
(2022) 02 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 8966 Of 2021

Amol Baban Sangar

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 21-02-2022

Acts Referred:

Citation : (2022) 02 BOM CK 0054

Hon'ble Judges : Sunil B. Shukre, J; Amit Borkar, J

Bench : Division Bench

Advocate : Prashant Bhavake, S. B. Kalel

Final Decision : Allowed

Judgement

Sunil B. Shukre, J

1. Heard. Learned AGP for Respondent Nos.1 to 5 seeks further time to file reply in the matter.
2. We are of the view that already sufficient time has been granted to the Respondents to file reply. Besides, law governing the controversy involved in the Petition is also well settled. We do not think that any purpose would be served by granting further time to the Respondents for filing their reply. Request is rejected.
3. Rule. Rule is made returnable forthwith by consent of the parties.
4. This is the case wherein the Petitioner an Assistant Teacher, initially appointed to an unaided post was transferred as an Assistant Teacher to an aided post. Such appointment of the Petitioner received approval of the Education Officer, Respondent No.5 as per his communication dated 9/7/2020. This communication has attained finality as it was not reviewed or set aside any time later.
5. When the aforesaid facts are not in dispute, we see no reason for the Deputy Director, Education to again dig out the issue of grant of approval to the appointment of the Petitioner to aided post upon his transfer from unaided post,

when it comes to inclusion of the name of the Petitioner in the Shalarth system. The Shalarth system has been initiated for facilitating the online payment of salary to the school employees by streamlining the whole system. When such is the object of the Shalarth system, the Deputy Director, Education cannot again look into the irregularity or otherwise caused in granting the approval to the appointment of the school employees by the Education Officer.

6. In number of judgments one of which is the judgment delivered in the case of Pramod Prabhakar Pokale v. State of Maharashtra 2019(3) Bom. C. R. 273, this Court (Aurangabad Bench) while reiterating the law declared by other Division Bench of this Court in earlier judgments held that once an approval is granted by the Education Officer to the appointment of school employees, the Deputy Director, Education would have no jurisdiction to refuse to enter the name of school employees in the Shalarth system. This law squarely applies to the facts of the present case narrated above and, therefore, we are of the view that the impugned order being erroneous needs to be quashed and set aside.

7. The petition is allowed in terms of prayer clause (b). The impugned order is hereby quashed and set aside.

8. Before parting with the judgment, we must place on record our displeasure to the way such an issue of inclusion of name of the school employees in Shalarth system is being dealt with by the Officers of Education Department of the State of Maharashtra. It must be borne in mind by all the concerned officers that the Shalarth system was brought into vogue as per the Government Resolution dated 7/11/2012 and the only object of the Government Resolution was to streamline the system of payment of salary to the school employees and to bring complete uniformity and transparency in payment of salary by all schools. There is no other purpose which is sought to be achieved by Shalarth system of computerized payment of salary. Nowhere in the Government Resolution is there any clause which requires the Deputy Director, Education, for that matter any other Officer of the State, to reconsider the issue of grant of approval, nor does the Government Resolution vests any Officer with any authority to review the order of grant of approval to the appointment of any school employee by the Education Officer and then decide about inclusion or otherwise of the name of such school employee in the Shalarth system. Besides, the power of review of any administrative order, if at all it exists, must be expressly created in the applicable statute because it has the potential of taking away a right vested in a school employee. In such a case, the power of review cannot be conferred by any Government Resolution which is in the nature of executive instruction. Of course, here the Government Resolution in question dated 7/11/2012 does not create any such power of review in the Deputy Director, Education and therefore, the Deputy Director, Education in any case, cannot examine the legality or otherwise of the approval granted to the appointment of any school employee, on the pretext of deciding the question of inclusion of name of the employee in Shalarth system. Proper course for him is to confine himself to parameters of the

said Government Resolution and satisfy himself as to whether or not the employee fulfills the conditions of the Government Resolution. If he sees that the employee fulfills the conditions, he must direct inclusion of name of such employee in the system. If he feels that employee does not fulfill them, he may reject the proposal. His rejection, if it is there, however, cannot be for any consideration other than the consideration arising from the conditions stipulated in the Government Resolution dated 7/11/2012.

9. Unfortunately, the Government Resolution dated 7/11/2012 is not being followed in its letter and spirit and time and again, this Court is coming across several Writ Petitions raising a common grievance that the Deputy Director, Education has refused to include name of a school employee or a teacher on a consideration extraneous to the Government Resolution dated 7/11/2012. Undoubtedly, the ground of irregular grant of approval to the appointment of any school employee by the Education Officer, which is taken by the Education Officer for refusing to include the name of such employee in Shalarth system is something which is completely alien to the Government Resolution dated 7/11/2012 and it could never be taken recourse to by the Deputy Director, Education for recording his refusal in such a matter.

10. We therefore request Respondent No.1 to issue necessary instructions to all the Authorities regarding strict adherence to the Government Resolution dated 7/11/2012 and to not travel beyond the parameters set out in the Government Resolution dated 7/11/2012 while considering the matters pertaining to grant of approval for inclusion of names of the school employees in the Shalarth system.

11. We also request Respondent No.1 to bring to the notice of all the concerned Authorities the observations made herein above so that time of school employees, school management and officers of the Government would not be unnecessarily wasted in litigation, which otherwise is avoidable.

12. Compliance with the above directions be made by Respondents within 4 weeks from the date of receipt of the order.

13. At this stage learned AGP has invited our attention to the Circular dated 29/3/2019 issued by the Commissioner of Education, Respondent No.2 contending that Deputy Director, Education has power to consider the issue of grant of the approval while entering the name of school employees in Shalarth system. Learned counsel for the Petitioner submits that this Circular has already been considered by this Court while passing interim direction on 21/1/2022 in another bunch of petitions involving similar issues in the case of Abhijit Ashok Waje v. The State of Maharashtra, Writ Petition No.8881/2021 and other connected matters decided on 21/1/2022.

14. A copy of the interim order dated 21/1/2022 is made available to us for our perusal by the learned counsel for the Petitioner. In this order, this Court has taken a view that approval once granted can be reviewed at a later point of time, but same is to be done in accordance with law and that such exercise of review

of approval cannot be done solely on the basis of Circular dated 29/3/2019 as it is not a Government Resolution issued under the name of the Governor of Maharashtra, but is a Circular issued by an Officer of State Government, which would not have the force of law as a Government Resolution. We would not disagree with the prima facie view so expressed in the interim order dated 21/1/2022 rather, we would go further. If the decision granting approval to the appointment of the school employee has to be reviewed, it has to be done only in accordance with well settled parameters of law. Power of review of an administrative order creating rights in favour of the employees can be exercised only when there is a statutory provision made in that regard and if it is exercised in a manner adverse to the employee it would also have to be done by following principles of natural justice. In other words, there has to be first a power of review conferred on the Authority and then creation of the mechanism in which such power of review can be exercised. Such power and such mechanism is not seen in the Government Resolution dated 7/11/2012 which is the principle source of inclusion of name of any employee in the Shalarth system and therefore, the Circular dated 29/3/2019 which also does not lay down any mechanism for exercise of power of review and which finds no support in the Government Resolution dated 7/11/2012 would not be enforceable in law insofar as it directs the concerned Authority to examine the issue of grant of approval in an appropriate way and thus we find that it has no binding effect on the Authorities to whom it is directed.

15. Put up for compliance and directions, if any, on 22/3/2022