

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.1062 OF 2015

(Shahbabu Education Society, Patur, District Akola and others
vs.

State of Maharashtra, through its Secretary, School Education, Mumbai and others)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

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Shri A.V. Khare, Advocate for the petitioners.
Mrs. Mrunal Naik, A.G.P. for respondent Nos.1 to 4.
Shri Mangesh Bute, Advocate for respondent Nos.5.

**CORAM : SMT. VASANTI A. NAIK AND
A.S. CHANDURKAR, JJ.**

DATE : FEBRUARY 23, 2016

Heard.

The petitioners have challenged the communication dated 04/08/2014 issued by respondent No.4 whereby the proposal submitted by the petitioners for grant of sanction for two non-teaching posts has been returned back by observing that as and when a fresh policy decision would be taken by the State Government, the petitioners would be informed in that regard.

It is the case of the petitioners that it is running various minorities schools in the District of Akola. The petitioner No.3 is holding the post of clerk and the petitioner No.4 is holding the post of peon at the petitioner No.2 - School. According to the petitioners, various non-teaching posts have been sanctioned by the State Government by issuing Government Resolutions on 12/07/2004 and 01/04/2011. As

the name of the petitioner No.2 - Institution did not figure in the list of schools in the Government Resolution dated 01/04/2011, it made a representation in that regard. However, as no decision was taken thereon and instead the communication dated 04/08/2014 was issued, the petitioners have challenged the same.

It is submitted by Shri A.V. Khare, learned Counsel for the petitioners that in terms of the Government Resolutions dated 12/07/2004 and 01/04/2011, the petitioner No.2 - School was entitled to be sanctioned the posts of a clerk and a peon. It is submitted that there were more than 500 students in the petitioner No.2 - School and in terms of Government Resolution dated 12/07/2004, the entitlement to said posts had been made out. He submitted that though in the impugned communication there is a reference to certain requirements that are to be fulfilled under the Right of Children to Free and Compulsory Education Act, 2009, in the additional affidavit filed on behalf of respondent No.4 a reference has been made to the subsequent Government Resolutions dated 13/12/2013 and 26/08/2015. It is submitted that though respondent No.4 is relying upon aforesaid Government Resolutions, copies thereof have not been annexed to the reply nor have same be made available for perusal. It is also submitted that these Government Resolutions do not find any mention in the impugned communication. It is,

therefore, submitted that appropriate relief deserves to be granted to the petitioners.

Mrs. Mrunal Naik, learned Assistant Government Pleader for respondent Nos.1 to 4 relied upon the affidavit-in-reply and submitted that after coming into force of the Right of Children to Free and Compulsory Education Act, 2009, the State Government had issued various guidelines which were the subject matter of challenge before the Principal Seat of the High Court in Writ Petition No.9026/2014 and connected writ petitions. The Government Resolution dated 13/12/2013 as well as the Government Resolution dated 26/08/2015 were also impugned in said writ petitions and the challenge to the same had not been accepted. It is submitted that on the contrary, directions had been issued to the State Government to re-assess and re-evaluate the relevant policies which included the aspect of sanctioning the posts in question. It was then submitted that by the impugned communication the proposal forwarded by the petitioners had been returned back and the same had not been rejected. It is, therefore, submitted that there is no case made out to grant any relief to the petitioner.

Perusal of the impugned communication dated 04/08/2014 indicates that it has been informed to the petitioners that after appropriate directions would be issued by the State Government in the light of the Right of Children to

Free and Compulsory Education Act, 2009, the petitioners would be called upon to submit a fresh proposal. On that count, the proposal submitted by the petitioners has been merely returned back and not rejected. It is, therefore, clear that as of today, the request being made by the petitioners for sanction of additional non-teaching posts has not been refused and the petitioners have been informed that on appropriate directions being issued by the State Government, they would be called upon to submit a fresh proposal. Considering the aforesaid communication, it cannot be said that the entitlement of the petitioners has either been refused or that any prejudice has been caused to the petitioners so as to challenge the said communication.

It is also to be noted that the subsequent Government Resolutions dated 13/12/2013 and 26/08/2015 were the subject matter of challenge in various writ petitions before the Principal Seat and the said writ petitions had been dismissed by judgment dated 15/12/2015. As a result thereof, the non-teaching staff which had been rendered surplus after coming into force of the Right of Children to Free and Compulsory Education Act, 2009 was liable to be observed in other institutions. This aspect was being considered by the State Government and on said count it was informed to the petitioners that after receiving fresh instructions from the State Government, they would be informed to submit a fresh proposal.

It is also to be noted that the posts which have been sanctioned as per the Government Resolution dated 01/04/2011 are those, which had been sanctioned by the State Government till the year 2006-07 and the applications in that regard had been made by the concerned institutions before the year 2006-07. No posts thereafter had been sanctioned by the State Government.

In view of aforesaid, we do not find that the petitioners have made out any case grant of any relief. The writ petition is, therefore, dismissed with no order as to costs.

JUDGE

JUDGE

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