



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 416 OF 2020.

- | | | |
|----|-------------------------------------|---|
| 1) | Madhuri Rahul Ghorpade |] |
| | Age : 35 Years, Occ. Service, |] |
| | C/o Modern Education Society, |] |
| | Koregaon, Taluka Koregaon, |] |
| | District Satara. |] |
| 2) | Medha Shrirang Nalawade |] |
| | Adult, Occ. Service, |] |
| | C/o. Saraswati Vidyalaya, Koregaon, |] |
| | The Modern Education Society, |] |
| | Koregaon, Taluka Koregaon, |] |
| | District Satara. |] |
| 3) | Uma Vithoba Dalvi |] |
| | Adult, Occ. Service, |] |
| | C/o. Saraswati Vidyalaya, Koregaon, |] |
| | The Modern Education Society, |] |
| | Koregaon, Taluka Koregaon, |] |
| | District Satara. |] |
| 4) | Swapna Narayan Histe, |] |
| | Adult, Occ. Service, |] |
| | C/o. Saraswati Vidyalaya, Koregaon, |] |
| | The Modern Education Society, |] |
| | Koregaon, Taluka Koregaon, |] |
| | District Satara. |] |
| 5) | Gulchand Murlidhar Pale |] |
| | Adult, Occ. Service, |] |
| | C/o. Saraswati Vidyalaya, Koregaon, |] |
| | The Modern Education Society, |] |
| | Koregaon, Taluka Koregaon, |] |
| | District Satara. |] |
| 6) | Smita Krishna Jadhav |] |
| | Adult, Occ. Service, |] |
| | C/o. Saraswati Vidyalaya, Koregaon, |] |
| | The Modern Education Society, |] |
| | Koregaon, Taluka Koregaon, |] |
| | District Satara. |] |
| 7) | Pushpa Balwant Jadhav |] |
| | Adult, Occ. Service, |] |
| | C/o. Saraswati Vidyalaya, Koregaon, |] |
| | The Modern Education Society, |] |

Koregaon, Taluka Koregaon,]
 District Satara.]
 [All Through Power of Attorney holder]
 namely, Petitioner No.1 above.] **...Petitioners.**

Versus

- 1) State of Maharashtra]
 [Summons to be served on the Learned]
 Government Pleader appearing for State of]
 Maharashtra under Order XXVII, Rule 4, the]
 Code of Civil Procedure, 1908].]
- 2) Deputy Director of Education]
 Kolhapur.]
 [Summons to be served on the Learned]
 Government Pleader appearing for State of]
 Maharashtra under Order XXVII, Rule 4, the]
 Code of Civil Procedure, 1908].]
- 3) The Education Officer (Secondary)]
 Zilla Parishad, Satara,]
 [Summons to be served on the Learned]
 Government Pleader appearing for State of]
 Maharashtra under Order XXVII, Rule 4, the]
 Code of Civil Procedure, 1908].]
- 4) The Modern Education Society,]
 Koregaon, Taluka Koregaon]
 District Satara.] **...Respondents.**

*Mr. A. V. Anturkar, Senior Advocate along with Mr. Prathamesh Bhargude for the
 Petitioners.*

Ms. M. S. Bane, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Reserved on : November 25, 2024.

Pronounced on : December 19, 2024.

Judgment :

1. ***Rule.*** With Consent, Rule made returnable forthwith and taken up
 for final hearing.

2. The present petition challenges the order dated 8th November, 2019 issued by the Deputy Director of Education cancelling the approvals granted to the appointment of the present Petitioners.

FACTUAL MATRIX:

3. The date of appointment of Petitioners as “Shikshan Sevaks” in the schools run by Respondent No.4, the date of approvals granted and the appointment date as Assistant Teacher are tabulated as under:

Pet. No	Name	Date of Appointment as Shikshan Sevak	Date of Approval	Date of Appointment as Assistant Teacher
1.	Madhuri Rahul Ghorpade	12 th September 2011	31 st October 2012	11 th December 2014
2.	Medha Shrirang Nalawade	21 st September 2011	31 st October 2012	21 st September 2014
3.	Uma Vithoba Dalvi	10 th January 2011	31 st October 2012	10 th January 2014
4.	Swapna Narayan Histe	10 th January 2011	31 st October 2012	10 th January 2014
5.	Gulchand Murlidhar Pale	10 th February 2010	31 st October 2012	10 th February 2013
6.	Smita Krishna Jadhav	10 th February 2010	31 st October 2012	10 th February 2013
7.	Pushpa Balwant Jadhav	10 th February 2010	31 st October 2012	10 th February 2013

4. On 9th May, 2017, an enquiry was conducted by the Director of Education (Secondary and Higher Secondary) pursuant to communication dated 23rd February, 2017 issued by the Commissioner (Education) alleging certain irregularities in grant of approvals to the Petitioners. Vide minutes of meeting dated 31st May, 2017, the Director of Education recommended cancellation of the approvals on the ground

that the permission for advertisement was not given by the Education Inspector (Primary), that the backward class cell had not verified the roster and that inspite of the backlog of reserved posts, the appointment is made against open category.

5. On 10th October, 2017 the Education Officer (Secondary) Zilla Parishad, Satara implemented the order of 31st May, 2017 and cancelled the approval granted to the Petitioners. On 11th September, 2017, the Director of Education directed the Education Officer to restore the approval granted to the Petitioners, which came to be restored. On 11th October, 2019, the Commissioner for Education directed cancellation of order of 11th September, 2017 passed by Director of Education. The impugned order dated 8th November, 2019 is the result of implementation of the directions dated 11th October, 2019 issued by the Commissioner for Education.

SUBMISSIONS:

6. Mr. Anturkar, learned Senior Advocate appearing for the Petitioners submits the order of the Director of Education dated 31st May, 2017 recommended the cancellation of approvals on three grounds. Firstly, that the Education Officer had not granted permission for advertisement, secondly, that the appointment was made given without the roster being approved from the backward class cell and thirdly, despite the backlog, the appointment has been made from the

Open Category. He submits that none of the reasons for cancelling the approval would stand scrutiny as the requirement for approval to the advertisement by the Education Officer was introduced for the first time by the Government Resolution dated 6th February, 2012 and as the appointments were made in the year 2011, the said requirement will not have any retrospective effect. He would submit that as far as the appointment of the persons from the Open Category without filling up of the backlog, this Court has held that even if there is some vacancy in the reserved category, direction can be given for filling up that backlog without disturbing the approval already given. He would further submit that in any event the requirement was satisfied with three appointments made from the reserved category. He submits that the Government Resolution dated 2nd July, 1997 does not provide that before appointment is made, the roster is required to be verified by the backward cell. He would further submit that the approval letter itself records that approval is granted to the appointment as despite best efforts the candidates for reserved posts are not available.

7. He submits that the order passed by the Education Officer cancelling the approval given, is without jurisdiction as it is a settled position in law that the Education Officer has no power of review. He submits that the Commissioner of Education while issuing the directions dated 11th October, 2019 did not give an opportunity of hearing to the

Petitioners. According to him, the communication dated 11th October, 2019 does not issue any such direction and in any event the Commissioner of Education had no authority. In support of his submissions, he relies upon the following decisions :

***Sheevani Prasanna Deshpande Vs. State of Maharashtra*¹ and
*Kalpana Ramkrishna Gavande v. State of Maharashtra*².**

8. *Per contra* learned AGP would submit that by the Government Resolution dated 2nd May, 2012 there was ban on the recruitment unless and until 100% surplus teachers are absorbed. She submits that it was mandatory to recruit the teachers as per the guidelines prescribed in the Government Resolution and as there was an irregularity observed in the appointments, hearing was conducted by the Director of Education in respect of 154 illegal approvals given and after conducting the hearing, 17 approvals were cancelled. She submits that the approvals were rejected by order dated 10th August, 2017 and thereafter on 11th September, 2017, direction was issued by the Director of Education to continue the salary of the concerned teachers in view of the Writ Petition No.10133 of 2016 filed in this Court and the directions issued in Writ Petition No.8818 of 2017. She submits that subsequently, the Government initiated departmental enquiry against the concerned

1 WP No.10133 of 2016 & group dtd. 1-8-2017.

2 WP (St.) No. 92916 of 2020 & Group dtd. 6-1-2021.

Education Officer and the Deputy Director of Education for the illegal approvals granted and by letter dated 11th October, 2019, the Commissioner of Education has directed the implementation of the order of Director of Education. She submits that though the reserved posts were not filled up, the candidates were recruited from the General Category and the roster had not been approved by the Backward Class Cell before recruitment, which is mandatory and thus, the approvals being irregular, has been rightly cancelled.

REASONS AND ANALYSIS:

9. The undisputed facts of the present case are that the Petitioners came to be appointed as Shikshan Sevaks with effect from 12th September, 2011, the approvals were granted to the appointments on 31st October, 2012 and the Petitioners were appointed as Assistant Teachers in the year 2013-2014 and continued in service till the passing of impugned order dated 8th November, 2019.

10. By the impugned order dated 8th November, 2019, effect is sought to be given to the order of 31st May, 2017 passed by the Director of Education cancelling the approvals granted to the Petitioners. The cancellation of the approvals is premised on three grounds firstly absence of Education Officer's permission to the advertisement, non verification of roster by backward class cell and appointment in Open Category despite the backlog.

11. Dealing with the reasons for cancellation of approval *ad-seriatim*, the requirement for obtaining the Education Officer's approval to the advertisement is introduced by Government Resolution dated 6th February, 2012. The appointment of the Petitioners as Shikshan Sevak was prior to the issuance of Government Resolution and the requirement of obtaining Education Officer's permission to the advertisement cannot have retrospective application.

12. The verification of roster from the backward class cell is not demonstrated to constitute a pre-requisite to the appointments. Mr. Anturkar would rely on the Government Resolution dated 3rd July, 1997 to submit that the said resolution does not indicate any requirement of backlog to be identified and approved by the backward class cell prior to the appointments, which has not been disputed. The Government Resolution of 6th February, 2012 provides that upon vacancy being created for purpose of ascertaining the category for filling the vacancy, the roster is required to be verified by the competent authority and as per their report action should be taken to fill in the post. Perusal of the Government Resolution dated 3rd July, 1997 discloses that the appointments have to be made by considering the roster. However, it does not state that roster has to be verified by the Backward Class Cell. Even if the requirement is introduced by Government Resolution dated 6th February, 2012, the Petitioner's appointments were prior in point of

time and therefore the appointments could not be held to be vitiated for non compliance of GR dated 6th February, 2012. The pleadings in the Petition is that the roster was scrutinised after the appointments and roster requirements were satisfied. The said averment is not disputed in the Affidavit in reply filed by the Education Department.

13. As far as the third reason for cancellation that the appointments are made in Open Category despite the backlog is concerned, the said issue need not detain us in view of the decision of Division Bench of this Court in the case of ***Sheevani Prasanna Deshpande v. State of Maharashtra*** (supra) where this Court has held that if the backlog of reserved category candidate is not properly maintained, the Education Officer is empowered to insist that no candidate belonging to the open category shall be filled in unless the quota of reserved category candidate is fulfilled. The said decision was followed by Co-ordinate Bench in another group of petitions in the case of ***Kalpana Ramkrishna Gavande v. State of Maharashtra*** (supra) and it was held that the Deputy Director was not empowered to cancel the approvals granted on the ground that the appointments were made without filling up the quota of reserved category. Pertinently, the learned Single Judge has observed that the Petitioners were in service in that case since the year 2002 to 2013 and that the exercise of power cancellation of approval after considerable length of time would adversely affect efficiency of

the teaching and non-teaching staff who have rendered a considerable number of years of service and that such delayed action is not in consonance with the demands of fair play and substantial justice.

14. The Deputy Education Officer has filed his affidavit-in-reply dated 10th February, 2020. The stand taken by the Education Department is that there was ban to new recruitment by Government Resolution dated 2nd May, 2012 which was relaxed in case of recruitment of teachers for English, Mathematics and Science subjects. It is stated that in respect of illegal approvals granted departmental inquiry has been initiated against the Deputy Director of Education and Education Officer.

15. The reliance placed on the Government Circular dated 2nd May, 2012 is clearly misplaced as the Petitioners appointments were in the year 2011 and the approvals were granted in the year 2012. The Circular of 2nd May, 2012 cannot be applied retrospectively. Although the reasons for cancellation of approvals are sought to be supported by the Affidavit, in the Affidavit there is no reference to any Government Resolution to indicate that the prior permission to the advertisement by Education Officer and the verification of roster by the backward class cell was a pre-requisite to the appointment. The Affidavit is completely silent on those aspects.

16. Even assuming *arguendo*, that the conditions were required to be satisfied prior to the appointments, at the time of granting approvals, it

was the duty of the Education Officer to verify satisfaction of all requisites and for the default of Education Officer, the Petitioners cannot be made to suffer especially after having being in employment for so many years.

17. Going a step further, even if the reasons for cancellation are accepted in its entirety, the same can be termed as irregularity and not illegality in the approvals granted. The irregularities stated in the impugned orders cannot result in rendering the appointments void. Admittedly, there was no fraud or misrepresentation in making the appointments. The irregularities are not so grave so as to warrant cancellation of approvals in the year 2019 of the teachers appointed in the year 2011. Two of the reasons are linked to the appointment of Open Category despite the backlog, which has been held by this Court that the backlog can be filled without disturbing the approvals already granted to the candidates from open category.

18. The manner in which the approvals are granted and cancelled by the Education Officers leaves much to be desired. The approvals were first granted in the year 2012. Pursuant to the recommendation of Director of Education dated 31st May, 2017 of cancellation of approvals, the Education Officer on 10th August, 2017 cancelled the approvals. Perusal of the order of 10th August, 2017 would indicate that the confidential letter was issued on 23rd February, 2017 by the

Commissioner of Education for cancellation of approval and accordingly the approval was cancelled. Thereafter, the Education Officer once again restored the approval as per the orders of Deputy Director of Education in September, 2019 and thereafter once again by the impugned order dated 8th November, 2019, the approvals were cancelled. The impugned order makes a reference to one hearing held on 9th May, 2017 in which the Petitioners were heard. Subsequent thereto, the approvals are oscillating between cancellations and restoration. In event after a period of two years from the hearing given, it was proposed to cancel the approvals, principles of natural justice demanded that an opportunity of hearing be given to the Petitioners once again before cancellation of approvals.

19. The enquiry which was conducted in the year 2017 recommended the approvals to be cancelled and having accepted the said recommendations of the Director of the Education and implementing the same by the communication dated 10th August, 2017 upon the restoration of the cancellation, without giving any fresh opportunity to the Petitioners, the order of restoration dated 11th September, 2017 could not have been cancelled by the impugned order. However, it is not necessary to remand the matter for hearing of the Petitioners in the present case as the three grounds on which the Director of Education has considered the appointments to be illegal and have recommended

the cancellation does not stand legal scrutiny. It is not demonstrated that requirements based on which the appointments / approvals of the Petitioners have been termed as illegal were mandatory at the time when the appointment was made in the year 2011.

20. In light of the above, the impugned orders dated 8th November, 2019 cancelling the approvals of the Petitioners are hereby quashed and set aside. Resultantly, the approvals granted to the appointment of respective Petitioners stand restored. Petition succeeds. Rule is made absolute.

[Sharmila U. Deshmukh, J.]