

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.1965 OF 2017

Rahul William Hiwale and others.

Petitioners.

Versus

The State of Maharashtra and others.

Respondents.

Mr. C.K. Shinde, Advocate for the petitioners.

Mr. A.A Jagatkar, A.G.P. for the State/respondent Nos.1 and 2.

Mr. M.A. Dond, Advocate for respondent No.3.

CORAM : **S.V. GANGAPURWALA &
SUNIL K. KOTWAL, JJ.**

Dated : **21st June, 2018.**

ORDER :-

. Learned Counsel submits that this is a second round of filing writ petition by the petitioners. Initially when the proposal of these petitioners was rejected, the petitioners had approached this Court. This Court had set aside the order and directed reconsideration of the proposal. This Court had observed that as the institution is a Minority Institution, ban on recruitment would not apply. Subsequently the proposal is rejected on the ground that petitioner Nos.3 and 4 have not passed TET and that prior permission is not taken. So also, again reason is mentioned that

there was ban on recruitment. Learned Counsel submits that the petitioners, without entering into the debate as to whether TET is necessary or not for teachers of Minority Institution, would comply the requirement of qualification of TET as per Government Resolution dated 24.11.2017.

2. Learned Additional Government Pleader submits that the petitioners posts filled in by the Institution are more than the sanctioned posts and other aspects are also rightly considered.

3. In view of our earlier order, the Education Officer could not have rejected the proposal on the ground that there was ban on recruitment. The ban on recruitment would not apply to the Minority Institutions. The Government itself has issued Resolution to the effect that Minority Institution cannot be compelled to absorb the surplus candidates.

4. Petitioner Nos.3 and 4 have agreed to acquire TET qualification within the period as prescribed under Government Resolution dated 24.11.2017. The staffing pattern is also produced on record suggesting that after retirement of the persons occupying the post of Junior Clerk, petitioner No.5 was appointed.

5. Considering the above, it would be appropriate for the Education Officer to scan the staffing pattern, consider the retirements and appointments.

6. It has also come to the notice that the Institution had given an application to the Education Officer seeking the permission to fill in the posts in October 2012. However, they have not given any response. On 15.04.2013 advertisement was issued and appointments were made thereafter. The Education Officer is also required to consider that the Institution is Minority Institution.

7. In the light of above, the impugned order is quashed and set aside. The Education Officer shall consider the Government Resolution dated 24.11.2017 and the period within which petitioner Nos.3 and 4 are required to acquire the TET qualification and consider grant of approval to them on the basis of Government Resolution dated 24.11.2017. The Education Officer shall consider the staffing pattern placed before him and the information about retirement of the respective persons and the appointment of the petitioners on the said post. It is made clear that the proposal shall not be rejected on the ground that there was ban on recruitment or that prior permission was not obtained for filling in the post or advertisement.

8. The Education Officer is also required to consider that the respondent Institution is a Minority Institution.

9. The proposal shall be decided within four months from today.

10. Writ petition is disposed of. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/