



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2469 OF 2018

1. Peoples Education Society, Mandane,
Tq. Shahada, District Nandurbar,
Through its Chairman,
Shri. J. T. Pawar
2. Smt. Deepawali Suresh Ahire,
Age : 37 Years, Occ. Service,
R/o. "Ai", 19 Kashiram Nagar,
Shahada, Tq. Shahada,
District Nandurbar. ..Petitioners

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Nashik Division, Nashik,
District Nashik
4. The Education Officer (Secondary)
Zilla Parishad, Nandurbar. .. Respondents

WITH

WRIT PETITION NO. 2470 OF 2018

1. Peoples Education Society, Mandane,
Tq. Shahada, District Nandurbar,
Through its Chairman
Shri. J. T. Pawar
2. Mahendra Bajirao Pawar,
Age : 34 Years, Occ. Service,
R/o. Adarsh Vidyalaya Va Kala and
Vanija Junior College, Mandane,
Tq. Shahada, District Nandurbar. .. Petitioners

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai – 32.
2. The Director of Education,
Maharashtra State, Pune.
3. The Education Officer (Secondary)
Zilla Parishad, Nandurbar. .. Respondents

WITH
CIVIL APPLICATION No. 11625 of 2021
IN W. P. No. 2469 of 2018

Bhimsingh Harsing Pawara .. Appellant
 Versus
 Peoples Education Society Mandane
 Through its Chairman and others .. Respondents

.....

Advocate for the Petitioners : Learned Senior Advocate Mr.
 V. D. Sapkal a/w Adv. Atharva D. Khedkar i/by Adv. S.R. Sapkal
 A.G.P for Respondent-State : Mr. P. S. Patil
 Advocate for intervenor : Mr. Sandesh R. Patil

....

CORAM : R. G. AVACHAT AND
SANDIPKUMAR C. MORE, JJ.

DATED : APRIL 07, 2025

ORAL JUDGMENT:- (Per R. G. Avachat, J)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. Both these petitions, under Article 226 of the Constitution of India, are taken up for decision together, since common questions of

facts and law arise therein. The main challenge in both these Writ Petitions is to the order of respondent- Deputy Director of Education, who, vide his orders dated 29.06.2017 and 06.02.2018, cancelled the approval granted by the Education Officer to the appointments of the petitioners as “*Shikshan Sevaks*” and thereafter as “Assistant Teachers”.

3. The learned Senior Advocate would submit that the Director of Education did not have jurisdiction to either sit in appeal or review the order passed by the Education Officer. According to the learned Senior Advocate, neither the MEPS Act nor any regulation issued thereunder authorizes the Director of Education to exercise such powers.

4. He relied on the two judgments of this Court namely *Ashok S/o Nilkanth Dhale Vs. State of Maharashtra [2016(5)Mh.L.J.]* & *Sandeep Chudaman Shinde and Others Vs. State of Maharashtra and Others 2023 DGLS (Bom.)5194*, wherein it has been so observed.

“9. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner, learned AGP for respondent Nos. 1 and 2 State, the learned counsel for respondent No.3 and learned counsel appearing for Nos. 4 and 5. With their able assistance, perused the pleadings in the petitions and annexures thereof. Clauses 1 and 2 of the Government Resolution dated 13.04.11 issued by the General Administration Department Government of Maharashtra, reads thus :

“१) गट—अ व गट—ब संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची विशेष मोहीम सुरु करण्यात यावी.

२) गट—क व गट—ड संवर्गातील पदांमधील मागासवर्गीयांचा अनुशेष भरण्याची पदभरतीची प्रक्रिया सुरु करण्याकरीता वित्त विभागाचा दिनांक २९.११.२०१० च्या शासन निर्णयाच्या आधीन राहून विशेष मोहीम करण्यात यावी.

Thereafter, by issuing another Government Resolution dated 21.08.2013, time to appoint the candidates from the reserved category, so as to fill in the backlog, has been extended till 31.03.2013.

(7) By amending the petition, the Petitioners canvassed in paragraph Nos. 16-A and 16-B as under:

16-A. Petitioners submit that, it has been reliably learnt that the complainant has filed numerous complaint with the office of the Deputy Director, with regard to the issue of appointments and approvals of the various teachers. Thus, it appears that, the complainant is habitual complainant and service jurisprudence does not recognize the concept of public interest and the said issue is no more res integra in the wake of the authoritative pronouncement of Hon'ble Apex Court in case of Duryodhan Shaush case (1998) 7 SCC 273, which is reiterated and followed in (2004) 3 SCC 363 as well as (2010) 9 SCC 655 Hari Banslal. Thus there was no occasion to try and entertain the complaint of the habitual complainant, who has neither participated in the recruitment process, wherein the petitioners have been selected and appointed by following due procedure of law. In any case the appointments of the petitioners are of the year 2012 respectively as such a substantial period has been lapsed, therefore, also the complaint ought not to have been entertained by the authorities and necessarily should have been rejected at threshold.

10. It is obvious that a total stranger has approached the education department alleging that the petitioners have been illegally appointed. The education department has entertained the complaint, practically giving audience to a stranger who claims to be a social worker and heads a political outfit, to unsettle an employee, more so a teacher on the basis of baseless allegations.

15. We are astonished by the conduct of the education department. The only issue as regards the appointments of the Petitioners is that the vacancies were not available when they were appointed. The petitioners have been granted approval and have put in almost a decade of service. Such cases have to be delicately handled by the Education Officer. No doubt irregularities committed by the Management have to be dealt with sternly. However, when an employee has been working for a long time, unless any illegality or fraud turns upon the conduct of such an employee and it is proved or is apparent that laches are attributable to his conduct or the appointment is patently illegal, issuing an order of cancellation of approval when they are not at fault, is an issue which needs to be thought over and pondered upon by the Education Department.”

5. He would further submit that the petitioners were appointed against reserved category posts. Both the petitioners fulfilled all the criteria for the recruitment to those posts. One of the petitioners belong to Scheduled Caste, while the other is of Scheduled Tribe category. According to him, there are sufficient pleadings to indicate that procedure prescribed for filling up the vacancy, has been

followed. In affidavit-in-reply, there is no specific challenge to those averments. According to him, the matter has been dug out at the instance of the stranger. In service matters, strangers should have no *locus standi*. The Director of Education ought not to have succumbed to pressure exerted by the intervenor herein, who claims to be one of the trustees of the education trust. His right, if any, would be determined by the appropriate authority under Maharashtra Public Trust Act. He took us through each and every document indicating the Education Officer to have duly approved the appointments of these petitioners and Director of Education did not have any business to interfere therewith.

5. On the other hand, the learned A.G.P. would submit that no prescribed procedure was followed and that, the order passed by the Director of Education was within his powers. He relied on certain paragraphs of the judgment of this Court in the case of **Gitanjali d/o Prakash Patil Vs. The State of Maharashtra and others in Writ Petition No. 2549 of 2018 decided on 10th July 2024** wherein reference has been made to certain Government Resolutions, authorizing the Director of Education to take such cases and when the facts warrant, he may recall approval granted by the Education Officer. He would further submit that the Management did not place before the Director of Education the name of newspaper wherein the advertisement was published, who were the candidates applied for the posts pursuant to

said advertisement, the marks secured by each and every candidates appeared for the interview etc. In short, according to the learned A.G.P, no tangible proof of the management to have followed the prescribed procedure for filling up the vacancy, was placed on record. He has strongly placed reliance on the Judgment in the case of **Gitanjali** (supra) to submit that the facts and circumstances therein were similar to the one in question. It was the very management although different recruitment procedure was there. The petitioners therein have been unsuccessful in those Writ Petitions. They were unsuccessful before the Apex Court as well. As such, according to the learned A.G.P, the issue decided in **Gitanjali's** case is squarely applicable to facts and circumstances of the present case. The same cannot be reopened in this matter. He also relied on the judgment of this Court in the case of *Sou. Revati Kusha Wagh and Another Vs. The State of Maharashtra and Another in Writ Petition No. 10580 of 2015 with W. P. No. 1145 of 2016 dated 09.03.2017* and recent judgment of this Bench in the case of *Sandeep Chudaman Shinde and Another Versus State of Maharashtra and others 2023 DGLS (Bom.) 5194 Coram : R.V. Ghuge & Y.G. Khobragade, JJ.* to submit that there has to be strict compliance of the procedure for the recruitment, prescribed under Section 5, Section 9 and Requisite Rules thereunder. Since the same has not been complied with, the Director of Education rightly revoked the approval. The learned AGP reiterated reasons mentioned

in the order impugned herein.

6. The learned Advocate for the intervenor would reiterate submissions made by the learned A.G.P. He relied on the judgment of this Court in case of *Datta Education Society Vs. The State of Maharashtra and others 2016(6) ALL MR 387* to submit that complainant therein was one of the trustees and the Division Bench of this Court, therefore, held him to have interest in the affairs of the trust. It was further observed that, the matter required to be deeply probed. He then relied on the facts of the said case to submit that approval granted therein was rightly revoked by the authority concerned and upheld by this Court. He also took us through written complaint made by him to the learned Joint Charity Commissioner. According to him, since 2009, there has been no election. The President appears to have acted in breach of authority. He therefore, urged for the dismissal of both the petitions.

7. We have considered the submissions advanced. One of the petitioners namely Mahendra Bajirao Pawar belongs to Scheduled Caste category while the other is of Scheduled Tribe. The State of Maharashtra had initiated special drive with direction to all the Education Institutes to fill up the vacancies reserved for Reserve Category candidates. The communication was issued by the Director of Education to all the Educational Institutes with a direction to

initiate recruitment process for filling up reserve posts. In view of the same, the respondent-Management was not expected to seek independent prior permission to fill up the vacancies of the reserved posts.

8. It has been specifically averred in the Writ Petition that an advertisement was issued. The learned senior counsel submits across the bar that it was an advertisement in the daily "*Apla Maharashtra*". He showed his willingness to place on record hard copy of the said advertisement. We do not find specific Traverse to the pleadings in the Writ Petitions. We also do not expect the Management now to place on record copy of the advertisement since it has to be presumed that the Education Officer, who granted the approval, had gone through each and every aspect relating thereto. To our query, as to whether the Education Officer, who allegedly granted approval in contravention of Rules and Regulations, has been taken to task or subjected to any departmental action is concerned, the learned AGP did not have any instructions in that regard. The appointments of the petitioners are of the year 2012. More than 13 years have passed thereafter. Both of them belong to Scheduled Caste and Scheduled Tribe category respectively. The learned A.G.P. was candid enough to concede that there is Government Resolution directing not to revoke appointment of Reserved Category candidates, if there is any minor

breach.

9. The submissions of the learned A.G.P that the post ought to have been kept vacant, if concerned category candidate was not available, or if some other category candidate was appointed, his appointment ought to have been only for the period of one year, we do not agree with the submission made by the learned AGP, since rules 9(a) of Maharashtra Employees of Private Schools (Conditions of service) Rules, 1981 reads thus :-

“9(a) In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in the sub-rule(7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward Classes.

10. Close reading of the said Rule would indicate that if a candidate from a particular reserved category was not available, the said post can be filled up from other reserved category. There is no such phraseology that the appointment has to be for a particular period i.e. for a year only.

11. In **Gitanjali's** Judgment (supra) the Division Bench of this Court referred to the Government Resolution suggesting that the Director of Education was authorized to exercise his power and

in such exercise, he is even authorized to recall the orders of granting approval passed by the Education officer. In view of the same, we do not wish to dwell at length on the issue that the exercise of powers by Director of Education was not statutorily bad. True, no statute provides for right of appeal to Director of Education or power of review. In spite of the authority having been relied by the learned A.G.P, we reiterate that we do not make any observation in this regard.

12. The facts remain that the Education Officer, supposedly verified all the documents put forth before him for granting approval. The intervenor herein in his complaint to the learned deputy Director of Education, has specifically admitted that the Management had given advertisement in a daily newspaper for filling up the vacancies of reserved category candidates. He was confronted with the said averment. He would submit the said averment pertains to some other year i.e. 2011. It was his oral submission, close perusal of his complaint do not inlead us to agree with him. As such, the fact remains that at the instance of the intervenor Director of Education reopened the case of approval granted by the Education Officer.

So far as the aspect of workload is concerned for the post which has been filled up by appointing Smt. Deepavali Suresh Ahire is concerned, now we do not wish to go therein, since she

has been in service for not less than 13 years, and rendering the same continuously. For all the aforesaid reasons, we are inclined to allow the Writ Petition.

13. The Writ Petitions, therefore, stand allowed in terms of prayer clauses (B) (C) and (D) of both the Writ Petitions which reads thus :-

(B) To quash and set aside Orders dated 29.06.2017 and 06.02.2018 passed by the Deputy Director of Education, Nashik Division, Nashik, by issuing appropriate writ or order or directions in the nature of writ.

(C) To restore the Order of Education Officer (Secondary) granting approval to the appointment of petitioner No.2 dated 22.07.2016, by issuing appropriate writ or order or direction in the nature of writ.

(D) To direct Education Department to include the name of petitioner in on-line payment system for releasing the payment by issuing appropriate writ or order or direction in the nature of writ.

14. Rule made absolute in above terms.

15. Intervention application stands disposed of.

(SANDIPKUMAR C. MORE)
JUDGE

(R. G. AVACHAT)
JUDGE

Y.S. Kulkarni