

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

WRIT PETITION NO.7382 OF 2018

1 Shri. Harpreet Singh Panesar

2 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
Petitioner.

Ms. Vaishali Nimbalkar, AGP for Respondent nos. 1 and 2.

Mr. Sheshrao Bade, Education Officer (Secondary), Zilla Parishad
Thane

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. The petitioner no.2 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 that in the academic year 2013-2014, the post of Junior Clerk had fallen vacant due to retirement of the earlier Clerk. The said post was duly sanctioned by the Education Officer, Zilla Parishad and therefore the School had decided to fill-up the vacant post. Accordingly, an advertisement was published in daily “Mumbai Mirror” on 4th December 2013. Thirteen applications were received. The petitioner no.1 was selected as Junior Clerk- Shikshan Sevak for a period of three years. The petitioner no.1 had joined the services as a Junior Clerk on 1st December 2013. The appointment letter shows that he was appointed as “Shikshan Sevak” for a period 1st December 2013 to 30th November 2016 on an honorarium of Rs.5,000/- per month. A proposal was sent for approval of the said post and upon placing reliance of the GR dated 12th February 2015

which was in continuation of the GR dated 23rd October 2013, there is a refusal to approve the said post.

4 It is submitted by the learned counsel for the petitioners that in fact the advertisement was published on 4th December 2013, however the appointment is from 1st December 2013.

5 Learned counsel for the petitioners has placed reliance on the GR dated 13th July 2016 whereas it has been held that in pursuance to the judgment of the Hon'ble Supreme Court in the case of Ahmedabad St. Xavier's College Society Vs. Gujarat State, reported in A.I.R. 1074 Supreme Court, 1389, the minority institutions have a right to open and run a School and that there were be no interference with the administration of the said School, in view of Article 30, Sub-Clause I of the Constitution of India. However, Clause 9 of GR would show that the appointments to vacant posts are to be made in accordance with law and by following due procedure of law.

6 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.

7 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.

8 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.

9 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.

10 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.”

11 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 Petitioner no.1 cannot be considered under the G.R. dated 12th February 2015 as it does not give retrospective effect but prospective appointments were banned.

12 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).

13 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.)