

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11771 OF 2022

Manik Mahadeo Gawade

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

Mr. Prashant Bhavake, for the Petitioners.

Mr. V. M. Mali, A.G.P. for the Respondent-State.

Mr. S. R. Ganbavale, and Mr. Shantanu Patil, for Respondent Nos. 6 and 7.

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: M. S. Karnik &
Sharmila U. Deshmukh, JJ.

Date

: 10th October, 2025.

ORDER (Per : Sharmila U. Deshmukh, J.)

1. Rule. Rule made returnable forthwith and taken up for final disposal with consent of the parties.
2. The Petition impugns the Order dated 5th November, 2019 passed by the Respondent No.4 – Deputy Director cancelling the individual approval granted to the appointment of Petitioner in the post of Shikshan Sevak at Respondent No. 7-Secondary School.

3. The Petitioner has acquired M.A. M.Ed. qualification and is eligible to teach Marathi subject at the secondary school. The Petitioner belongs to open category and due to retirement of Assistant Teacher in Respondent No. 6-School by superannuation on 30th April, 2013 a post of Shikshan Sevak from open category became vacant in Respondent No. 7-School. The Respondent Nos. 6 and 7 approached the Respondent No. 5-Education Officer seeking information about suitable surplus teacher to fill up the said post however, there was no response by the Respondent No. 5. An Application dated 10th June, 2013 was submitted by the Headmaster of Respondent No. 7-Secondary School seeking permission to issue advertisement for recruitment to the vacant post of Shikshan Sevak to which also there was no response. The Respondent Nos. 6 and 7 were therefore constrained to issue an advertisement for recruitment to the post of Shikshan Sevak.

4. The Petitioner being eligible applied for the said post and was found suitable and came to be appointed as Shikshan Sevak from open category on 1st July, 2013. Since then the Petitioner has been continuously working on the Respondent No. 7-School after having successfully completed probationary period.

5. The proposal submitted to Respondent No. 5 seeking individual approval to the appointment of the Petitioner was approved vide order

dated 27th November, 2018. On 20th August, 2019, the Respondent No. 4 issued notice and after hearing the Respondent Nos. 6 and 7 revoked the approval by order dated 5th November, 2019.

6. Mr. Bhavake, learned Counsel appearing for the Petitioner has taken this Court through the impugned order and would submit that the order passed by the Respondent No. 4 – Deputy Director is completely without jurisdiction as the Respondent No. 5 – Education Officer had already granted approval to the appointment of the Petitioner. He submits that the impugned order amounts to review of order of Respondent No. 5 without there bring any allegation of fraud, misrepresentation or suppression in the show cause notice. He would submit that the consistent view taken by this Court is that unless there is any allegation of fraud, misrepresentation or suppression it is not open for the Deputy Director to review the order passed by the Education Officer on the ground of irregularity. Drawing support from the decision of this Court in the case of *Prajakta Sharad Powar vs. The State of Maharashtra* passed on 20th August, 2025, in Civil Writ Petition No. 12440 of 2022, he submits that in an identical situation, this Court has held that the Petitioner therein was not put to notice as regards fraud, misrepresentation or suppression and liberty was granted to issue fresh show cause notice on the allegation of fraud, misrepresentation or suppression if the authority

deems it fit and proper and had restored the approval of the Petitioner. He would submit that the impugned order came to be passed based on third party complaint without considering that there was no malafide act on part of the management in securing the approval to the Petitioner's appointment.

7. *Per contra* Mr. Mali, learned AGP would submit that the impugned order came to be passed by taking into consideration that there was backlog of three post which was not reflected in the staffing pattern and there was no transparency in the appointment process. He submits that as there was irregularity in the appointment of the Petitioner, the approval came to be rightly revoked.

8. There is no dispute about the factual position of the Petitioner being appointed on 1st July, 2013 in the post of Shikshan Sevak and that approval was granted by the Respondent No. 5-Education Officer on 27th November, 2018. Perusal of the impugned order would indicate that the Respondent No. 4 has revoked the approval granted on 27th November, 2018 by the Respondent No. 5-Education Officer by finding irregularities in the appointment of the Petitioner. The issue to be considered is whether the approval which is already granted by the Respondent No. 5-Education Officer can be cancelled by the Respondent No. 4 – Deputy Director without any allegation of fraud, misrepresentation or

suppression.

9. We have perused the show cause notice dated 20th August, 2019 which does not make out any case of allegation of fraud, misrepresentation or suppression and the show cause notice has been issued only in order to verify whether the approval granted to the Petitioner's appointment suffers from irregularity.

10. The controversy in the present case is no longer *res integra* and has been settled by the decision of this Court dated 30th March, 2021 passed in Writ Petition No. 1380 of 2019 in the case of ***Ansari Amina Muzhar Ali v/s. The State of Maharashtra and Ors*** along with connected Writ Petitions. In that case the Petitioner's approval came to be revoked and this Court held that the impugned orders based on the show cause notice did not make any allegation of fraud, misrepresentation, suppression or collusion and neither the impugned order was based on such allegation and quashed and set aside the order revoking the approval.

11. Mr. Bhavake, has rightly relied upon the decision in the case of ***Prajakta Sharad Powar vs. The State of Maharashtra*** (supra) where in identical facts, the approval granted by the Education Officer came to be revoked by the Deputy Director on the ground that the appointment is irregular, this Court held that in the absence of any allegation of fraud, misrepresentation or suppression in the show cause notice, the impugned

order cannot be sustained. This Court while quashing the impugned order granted liberty to the Respondents to issue a fresh show cause notice on the allegation of fraud, misrepresentation or suppression if the authority deems it fit and proper.

12. In the present case, the revocation of approval by the Respondent No. 4-Deputy Director is not based on any reasoning of fraud, misrepresentation or suppression. There is no finding of any malafide action on the part of management or Petitioner as regards securing the approval to the appointment of the Petitioner. The Deputy Director has reviewed the order passed by the Respondent No. 5-Education Officer on the ground of irregularity mentioned therein. It is by now well settled proposition that unless power of review specifically or by necessary implication is provided, the authority cannot review its own order and only when there is case of fraud or misrepresentation made out that the order can be recalled.

13. As neither the show cause notice nor the impugned order revokes the approval granted to the petitioner on the ground of fraud, misrepresentation or suppression, the impugned order is clearly unsustainable and is liable to be quashed and set aside and accordingly is quashed and set aside.

14. It is open for the Respondent to issue fresh show cause notice on

the allegation of fraud, misrepresentation or suppression, if the authority deems it fit and proper and the quashing of the impugned order in the present case would not come in the way of issuance of fresh show cause notice and fresh consideration on merits of the case.

15. With the above observations, the impugned order dated 5th November, 2019 is hereby quashed and set aside and the individual approval granted to the appointment of the Petitioner to the post of Shikshan Sevak is restored.

16. The Respondent No. 4-Deputy Director is directed to allot Shalarth ID to the Petitioner and to grant permission to the Respondent No. 5-Education Officer to include the name of the Petitioner in Shalarth Pranali within a period of four weeks from today and accordingly release the arrears of the Petitioner's salary within a period of four weeks thereafter.

17. Rule is made absolute in the above terms.

[Sharmila U. Deshmukh, J.]

[M. S. Karnik, J.]