

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

WRIT PETITION NO. 11755 OF 2023

Mr. Shadab Rafique Kauchali & Ors. ... Petitioners
versus

The State of Maharashtra & Ors. ... Respondents

.....

Mr.Chetan Patil with Mr. Mandar G. Bagkar for the Petitioners.
Mr.M.M.Pabale, AGP for the Respondent -State.

.....

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

DATE : 19 APRIL 2024

P.C. :

. Heard the learned Counsel for the parties.

2. The Petitioners have challenged the order passed by Respondent No.2- the Regional Deputy Director of Education, Mumbai dated 29 May 2023 setting aside approval granted by Respondent No.3-the Education Officer (Secondary), Zilla Parishad, Raigad on 19 August 2020 to the appointment of Petitioner No.1 on the proposal submitted by Petitioner No.2-Institution. Approval is cancelled at the time when Petitioner No.1's name was to be entered in the Shalarth system which is maintained by the State Government for disbursal of salary grant.

3. As to the issue whether the Deputy Director of Education would have power of review of the order of approval granted at the

time of entering the name in the Shalarth system had already come up for consideration before this Court. In the case of *Amol Baban Sangar V/s. The State of Maharashtra and Others*¹ and in the case of *Abhijit Ashok Waje v/s. The State of Maharashtra and Ors. and other connected petitions*², the Division Benches of this Court have taken a view that there is no substantive power of review while entering the name of an approved employee in the Shalarth system. The Deputy Director of Education has no jurisdiction to refuse to enter the name of the employees in Shalarth system. This exercise is to be done in different circumstances and for which a different methodology is prescribed. If the Deputy Director has to review the approval granted and set aside the same on the ground that it was based on misrepresentation or fraud, the separate Government Resolution and procedure for that purpose are contemplated. The impugned order does not spell out any of these facets. There is no notice to the Petitioners that there is fraud, misrepresentation and collusion warranting cancellation of his approval. Power is exercised on the ground that approval was incorrectly given.

4. The learned Counsel for the Petitioners submits that even otherwise the grounds taken for cancellation are not tenable. First ground is that the appointment of Petitioner No.1 was considered during the period of ban imposed by the Government Resolution dated 12 February 2015. The Division Bench of this Court in the case of *Mr. Wasim Nijam Purkar Versus The State of Maharashtra*

1 Writ Petition No. 8966 of 2021 dated 21 February 2022

2 Writ Petition No. 8881 of 2021 dated 21 January 2022

*and Others*³ has observed that the said Government Resolution is not applicable to the minority institutions. It is not debated before us that Petitioner No. 2 is a minority institution.

5. The second point taken in the impugned order is that based on Government Resolution dated 7 March 2019 that at the time when the appointment of the Petitioner was made, the post was not sanctioned. The learned Counsel for the Petitioners points out that it is not disputed that the Petitioner was appointed as a vacancy arose on retirement of one of the employees of the Respondent - Management.

6. Therefore, on both, the power of the Deputy Director of Education to review as well as on merits, the impugned order cannot be sustained. Accordingly, the order dated 29 May 2023 passed by Respondent No. 2-the Regional Deputy Director of Education is quashed and set aside. Further, consequential steps be taken by Respondent No.2 based on the approval already granted to enter the name of Petitioner No.1 in the Shalarth system within a period of four weeks from today.

7. The writ petition is disposed of in above terms.

(M.M.SATHAYE, J.)

(NITIN JAMDAR, J.)

³ Writ Petition No. 10444 of 2022 dated 30 August 2023.