

WRIT PETITION NO. 12028 OF 2024

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**CORAM : NITIN JAMDAR AND
M.M. SATHAYE, JJ.**

DATE : 26 AUGUST 2024

P.C. :

. Heard learned counsel for the parties.

2. Petitioner No. 1 Education Institute, Petitioner No. 2 School and Petitioner No. 3 employee (Narayan Uttam Kumbhar) are jointly challenging the Order dated 10 July 2023 (issued on 14 July 2023) passed by Respondent No. 3 / Education Officer (Secondary), Zilla Parishad, Sangli. By said impugned Order, the approval for upgradation of Petitioner No. 3 from Peon to Junior Clerk is rejected.

3. Perused the impugned Order, which is admittedly passed without any show cause notice / opportunity / hearing to Petitioners.

Had an opportunity been given, the Petitioners would have given appropriate and necessary explanation to reasons stated in impugned order for rejecting proposal. It has resulted in a situation where inquiry about the grounds of rejection are required to be done first time in this Court.

4. The only reason in the impugned order is based on a communication dated 1 August 2022, which is produced on record (Exhibit J page 56). The said communication is issued because of interim stay that was granted by this Court in W.P.No. 5058 of 2021 and W. P. Nos. 8007 of 2021 filed by non-teaching staff associations. It is rightly pointed out by the learned counsel for the Petitioners that subsequently this Court by its order dated 6 February 2024 has disposed of both these petitions and interim stay has been vacated. Therefore today the said reason does not survive and is accordingly set aside.

5. In that view of the matter, we dispose of this petition by setting aside the impugned order. The Petitioner No. 3's proposal stands restored. If there are any other grounds on which the Respondent Education Officer intends to return or reject the proposal, he is directed to communicate the same to the Petitioners within a period of 3 weeks from today.

6. The Petitioners shall thereafter submit its explanation to the

proposed grounds, along with supporting material including government resolutions, case laws etc. if relied upon.

7. Thereafter within a period of 8 weeks, subject to other time bound directions, the Respondent Education Officer is directed to decide the proposal of Petitioner No. 3 by dealing with the explanation given by the Educational Institute as also dealing with case law/orders of this Court, by passing a reasoned order. The order will be passed keeping in mind the directions issued by this Court in Part II Clause A(i) to (iii) of the judgment in the matter of *Nitin B. Tadge Vs. State of Maharashtra*¹.

8. We have not expressed any opinion on the Petitioners' proposal and the same shall be decided on its own merits in accordance with law. Needless to mention that if the Respondent Education Officer proceeds to grant proposal as prayed, consequent benefits and orders will follow.

9. The writ petition is disposed of in the aforesaid terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)

¹ 2024 SCC OnLine Bom 1116