

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6251 OF 2016

The Konkan Muslim
Education Society and ors. .. Petitioners

vs.

The Education Officer and ors. .. Respondents

Mr. Arvind G. Kothari for the Petitioners.
Ms Aparna D. Vhatkar, AGP for the State-Respondents.

CORAM : M. S. SONAK, J.
DATE : 21 JUNE 2016.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 3 May 2016 made by the respondent No.1 - Education Officer (Secondary), Zilla Parishad, Thane, declining to approve the petitioners' proposal for appointment of twenty six teachers, relying solely upon the Government Resolution (GR) dated 2 May 2012, which provides for absorption of surplus staff in other institutions, before any fresh recruitment can be permitted.

3] Mr. Kothari, learned counsel for the petitioners, has submitted that the petitioner no.1 society is the minority institution as is evident from the Certificate dated 13 February 2009 issued by the competent authority of the State of Maharashtra. Mr. Kothari has submitted that any GR, which foist surplus staff upon minority institution would violate the right guaranteed under Article 30 of the Constitution of India. In this specific context of GR dated 2 May 2012, Mr. Kothari has submitted that this Court, in case of ***Vinod Shelkar and anr. V/s. State of Maharashtra (Writ Petition No. 2207 of 2016 decided on 31 March 2016)***, has taken the view that such GR will not apply to the minority institution. Mr. Kothari also made reference to certain other decided cases to submit that the issue raised in the present petition is squarely covered and the Education Officer, has exceeded jurisdiction in making the impugned order.

4] Ms Aparna Vhatkar, learned AGP for the State, submitted that the Education Officer has complied with the directions contained in GR dated 2 May 2012, particularly since the proposed appointments pertain to the period post 2 May 2012. On this ground, Ms Vhatkar

submitted that there is no case made out to interfere with the impugned order.

5] The rival contentions now fall for determination.

6] There is no dispute that the petitioner No.1 institution is the minority institution. The competent authority has issued the necessary Certificate in this regard. This Court in case of ***Vinod Shelkar (supra)***, relying upon the previous decision in case of ***Parbhani Education Society Vs. The State of Maharashtra and anr. (Writ Petition No. 3707 of 2013 decided on 2 September 2013)***, has taken the view that the GR dated 2 May 2012, will not apply to the minority institutions. Accordingly, in the said case, the order of Education Officer declining approvals for appointments in the minority institution, relying upon the GR dated 2 May 2012, came to be quashed. Further, this Court, has taken cognizance of the GR dated 20 June 2014 issued by the State of Maharashtra, which, again reiterates the ban on fresh appointments until the surplus staff is duly absorbed. To this extent, the provisions of the GR dated 20 June 2014 are similar to the GR dated 2 May 2012. However, the GR dated 20 June 2014, perhaps after taking cognizance of the

provisions contained in Article 30 of the Constitution of India, as also decided cases on the issue, has, under the clause (2), specifically excluded the minority institutions, in the matter of such ban.

7] In the aforesaid context, reference to what has been set out in paragraphs 10,11,12 and 13, in case of **Vinod Shelkar (supra)**, would be relevant. The same read thus:

“10. The question whether G.R. dated 2nd May, 2012 is applicable or not was for consideration before the Division Bench of this Court while deciding Writ Petition No.3707 of 2013 and Writ Petition No.5547 of 2013.

11. The Division Bench while deciding WP No.3707 of 2013, in paragraph Nos.14 has observed thus :-

“14. Position clearly emerges that petitioner institution is indisputably a minority institution and, in various rulings cited on behalf of the petitioner, it is held that the appointments by minority institutions would not be able to be withheld till the time surplus teachers are accommodated/absorbed. In view of the aforesaid prevailing position, as exemplified under the decisions of the Apex Court and the High Courts, particularly of this Court as depicted in judgment dated 16th July, 2012 which could not be effectively countered by the respondents, save that impugned order being tried to be supported by Government Resolution dated 02.05.2012, the impugned order is incompatible with emerging legal position and as such is unsustainable”.

12. It appears that in the light of the decision of this Court as referred above, the State of Maharashtra issued fresh Government Resolution dated 20.6.2014 copy of which is

annexed as Exhibit "J" to this petition. By this Government Resolution the ban imposed on the new appointments of teachers has been withdrawn and fresh ban is imposed. The provisions of this Government Resolution are similar to the Government Resolution dated 2nd May, 2012. However, under clause 2 of this G.R. minority institutions are excluded from the above.

13. In above circumstances, the impugned order rejecting approval to the appointment of petitioner No.1 especially when petitioner No.2 is minority institution cannot be sustained. We are, therefore, inclined to allow this petition."

8] In the present case, the impugned order has been made on 3 May 2016. In such circumstances, it was expected that the Education Officer takes into consideration the GR dated 20 June 2014, rather than the GR dated 2 May 2012. In any case, taking into consideration the decision of this Court in cases of ***Vinod Shelkar (supra)*** and ***Parbhani Education Society (supra)***, the impugned order will have to be set aside, *inter alia*, on the ground that the approval could never have been declined on the basis of GR dated 2 May 2012. Accordingly, the impugned order dated 3 May 2016 is hereby set aside.

9] The respondent No.1 - Education Officer is now directed to reconsider the petitioners' proposal for approval of appointments of twenty six teachers, in accordance with law and on its own merits, in the light of decisions of this Court in case of ***Vinod Shelkar (supra)***

and *Parbhani Education Society (supra)*. The Respondent No.1 -Education Officer to decide such proposal, as expeditiously as possible and in any case within a period of two months from today.

10] Rule is made absolute to the aforesaid extent. There shall however, be no order as to costs.

11] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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