

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6313 OF 2024

Ashwini Prashant Kadam And Anr

...Petitioners

Versus

The Education Officer (Secondary) Zilla

Parishad, Thane And Anr

...Respondents

Mr. Aniruddha A. Garge a/w. Mr. Kashyap Bhalerao for the
Petitioners.

T. J. Kapre, AGP for the Respondent-State

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

DATED : 29 APRIL 2024

P.C.:

. Heard learned counsel for the parties.

2. Petitioner No. 1 Employee and Petitioner No. 2 Education Institute are jointly challenging the Order of 30 January 2023 passed by Respondent No. 1 / Education Officer (Secondary), Zilla Parishad, Thane. By said impugned Order, the approval for transfer of Petitioner No. 1 from unaided to aided post of assistant teacher is rejected.

3. It is submitted that the impugned order is passed without any
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show cause notice and had an opportunity been given, the Petitioners would have given appropriate and necessary explanation to reasons stated in impugned order for rejecting proposal.

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.

5. The Division Bench of this Court in the decision of *Nitin B. Tadge Vs. State of Maharashtra*¹ and other companion petitions after considering that in large number of cases Petitions are filed making a similar grievance, has issued the directions as under:

“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

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

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

6. In that view of the matter, we dispose of this petition by directing that the above impugned order will be treated as notice to Petitioners of the proposed ground/s for rejection of Petitioner No. 1’s proposal, which stands restored. If there are any other grounds on which the Respondent Education Officer intends to return or reject the proposal, he is directed to communicate the same to the Petitioners within a period of 3 weeks from today.

7. The Petitioners shall thereafter submit their explanation to the proposed grounds, along with supporting material including government resolutions, case laws / orders of this Court etc. if relied upon. The Respondent Education Officer is directed to decide the proposal of Petitioner No. 1 thereafter within a period of 8 weeks, by dealing with the explanation given by the Educational Institute 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 passed as per directions in *Nitin Tadge’s* case, as stated above.

8. We have not expressed any opinion on the Petitioners' proposal and the same shall be decided on its own merits in accordance with law. Needless to mention that if the Respondent Education Officer proceeds to grant proposal as prayed, consequent benefits and orders will follow, and in that case, the aforesaid procedure/directions will not apply.

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

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)