

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5715 OF 2014

Hindi Prachar Mandal & Anr. ... Petitioners

V/s.

The Joint Director (Vocational Education),
I.I.T. Campus, Kherwadi and Ors. ... Respondents

Mr.R.S. Apte, Senior Advocate with Mr.J.H. Oak for the Petitioners.
Mr.V.N. Sagare, AGP for Respondent Nos.1 to 3.

**CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.**

DATE : 14th MARCH, 2017.

P.C. :

Parties through their counsel.

Feeling aggrieved by the order dated 10th July, 2012 passed by the first Respondent Joint Director (Vocational Education) by which the Petitioner No.1's proposal for grant of approval to the appointment of Petitioner No.2 on the post of full time teacher for the Course of Medical Laboratory Technician has been rejected, the Petitioners have filed this petition.

2] Brief facts of the case are as under;

The Petitioners had filed Writ Petition No.3594 of 2009 challenging the letters dated 7th June, 2008 and 19th June, 2008 issued by the Respondents whereby the proposal forwarded by the Petitioner No.1 for grant of approval to the appointment of Petitioner No.2 was rejected by the State placing reliance on the Government Resolution dated 10th April, 1991. The said Writ Petition was disposed of by an order dated 21st January, 2010 by remitting the matter back to the Deputy Director (Vocational Education), directing him to reconsider the Petitioners claim on its own merits in accordance with law. In the said order it was specifically observed by this Court that the rejection of Petitioner No.1's proposal for grant of approval to the appointment of Petitioner No.2 on the basis of Government Resolution dated 10th April, 1991 is not correct, as the provision of the said Government Resolution are not applicable to the minority institutions like Petitioner No.1.

3] After the matter was remitted back to the Deputy Director, the Deputy Director reconsidered the matter and once

again rejected the Petitioner's proposal without giving opportunity of hearing to the Petitioners. In the circumstances the said order was set-aside in Writ Petition No.5044 of 2010 vide order dated 23rd February, 2011. This Court again directed the Deputy Director to pass a fresh order after giving an opportunity of hearing to the Petitioners.

4] After the second remand, the matter was reconsidered by Respondent No.2 and vide order dated 17th May, 2011 again rejected the proposal by observing that the Petitioner No.1 is a minority institution and that the Advertisement issued by the management is not in accordance with law. It was also observed that the Advertisement does not reflect number of post as also the pay-scales applicable to the post in-question.

5] When again the matter was challenged before this Court, the Division Bench, while disposing of the Writ Petition No.5982 of 2011 vide order dated 17th April, 2012 made following observations.

“5. This very issue came up for consideration before the same authority on the earlier occasion, but vide his orders dated 7th June 2008 and 19th June 2008, Respondent No.2 rejected the proposal forwarded by Petitioner No.1 for grant of approval to Petitioner No.2

as medical laboratory technician. That view was taken relying on the Government Resolution dated 10th April 1991. The Petitioners had challenged the said decision of Respondents 1 and 2 by way of Writ Petition 3594 of 2009. That Petition was allowed in terms of order dated 21st January 2010 in which it has been plainly held that paragraph 5 of the Government Resolution dated 10th April 1991 itself makes it amply clear that the said Government Resolution has no application to minority institution. This Court, therefore, remitted the matter back to the authority for reconsideration of the matter in issue.

6. After remand, the Deputy Joint Director vide impugned order dated 17th May 2011 has non-suited the Petitioner and found that the advertisement issued by the Petitioner was defective, rendering the selection process as non-transparent and vitiated. For that, the Deputy Director placed reliance on the circular dated 19th November 2003. What has been glossed over by the authority is that the circular dated 19th November 2003 is founded on Government Resolution dated 10th April 1991. On the earlier occasion this Court has held that the restriction specified in the said Government Resolution have no application to minority institution. For that very reason, the circular dated 19th November 2003 will have no application to the Petitioner institution which has been held to be minority institution by the competent authority. So long as the status of the Petitioner institution continues to be minority institution and until the State Government evolves a policy regarding minority institution pertaining to matters in employment, the question of answering the controversy on the basis of Government Resolution dated 10th April 1991 or circular dated 19th November 2003 does not arise. To that extent the decision of the Deputy Joint Director will have to be set aside.

7. *The other reason stated in the impugned decision is that the management has not taken any certificate from the Employment Exchange regarding non-availability of candidates or no objection certificate in that regard. As aforesaid, if the concerned Government Resolution necessitating obtaining of such certificate itself has no application, the question of default committed by the Petitioner in not obtaining such certificate does not arise. In any event, the Petitioner has asserted that even this condition has been complied with without prejudice to the rights and contentions of the Petitioners. It is not necessary for us to examine this matter any further.*

8. *Suffice it to observe that the basis on which the Deputy Joint Director proceeded to answer the controversy is completely untenable. For that reason the impugned decision deserves to be set aside and the Petitioners will have to be relegated before the Deputy Joint Director of Vocational Education and Training, Regional Office for consideration of the proposal on its own merits in accordance with law.*

9. *The learned AGP did submit that instead of sending back the matter, this Court itself should decide the matter in issue. We do not propose to do that. As considering grant or non-grant of proposal, is a matter within the discretion of the appropriate authority to be answered on the basis of extant regulation. The authority will have to be satisfied that all reasonable requirements applicable to minority institutions have been fulfilled by the Petitioner institution before accepting the proposal of the Petitioner.*

10. *Accordingly, we dispose of this Petition with the observation that the said authority will decide the proposal expeditiously, preferably within three months from today”.*

6] In view of the aforesaid order the matter was again examined by Respondent No.1 Joint Director and vide impugned order the Petitioner No.1's proposal seeking grant of approval to the appointment of Petitioner No.2 came to be rejected. Aggrieved by the said order, the Petitioner has filed this petition.

7] Learned counsel appearing for the Petitioners submits that when this Court in specific terms had already observed that Government Resolution dated 10th April, 1991 is not applicable to the minority institutions like Petitioner No.1, it was not open for Respondent No.1 Joint Director to have taken into account the said Resolution and to have pass the order on the basis of the provisions contained in the said Resolution. Learned counsel for the Petitioner submits that Respondent No.1 has committed apparent error in rejecting the Petitioners claim on the ground that the Advertisement, which was issued by Respondent No.1 was illegal, incorrect and improper. He submits that in fact there was no necessity of issuance of the Advertisement as has been held by the Division Bench in the order dated 17th April, 2012. He further submits that the Petitioner

No.2 was having requisite qualifications as he had passed MBBS in second class, which was the minimum requisite qualification for the post in-question. The rejection of the proposal and the approval is contrary to law and also the earlier orders passed by this Court and as such the same is also not sustainable.

8] On the other hand, learned AGP has supported the impugned order. He submits that the Advertisement, which was issued was defective moreover the Petitioner was not having requisite qualification as per the requirement mentioned in the Advertisement issued by Petitioner No.1, the Petitioner No.2's appointment was illegal.

9] We have considered the submissions made by the learned counsel for the respective parties.

10] Undoubtedly in the earlier orders passed by this Court in between the parties, it was clearly recorded that the Government Resolution dated 10th April, 1991 is not applicable to the minority institutions. It is not in dispute that Petitioner No.1 is a minority institution. It was also observed in the said earlier orders that the

issuance of Advertisement was not necessary for filing the post as Petitioner No.1 is a minority institution. In the circumstances, the defect in the Advertisement cannot be made ground to reject the Petitioner No.1's claim for grant of approval to the appointment of Petitioner No.2.

11] The other grounds that the Petitioner was not having the requisite qualification is also incorrect. It is not dispute that the Petitioner No.2 is a “MBBS” from a statutory university and has passed the degree course in second division. It is also not in dispute that the minimum requisite qualification for the post in question is Degree of a statutory university in second class in MBBS. The attempt of learned AGP to show that Petitioner No.2 is not having work experience, suffice it to say as observed the minimum requisite qualification was not the person should be having work experience. Though in the Advertisement issued by the Petitioner No.1, the work experience was demanded but as already held that the issuance of the Advertisement was not the requirement for filing of the said post and therefore, the Petitioner having the minimum eligibility qualification as per the rules, the stand of the State Government

cannot be accepted.

12] In the circumstances, keeping in view the aforesaid observations, we allow the Writ Petition in terms of prayer clause (a-1) and set-aside the impugned order dated 10th July, 2012 as also the order passed by the Respondent in Review Petition on 19th October, 2012 and direct the Respondents to accept the proposal of Petitioner No.1 and grant the approval for appointment of Petitioner No.2 with effect from 22nd July, 2004 along with all consequential benefits.

[PRAKASH D. NAIK, J.]

[SHANTANU S. KEMKAR, J.]