

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

WRIT PETITION NO.6977 OF 2018

1 Shri. Sunil Sakharam Uttekar

2 Shri. Sandeep Narayan Mahajan

3 Shri. Sunny Madhukar Tujare

4 Shri. Ganesh Pandurang Dhole

5 Shri. Guru Singh Sabha
Rambaug, Kalyan (West)
through It's President

.... Petitioners

Vs.

1 The State of Maharashtra

2 The Education Officer (Secondary)
Zilla Parishad, Thane

..... Respondents

Mr. N.V. Bandiwadekar I/by Ms. Ashwini N. Bandiwadekar for the
Petitioners.

Ms. Vaishali Nimbalkar, AGP for Respondents 1 and 2.

Mr. Sheshrao Bade, Education Officer (Secondary), Thane present.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 31st October 2018.

P.C.:

1 Rule. Rule made returnable forthwith with the consent of the parties.

2 The petitioners herein challenged the order dated 28th February 2018 passed by the Education Officer, (Secondary) Zilla Parishad, Thane. The petitioner no.5 i.e. Guru Singh Sabha runs a secondary school in the name of Gurunanak English High School, Rambaug, Kalyan (West). It is Sikh Religious Minority Educational Institution.

3 It is submitted by the petitioner no.5 that in the academic year 2013-2014, four posts of Peons were vacant due to various reasons such as voluntary retirement, death and retirement of earlier Peons. The posts were duly sanctioned by the Education Officer, Zilla Parishad as per the staffing pattern and in consonance of the strength of the students of the said School. An advertisement was published in daily "Loksatta" on 29th August 2013. The candidates were called for an interview on 6th September 2013. Eight candidates had reported for interview and were interviewed by the Selection

Committee. The petitioner nos. 1 to 4 were selected for four vacant posts and in the meeting dated 6th December 2013 vide resolutions, the posts were approved by the Committee. The selected candidates were given appointments as Shikshan Sevaks, Peons respectively for a period of three years, on an honorarium of Rs.1500/-. They had joined their services on 16th September 2016. The approval was refused on the ground that there was a ban on recruitment on non-teaching employees. It was demonstrated that it is a minority educational institution and that the posts are duly sanctioned and vacant.

4 Learned counsel for the petitioners submits that the petitioners were appointed vide order dated 16th September 2013, whereas the G.R. is dated 23rd October 2013 and therefore according to the learned counsel for the petitioners, the same is not applicable to the present petitioners. It is further submitted that there was Sanch Manyata (Group Approval) on the basis of the strength of the students and for the academic year 2013-2014, the respondent no.2 had sanctioned six posts of Peons of Class-IV cadre and therefore

even according to revised staffing pattern prescribed under the GR dated 23rd October 2013, the posts are admissible and liable to be sanctioned to the said School. It is also submitted that there is no embargo for sanctioning and approving the posts in minority educational institution and that the administration of the Minority Institutions is not governed by the GRs.

5 Learned AGP submits that in view of this, it cannot be said that the petitioner was appointed by following due procedure of law. Learned AGP further submits that since this pertains to non-teaching staff, no implicit reliance can be placed on the citations presented by the petitioner since they pertain to teaching-staff.

6 The definition of employee as per Section 2(7) of the Maharashtra Employees of Private Schools Regulation Act, 1977 (“MEPS Act”) reads as follows:

2(7) Employee means any member of the teaching and non-teaching staff of a recognised school [and includes Assistant Teacher (probationary)]
Shikshan Sevaks:- This category has been included in categories of “**employees**” on honorarium basis

for probation period of 3 years as base cadre to be appointed and confirmed as Assistant Teacher.

7 It is pertinent to note that the G.R. dated 25th November, 2005 is based on Section 2(7) of MEPS Act wherein it is clearly mentioned that the non-teaching staff i.e. the Clerks, Peons and others are appointed as per Shikshan Sevaks Scheme and not as per Secondary School Code. Their appointments are not made on the pay-scales but they are entitled to an honorarium for a period of three years just like the teaching staff, who are appointed as Shikshan Sevaks. The Petitioners are appointed prior to the G.R. dated 12th February, 2015.

8 The Education Officer is present and admits that the non-teaching staff is covered by the Shikshan Sevaks Scheme. The Education Officer further submits that the inclusion of non-teaching staff under the Shikshan Sevaks Scheme is subject to appointment and approvals by the educational authorities. That exclusion of non-teaching staff would reverse a long standing practise.

9 In the case of Uma Kant (Dr.) and Ors. Vs. Bhika Lal Jain (Dr.) and Ors., reported in 1991 II CLR 734., the Hon'ble Apex Court has held as follows :

“It is well settled that in matters relating to Educational Institutions, if two interpretations are possible, the Courts would ordinarily be reluctant to accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities.”

10 Learned AGP, upon instructions, submits that the Committee constituted has not taken any decision either on the staffing pattern or otherwise. The posts of the present Petitioners cannot be considered under the G.R. dated 12th February 2015 as it does not give retrospective effect but prospective appointments were banned.

11 It is, in these circumstances that the petition deserves to be allowed. The order dated 28th February 2018 passed by the Education Officer,(Secondary) Zilla Parishad, Thane is hereby quashed and set aside and rule is made absolute in terms of prayer

clause (b).

12 At this stage, the learned AGP seeks stay to the order. It is a matter of fact and record that in the catena of decisions, the refusal to approve the posts on the basis of the G.R. does not get retrospective effect and, therefore, the prayer for staying the order is declined.

(SMT. SADHANA S. JADHAV, J.)