

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13169 OF 2022

Balu Jaysing Pisal

...Petitioner

**Versus**

The State Of Maharashtra Thr. Secretary

And Ors.

...Respondents

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Mr. Rahul Kadam for the Petitioner.

Mr. S.B. Kalel, AGP for the Respondent/State.

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

DATE : 24 JANUARY 2024

P.C. :

. Heard the learned counsel for the parties.

2. The Petitioner has challenged the order passed by Respondent No.3/Education Officer (Secondary), Zilla Parishad, Pune dated 10 September 2020. After considering the matter on facts as well as on law, we are of the opinion that the impugned order will have to be set aside on the ground that the procedure has not been followed and the Education Officer does not have power to pass the impugned order. Few facts for such a conclusion are as under.

3. The Petitioner and Respondent No.6 are working in the school

run by Respondent No.4/Management. On 21 March 1996 approval for their appointments shown from date 13 June 1992, was granted by the Education Officer (Secondary). It is on 27 August 2020 that Respondent No.4 wrote to the Education Officer that the date of appointment of Respondent No.6 in the approval orders needs to be changed from 13 June 1992 to 19 June 1991. The Education Officer thereafter passed the impugned order on 10 September 2020 stating that the date of appointment of Respondent No.6 in the order of approval shall read as 19 June 1991. The Petitioner aggrieved by this change has filed this petition.

4. The learned AGP has not been able to show us any statutory power that is vested in the Education Officer to effect such a change. The learned counsel for Respondent No.6 submitted that what is carried out is only a correction and in fact such a correction was made by order dated 5 January 2006 and it was because there was a change of Management that application was made and the impugned order was passed.

5. Firstly, the so called order dated 5 January 2006 which finds no reference in the impugned order. There is no reference in the proposal of the Respondent/Management. We find no satisfactory reason because if correction was already carried out, as it why it was necessary again to pass impugned Order after a period of 14 years thereafter. Even assuming that 2006 order is to be considered, the same is after a period of 10 years from the date of approval and from

the year 1996 to 2006 neither the Management, nor the Respondent No.6 took any steps to get the date of appointment corrected.

6. Therefore, once an approval was granted from a particular date, which entry remained for more than two decades, such a correction, clerical or typographical, would alter the seniority list. In these circumstances, we are of the opinion that since the Education Officer did not have the power to do so, the impugned order must be set aside and is accordingly set aside. Even assuming that order dated 5 January 2006 (which is placed on record by way of reply by Respondent No.6 and not by the State) exists, the same must suffer the same fate for lack of power.

7. Accordingly, Writ Petition is allowed in terms of prayer clauses (a) and (b). Necessary changes be carried out in the record. We make it clear that the setting aside of the order is not on the merits of the matter. Since we have set aside the order on the above grounds and not on merit, it is open to the parties to agitate the contention regarding the correct date of appointment in the appropriate proceedings.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)