IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6563 OF 2023

Krunal Subhash Nikam ... PETITIONER

VERSUS

1. The State of Maharashtra,
through, Principal Secretary,
Education & Sports Department
Mantralaya, Mumbai-32
2. Director of Education (Secondary &
Higher Secondary, Education Directorate
Maharashtra State Pune.
3. Deputy Director of Education,
Aurangabad Division Aurangabad.
4. Deputy Director of Education,
Nasik Division Nasik.
5. Education Officer (Secondary),
Zillha Parishad, Jalgaon.
6. Superintendent of Salary & P.F.
Squad (Secondary) Jalgaon,
Zilha Parishad, Jalgaon
7. Head Master, Madhyamic Vinay
Mandir & Dadaso Supdu Malaji
Patil Junior College Bhadgaon,
Dist. Jalgaon Sanchlit, Karmavir
Tatysaheb Hari Ravji Patil, Kisan
Shikshan Sanstha, Bhadgaon,
Dist. Jalgaon. ... RESPONDENTS

...

Advocate for the Petitioner : Mr. Patil (Borse) Paresh B.
AGP for Respondent Nos.1 to 6 : Mr. S.R. Wakle
Advocate for Respondent No.7 : Mr. M.D. Gitte

...

CORAM : NITIN B. SURYAWANSHI &
ABASAHEB D. SHINDE, JJ.

Reserved on : 16.06.2026

Pronounced on : 03.07.2026

JUDGMENT (PER: ABASAHEB D. SHINDE, J.) :

1. Heard. Rule. Rule made returnable forthwith. With the consent of the parties, the petition is taken up for final hearing at the stage of admission.

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has put forth following main prayers :

"B] That, this Hon'ble Court be pleased to issue Certiorari or any other appropriate Writ of like nature and/or any other writ, order or Directions, kindly be quashed and set-aside impugned orders dated 30/06/2022 and 29/07/2022 passed by the Resp. No. 3 Dy. Director of (Education) Aurangabad Division Aurangabad and pleased to restore the approval order dated 15/01/2016 passed by the Resp. No. 5 Education Officer (Secondary) Zilha Parishad, Jalgaon in favour of the petitioner.

C] That, this Hon'ble Court be pleased to issue Wirt of Mandamus or any other appropriate Writ of like nature and/or any other writ, order or Directions, thereby directing to the Resp. Nos. 3 and 4 authorities to restore forthwith approval order dated 15/01/2016 issued by Resp. No. 5 and further pleased to direct the Resp. Nos. 4 to 6 authorities to pay regular salary as well as arrears of the salary from 1st October 2022 and other consequential benefits to the petitioner in terms of approval; for that purpose, Hon'ble Court may pass appropriate order."

3. Learned counsel for the petitioner submits that petitioner possesses the qualification of B.Sc. B.Ed. Respondent No.7 initially appointed the petitioner on the post of Shikshan Sevak on unaided division vide appointment order dated 10.06.2011. After

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completion of 4 years of service on unaided post, the Respondent No.7 transferred the petitioner on aided post by passing necessary resolution in that regard and vide order dated 01.03.2015. Pursuant to the proposal submitted by Respondent No.7 seeking approval to the said transfer. By order dated 15.01.2016 Respondent No.5 – Education Officer accordingly granted approval to the transfer of petitioner from unaided post to aided post.

4. By the impugned orders Respondent No.4 – Deputy Director of Education, Aurangabad Division, Aurangabad cancelled the approval order dated 15.01.2016 approving transfer of petitioner from unaided to aided post as well as his individual approval on the following grounds :

i) Despite there being backlog of reserved post, the petitioner has been appointed from open category against the reserved post.

ii) The appointment of the petitioner is without following the due procedure of law as before issuing advertisement pursuant to which the petitioner has been appointed Respondent No.7 did not obtain prior permission from his office.

5. Learned counsel for the petitioner submits that the Respondent No.3 has no power or authority to cancel the approval granted by the Education Officer. The only reason assigned in the

impugned order is with regard to non-adherence to the reservation policy and obtaining prior permission before issuing advertisement while appointing the petitioner. In short, learned counsel for the petitioner submits that unless it is shown that, the petitioner has been appointed by practising fraud, misrepresentation or suppression, respondent No.3 cannot cancel the approval once granted by the education officer. In support of his submission, learned advocate for the petitioner relied on the judgments of this Court in the case of ***Amol Baban Sangar Vs. State of Maharashtra and Others; 2022 DGLS (Bom.) 1088***, *and* ***Pandurang Narayan Kanekar Vs. State of Maharashtra and Ors.; 2022 DGLS (Bom.) 784***.

6. Per contra, learned AGP would submit that Respondent No.3 has rightly considered the aspect of irregularity committed by Respondent No.7 while transferring the petitioner from unaided post to aided post, as well as the illegality in granting approval to his transfer by Respondent No.4 – Education Officer. In support of his submission that the Respondent No.3 has power to go into the legality and validity of selection process of the teaching and non-teaching staff, learned AGP pressed into service Government Resolutions dated 05.11.2009, 06.02.2012 and 23.08.2017. He, therefore, urged that the writ petition deserves to be dismissed.

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7. Having heard learned counsel for the petitioner and learned AGP for the State and after perusal of record, we find that, the petitioner was initially appointed on unaided post on 10.06.2011 and thereafter he was transferred from unaided post to aided post on 01.03.2015 and the approval to the said transfer has been granted by the Education Officer on 15.01.2016. We find that the approval granted to the transfer and individual appointment of the petitioner, has been cancelled by the impugned order after a period of almost 11 years from the date of petitioner's appointment and 7 years from the date of granting approval to the transfer and appointment that too on the ground of non-adherence to the reservation.

8. So far as the Government Resolution relied upon by the learned AGP are concerned, those are not applicable in the present case for the reason that it is not the case that any fraud, misrepresentation or suppression is attributed either to the petitioner or the respondent No.7 while appointing the petitioner. This issue has been dealt with by this Court in the case of ***Amol Baban Sangar*** (supra), wherein, this Court while expressing its displeasure about the way the orders of approvals are cancelled by the Education Department, in paragraph No.8 observed thus :

"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 employees 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. Similarly, in the case of ***Pandurang Narayan Kanekar*** (supra), this Court has made following observations :

"13. The main ground stated in the order of cancellation of the appointment is that as per the roster posts reserved for backward class candidates were not filled up and in the school staff the post of Shikshan Sevak was not sanctioned. In our opinion, this order cannot be sustained for two reasons. First, appointment of the petitioner was made by respondent No. 6 by following the procedure as laid down under Rule-9 of the M.E.P.S. Rules and second, the show cause notice is bereft of the required particulars and more particularly, the ground on which the approval has ultimately been cancelled. It is pertinent to note that as per the provisions of section 5, sub section (2A), the order passed by respondent No.4 cannot be sustained. Appointment order was admittedly for a period of three years. Approval was granted to the said appointment. Even if it is assumed for the sake of argument that there was no approval, in our opinion, it would not stand in the way of the petitioner because as provided under Section-5, sub section (2A) on completion of the probation period of three years, the petitioner became a permanent teacher. As can be seen from the record, two posts from the open category were vacant. Even if it is assumed for the sake of argument that there was a backlog of one reserve category candidate, the petitioner was rightly appointed on the open category post. In the background of these facts and the provisions of section 5 of the M.E.P.S. Act and Rule-9 of the M.E.P.S. Rules, it was incumbent upon respondent No. 4 to specifically set out the relevant ground in the show cause notice. It was also incumbent upon him to record concrete finding based on

the facts and applicable law as above and then form an opinion vis-à-vis illegality or otherwise of the appointment of the petitioner. It is seen that the show cause notice is bereft of the above particulars. Similarly, the order passed by respondent No. 4 on this point is as vague as the vagueness could be. In our view, therefore, in the teeth of the above stated facts, a deemed confirmed employee cannot be dislodged from his position on the basis of such order."

10. In the light of ratio laid down by this Court in the case of ***Amol Baban Sangar*** *(supra) and* ***Pandurang Narayan Kanekar*** (supra), we are of the opinion that the impugned orders are unsustainable and, therefore, deserves to be quashed and set aside. Hence, we pass the following order :

O R D E R

I. The writ petition is allowed in terms of prayer clauses 'B' and 'C' as above.

II. Rule is thus made absolute in above terms with no order as to costs.

(ABASAHEB D. SHINDE, J.) (NITIN B. SURYAWANSHI, J.)

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