

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12142 OF 2022

Shaikh Lubna Ghazal Abdul Maboob

Age : 31 years, Occ : Service,

R/o. : Near Gandhi Park, Shah Inayat

Qalandar Mohalla, Dist. Parbhani.

..Petitioner

Versus

1. The State Of Maharashtra
Through School Education Department
Mantralaya, Mumbai-400008.
 2. The Director of Education,
(Primary), Pune.
 3. The Deputy Director of Education
Aurangabad Division, Aurangabad.
 4. The Education Officer (Primary)
Zilla Parishad, Parbhani.
 5. New Modal Education and Welfare Society,
Aurangabad Sanchalit
Through its President,
Jawed Rahim Moghal,
R/o. 147/A, Motiwala Nagar, Near MGM Hospital,
Aurangabad.
- ..Respondents

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Advocate for the Petitioner : Mr. Kazi S.S.
AGP for Respondent/State : Ms. R.R. Tandale

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**CORAM : S.G. MEHARE &
SHAILESH P. BRAHME, JJ.**

DATED : JANUARY 06, 2025

ORDER :

1. Heard finally at the admission stage with the consent of
the parties.

2. The petitioner is aggrieved by the order dated 01.03.2019 passed by respondent no.3 – Deputy Director of Education revoking the approval granted to the petitioner by respondent no.4 – Education Officer on 29.01.2018. The petitioner is also soliciting the directions for the consequential relief.

3. It is a case of the petitioner that respondent no.5 is a minority institution. She was appointed to the post of Assistant Teacher on non-grant basis by order dated 01.03.2013 by following due procedure of law. Her appointment was approved by respondent no.4 – Education Officer on 29.01.2018. Thereafter, she was continued in services. By the impugned communication dated 01.03.2019, respondent no.3 – Deputy Director of Education revoked the approval for the reasons that due procedure of law was not followed in appointing her. There was no sanctioned post as per the staffing approval of 2012-2013 and there was no prior permission of the Education Officer for the appointment.

4. The learned counsel for the petitioner submits that the petitioner was appointed after following due procedure of law. There was advertisement issued on 13.06.2012. Before issuing advertisement, by letter dated 01.06.2012, the permission was solicited from the Education Department. He would point out the application for prior permission as well as advertisement and its translation. It is further submitted that the staffing approval, which is

placed on record for the year 2012-13 as well as 2013-14 would indicate that four sanctioned posts were available and appointment of the petitioner was against the vacant sanctioned post. He would further submit that the Education Officer after considering the proposal granted her approval which cannot be faulted by way of impugned communication. Additionally, it is submitted that no proper opportunity was given to her by the Deputy Director of Education.

5. The learned AGP repels the submission of the learned counsel for the petitioner by relying on the affidavit in reply. She would submit that respondent no.3 is justified in revoking the approval because there was no sanctioned post available. The advertisement was not placed before the authority. She would further submit that the Deputy Director of Education conducted hearing and extended opportunity to the petitioner as well as management. It is further submitted that it was admitted by petitioner that relevant document was not before the authority. She would point out Ground Nos. XVI of the memo of writ petition.

6. We have considered the rival submissions of the parties. The Deputy Director of Education conducted hearing before taking a decision. Thereafter, by impugned communication, the approval was revoked. The contention of the petitioner that opportunity was not

extended to her cannot be accepted considering the minutes of the proceedings.

7. The petitioner was initially approved by order dated 29.01.2018. The staffing approval which is placed on record would indicate that for the academic year 2012-13 and 2013-14, four posts were sanctioned. The petitioner's appointment was from amongst the sanctioned and available vacant post. The submission of the learned AGP that the staffing approval was not produced cannot be countenanced because the staffing approval is part of the record of the Education Officer, who is a sub-ordinate officer. Even if the management or the employee concern does not produce the said record, it would be always open for the Deputy Director of Education to solicit information from the concerned Education Officer.

8. Similar is the case in respect of non-production of the advertisement. The relevant record could have been called for from the concerned Education Officer. The minutes of the hearing conducted by the Deputy Director of Education does not reflect that any endeavour was made by the Deputy Director of Education to call upon either the petitioner or the management to produce certain documents, which were wanting. No endeavour has also been made to solicit the information from the Education Department.

9. The Deputy Director of Education while exercising the jurisdiction is not an Appellate Authority. As the self-same Education

Officer has no powers to revoke its own order. Being the higher authority, the Deputy Director of Education exercises the powers. Unless and until there is a fraud or glaring defect in the procedure followed in appointing the employee, the orders of Education Officers cannot be upset. It is not permissible for the higher officer to find fault with the approval granted earlier. We do not notice that there is any fraud, suppression of material facts or any patent illegalities in undertaking the recruitment of the petitioner. In that view of the matter, we find that the impugned order is unsustainable. We, therefore, pass the following order :

ORDER

- (i) Writ Petition is allowed partly.
- (ii) The order dated 01.03.2019 passed by respondent no.3 – Deputy Director of Education is quashed and set aside.
- (iii) The petitioner shall be entitled to receive all the consequential benefits. The same shall be disbursed by the respondents to the petitioner as expeditiously as possible.

(SHAILESH P. BRAHME, J.)

(S.G. MEHARE, J.)