal. School Tribunal decided the matter in his favour but petitioner No.1 challenged the said order before this Court and petition was pending. In the meantime, when the approval was not granted to the appointment of petitioner No.2, petitioner No.1 had approached this Court by

filing Writ Petition No.9623 of 2017 and this Court by taking note of the fact that the petitioner No.1 has already given an application on 28.11.2016 and the Education Officer has not responded to it, then he should re-consider it, but then it was also stated that the Education Officer will not have right to reject the proposal without obtaining prior permission, that is, for the filling up of the post.

6 Now, the situation has arisen that said Omprakash has expired, whose order of reinstatement by the School Tribunal was challenged by petitioner No.1 in this Court. Therefore, we are of the opinion that the matter can be sent back for re-consideration as it is in respect of giving approval to the services of petitioner No.2. Perusal of the order dated 30.06.2021 passed by the Education Officer (Primary), Zilla Parishad, Aurangabad would show that temporary approval was granted for a period of one year and then by order dated 16.08.2021 the proposal to enter the name of petitioner No.2 in Shalarth Pranali was rejected. Therefore, it would be appropriate to ask petitioner No.1 to file a fresh proposal to respondent No.4 giving all the details and also by attaching documents to show that said employee Omprakash Saulatkar has expired. Hence, we pass the following order.

ORDER

1 The Writ Petition stands partly allowed.

2 The communication dated 16.08.2021 is hereby quashed and set
aside.

3 Petitioner No.1 to file a fresh proposal for grant of permanent approval to the appointment of petitioner No.2 giving necessary details, along with death certificate of Omprakash Saulatkar. Such proposal be filed within a period of 15 days.

4 The proposal to be submitted for grant of permanent approval should be decided by respondent No.4, on its own merits, by taking into consideration the subsequent events as well as observations in order passed by this Court in Writ Petition No.9623 of 2017 dated 19.03.2018, within a period of one month from the date of presentation.

5 In case of favourable decision on proposal for permanent approval, petitioner No.1 to re-submit the proposal for inclusion of name of petitioner No.2 in Shalarth Pranali, within a period of 15 days from the date of decision by respondent No.4 and it should be decided by respondent No.3 within a period of one month from the date of the proposal.

6 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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