

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1532 OF 2021

Shri. Rangrez Wasim Ahmed Zahir Ahmed
and Anr.

...Petitioners

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Vinayak Kumbhar i/b Ms. A.N. Bandiwadekar for the Petitioner.
Ms. Nisha Mehra, AGP for the Respondent Nos. 1 to 4/State.

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

DATE : 8 MAY 2024

P.C. :

. Heard learned counsel for the parties.

2. Petitioner/ employee working with Petitioner No. 2 Educational Institute, are jointly challenging the Order dated 3 March 2018 passed by Respondent No. 2 / Education Officer (Secondary), Zilla Parishad, Solapur. By said impugned Order, the approval for Petitioner No. 1's transfer from unaided to aided post as assistant teacher is rejected.

3. It is submitted that the impugned order is passed without any show cause notice and had an opportunity been given, the

Petitioner / Respondent Management would have given appropriate and necessary explanation to reasons stated in impugned order for rejecting proposal. Learned counsel has further invited our attention to latest Government Resolution (GR) dated 29 April 2024 issued in such cases involving approval to transfer from unaided/partially aided to partially / fully aided posts, whereunder certain class of cases are directed to be placed before Government for sanction.

4. Perused the impugned Order. It has resulted in a situation where inquiry about the grounds of rejection are required to be done first time in this Court. The Division Bench of this Court in the decision of *Nitin B. Tadge Vs. State of Maharashtra*¹ and other companion petitions, after considering similar grievances in large number of cases, has issued following directions :

“PART- II

A. (i) We direct that upon receipt of a proposal seeking approval, the Educational Authority, as per the methodology laid down in the Government Resolution dated 6 February 2012, will communicate the shortfalls/objections in the proposal submitted by the Management/Employer as the case may be calling for explanation giving them reasonable time. Upon receipt of such explanations, the Educational Authority will examine the explanation and pass a reasoned order.

(ii) If any judicial pronouncement is cited regarding the shortfalls/ objections in the explanation, then in the reasoned order, the Educational Authority will specifically address the legal position laid down by the said judicial pronouncement.

(iii) It is emphasized that avoiding referring to and avoiding considering the legal position laid down in the judicial

1 Writ Petition No. 204 of 2019, order dated 16 April 2024

pronouncement would be viewed seriously and may result in action under the contempt jurisdiction of this Court.”

5. In that view of the matter, we dispose of this petition by directing that the impugned order dated 3 March 2018 will be treated as notice to Petitioners of the proposed ground/s for rejection of Petitioner’s proposal, which stands restored to either Respondent Education Officer or Government as the case may be in accordance with GR dated 29 April 2024. If there are any other grounds on which the concerned Education Authority intends to return or reject the proposal, it 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 / orders of this Court etc. if relied upon. The concerned Education Authority is directed to decide the proposal thereafter within a period of 8 weeks, by dealing with the explanation given by the Petitioners as also dealing with case law/orders of this Court, by passing a reasoned order, subject to other time bound directions. The order will be as per directions in *Nitin B. Tadge’s* case as indicated above.

7. We have not expressed any opinion on the Petitioner’s proposal and the same shall be decided on its own merits in accordance with law. Needless to mention that if the concerned Education Authority proceeds to grant proposal as prayed,

consequent benefits and orders will follow, and in that case, the aforesaid procedure/directions will not apply.

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

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)