

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

WRIT PETITION NO. 7192 OF 2024

Shri Krishna Narayan Patil and Others ... Petitioners
versus
The State of Maharashtra and Others ... Respondents

Mr.N.V. Bandiwadekar, Senior Advocate i/b. Mr.Prashant Bhavake for the Petitioners.

Mr.P.P.Kakade, Addl.GP with Mr.Aditya Deolekar, AGP and Mr.Karan Thorat, 'B' Panel Counsel for Respondent Nos. 1 to 5-State.

Mr.Suresh Pakale, Senior Advocate with Mr.Nilesh Desai and Ms.Netra Tembe i/b. Ms.Padmaja Malgaonkar for Respondent No.6.

**CORAM : RAVINDRA V. GHUGE
&
ASHWIN D. BHOBE, JJ**

DATE : 18TH DECEMBER, 2024

P.C.:

1. This is yet one more case wherein the learned Senior Advocate for the Petitioners points out that the letter of the then Hon'ble Minister for Education, issued in October, 2022 led to the issuance of the notice dated 3rd October, 2022 calling upon these Petitioners to show cause why approvals granted to their transfer from the unaided to partially aided or partially aided to fully aided establishments, should not

be cancelled.

2. The learned Senior Advocate for the Petitioners submits that for the present, the Petitioners are not desirous of mentioning the name of the then Hon'ble Education Minister. They are interested in getting justice from this Court. They are in employment today. Their approvals have been cancelled, despite the fact that they have been working from 2000-2015, respectively and their approvals to the unaided posts having granted in between 2004 to 2016. Their transfers on the aided posts date back to the period 2015 to 2021 and they have received approvals on 2nd June, 2021, 4th August, 2021, 5th August, 2021 and 2nd September, 2021. A ready reference chart is placed at Page No. 32 in the Petition paper book.

3. There is no dispute that the Petitioners were issued with show cause notices and by mentioning that the inquiries have been initiated on account of the order of the then Hon'ble Education Minister, the Deputy Director of Education, Kolhapur Division, has passed an order cancelling their approvals vide the impugned order dated 26th April, 2024. This Petition was filed on 30th April, 2024. This is the first hearing on the merits in the matter and the Petitioners pray for

ad-interim protection. Even the educational institution/trust, is before this Court as Petitioner No.9, through the Secretary.

4. The learned Senior Advocate for Respondent No. 6, has tendered an affidavit in reply dated 16th December, 2024, copy of which is supplied to the learned Senior Advocate for the Petitioners, yesterday evening. According to the Affiant, who claims to be Respondent No.6, all the Petitioners are bogus employees and are imposters. The learned Senior Advocate is instructed to say that all of them are strangers to the educational organization. All of them were never selected or appointed. All of them are not discharging their daily duty. All of them are only shown to be in employment by a paper arrangement. If they have been drawing their salaries, all of them have indulged in a fraud. The learned Senior Advocate has read out the entire affidavit in reply setting forth this contention.

5. What we find from the record at this ad-interim stage is, that one of these Petitioners, namely, Namdev Tukaram Patil along with the Management of the Educational Institution, namely, Sharda Shikshan Prasarak Mandal, Taluka Chandgad, District Kolhapur, were before this Court in Writ Petition No. 3154 of 2021. By a judgment dated 28th July,

2021, the Writ Petition was allowed by relying upon the law laid down by the Division Bench of this Court in the judgment dated 8th October, 2020 delivered in Writ Petition No. 8643 of 2019 (***Rajaram S. Mandale and another vs. The State of Maharashtra and Others***) and the said impugned order of the Education Authority was quashed and set aside and the Authority was directed to approve the transfer of Namdev Tukaram Patil on the aided establishment with effect from 15th June, 2016 and sanctioned the payment of monthly salary as applicable to the said post.

6. Despite the judgment of this Court, the Deputy Director of Education, has ventured into cancelling the approval, even of Namdev Tukaram Patil. *Prima facie*, this is a glaring instance of misuse of authority and jurisdiction. We would deal with this as we hear the Petition finally.

7. We are reminded of the view taken by this Court in the Judgment dated 12th December, 2018 [Coram: Shri. Abhay S. Oka (as His Lordship then was) and Hon'ble Shri. Sandeep K. Shinde, JJ.] passed in Writ Petition No.8987 of 2018 (***Balasaheb Vitthalrao Tidke V/s. The State of Maharashtra and Anr.***). The two observations of the

Court in two paragraphs (both paragraphs are numbered 2), read as under :

“2. In the order dated 3rd December, 2018, we have recorded the assurance of the State that it will be ensured that the process of transfers will not be influenced by the recommendations made by elected representatives of people and the Hon’ble Ministers who are not concerned with the process of transfers. In terms of the said statement, Mr. Dinesh Kumar Jain, the Chief Secretary of the Government of Maharashtra has filed an Affidavit. The Affidavit dated 12th December, 2018 is taken on record and marked ‘A’ for identification. Paras-1 and 2 of the said Affidavit reads thus :

“1. I submit that I am filing the present Affidavit for the limited purpose of stating that the process of transfer at the level of the Government will not be influenced by any recommendations made by any political leaders, members of political parties or any Hon'ble Ministers who are not part of the process of transfers.

2. I submit that all authorities who are competent to effect the transfers will be advised to strictly follow provisions of the Maharashtra Government Servants Regulation the of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 while issuing transfer order.”

2. We accept the statements made in paragraphs-1 and 2 of the said affidavit quoted above as the Undertakings given on behalf of the State of Maharashtra. Now there is a clear assurance that all transfers will be effected strictly in accordance with the provisions of the said Act of 2005 and none of the transfers will now be influenced by the recommendations of the political leaders including the Hon'ble Ministers (who are not a part of the process of transfers). We direct that the statements made in para-1 of the said Affidavit are brought to the notice of all the concerned

who have to exercise powers of transfer under the said Act of 2015 so that there will not be any attempt to make any recommendations thereby influencing the process of transfers of the Government Servants.”

8. **Issue notice to the Respondents.** returnable on 24th February, 2025. The learned Addl. GP waives service of notice on behalf of Respondent Nos. 1 to 5, State. The learned Advocate Ms.Malgaonkar waives service of notice on behalf of Respondent No. 6.

9. Until further orders, the impugned order shall stand stayed. These Petitioners would be entitled to earn their salaries as per the approval granted prior to the impugned order, from the month of December, 2024 payable in January, 2025 and onwards. Insofar as the arrears are concerned, the State Government would deposit the arrears of salaries from April, 2024 till November, 2024, in this Court, within a period of 45 days from today. The said deposit of amount would be subject to the decision in the Petition.

10. To balance the equities, all teaching and non-teaching Petitioner employees, except Namdev Tukaram Patil, would tender their affidavit undertakings in this Court that, if this Court finally concludes or

if any Authority, so directed by this Court to investigate, concludes that these Petitioners have never been selected or appointed or are not working or were not discharging their duties, they would return this amount paid to them.

11. All office objections, if any, to be removed, on or before 16th January, 2025, failing which, the Petition would stand dismissed without reference to the Court, on 17th January, 2025.

(ASHWIN D. BHOBE,J.)

(RAVINDRA V. GHUGE, J.)