

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 8926 OF 2023

Tandale Shriram Dnyandev and Ors.

... Petitioners

V/s.

The Education Officer, Secondary Pune
Zilla Parishad and Anr.

... Respondents

Mr. S.V. Pitre with Mr. Amol Ghuge for the Petitioners

Mr. B.V. Samant, Addl. G.P. with Ms. T.J. Kapre, AGP for the
Respondent - State

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

DATE : 20 MARCH 2024

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioners – teachers and the Educational Institute have challenged the order passed by the Deputy Director of Education dated 10 May 2022 and the subsequent order dated 9 March 2023 passed by the Education Officer (Secondary), Zilla Parishad, Pune.

3. The Petitioner No.1 was appointed by the Petitioner – Management on 4 July 2012 and he was working as an assistant

teacher. The approval to his post was granted on 10 July 2023. An order came to be passed by the Deputy Director of Education cancelling the approval granted to the Petitioner's appointment ten years thereafter, on 10 May 2022. Grounds taken were on merits of the approval such as permission for the advertisement was not taken, the original advertisement was not placed on record, Roster point was not examined. On these grounds the Deputy Director found that the approval granted by the Education Officer was faulty. Thereafter, the Education Officer on 9 March 2023 directed the Petitioner – Management not to submit the bills of the Petitioner No.1 since the approval was cancelled.

4. The learned Counsel for the Petitioner submitted that not only the Petitioner has answered to all the points taken on merits by the Deputy Director in the impugned order, the main question is the lack of power in the Deputy Director to review the order of approval on merits that too after a decade.

5. As to whether the general power of review vested in the Deputy Director is concerned, the Division Bench of this Court in the case of *Shivane Deshpande vs. State of Maharashtra and Ors.*¹ observed that the power of review is specifically or by necessary implication provided. The authority cannot review its own order unless it is obtained by exercising fraud. This decision was followed

¹ WP 10133/2016 dtd. 01/08/2017

in the case of *Ansari Amina Muzhar Ali vs. The State of Maharashtra and Ors.*² observing thus :-

“8. The State Government, by issuing Government Resolution dated 23 August 2017, after noting the observations, has laid down that when approval is to be cancelled, a show-cause-notice be issued, and an opportunity of hearing be given to the concerned and then the decision be taken. The observations made in the order dated 1 August 2017 in Writ Petition No.10133/2016 and order dated 14 August 2017 referred to in the Government Resolution were not challenged, and we have not been shown any decision of any Court saying that this would not be the parameters. We have also not been shown any decision or Government Resolution that a full fledged review of all cases of approval is directed to be taken. We, therefore, do not agree with the submission of the learned A.G.P that the observations of the Court in the earlier Petitions were only in the context of the same officer recalling the order. The observations were not in the context of any officer but were prescribing the act of reviewing the earlier decisions, as such reviews after a long period of time when legitimate expectations arise, parties settle in life; are highly inequitable. Such powers would be arbitrarily used. The Division Bench, therefore, restricted the power of reconsideration/review in limited circumstances of fraud, suppression and misrepresentation. The phrases "fraud", "misrepresentation", and "suppression" are not colloquial terms, but they have a judicially recognized ambit. These three factors need not be restricted to the acts of teachers and management alone, but they can be by the authorities and by way of collusion. In such cases,

² O.S. WP 1380/2019 dtd. 30/03/2021

the review would be permissible. For that purpose, show cause notice should mention that these factors exist.

9. Therefore, when the impugned orders came to be passed, the aspect of whether there was any fraud or misrepresentation or suppression was to be dealt with. The impugned orders based on a show cause proceed only on the basis that Rule 9(8) has not been followed, and with no allegation of any fraud, suppression, misrepresentation or collusion. Therefore, since neither the show- cause-notice nor the impugned order is based on fraud, misrepresentation or suppression, such impugned orders would be contrary to the order passed on 16 August 2017. Considering the language of the Government Resolution dated 23 August 2017 whereby show-cause-notice and opportunity of hearing are contemplated, a reasoned order is to be passed first putting the party to the notice of the fraud or misrepresentation or suppression and then to deal with the same in the impugned order. Since this has not been done and, in view of the order passed on 16 August 2017 in Petitioners' own case, the impugned order is liable to be quashed and set aside."

6. In the case at hand there is no show cause notice to the Petitioner setting out any ground of fraud, misrepresentation or collusion. By using appropriate words, every ground on merits can be dressed up and projected as fraud, however, these phrases, as observed in the decision of *Ansari Amina Muzhar Ali* are not colloquial terms but they have a judicially recognized ambit. The impugned order does not specify any such ground of fraud,

misrepresentation. Even otherwise if they existed, a show cause notice setting out these grounds should have been issued giving adequate notice to the Petitioners.

7. In the light of the law laid down as above, the order passed by the Deputy Director of Education dated 10 May 2022 and the subsequent order dated 9 March 2023 passed by the Education Officer (Secondary), Zilla Parishad, Pune are liable to be quashed and set aside and are accordingly quashed and set aside. The Writ Petition is disposed of.

8. The learned Counsel for the Petitioners states that as a consequence of setting aside of the impugned orders the salary payable to the Petitioner No.1 as per the original approval order, which has not been released, should be so released. The State Authorities will release the arrears of salary accordingly within a period of six weeks from today.

M.M. SATHAYE, J.

NITIN JAMDAR, J.

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PRAKASH
PAWAR

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