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

WRIT PETITION NO. 4553 OF 2016

1. Mahatma Phule Shikshan Sanstha,
Panewadi, Tq: Ghansavangi,
Dist.:Jalna, Through its Secretary.
2. Mahatma Phule Secondary and
Higher Secondary School,
Panewadi, Tq.Ghansavangi,
Dist.Jalna, through its Head Master.
3. Madhukar S/o Narayan Khune,
Age: 26 years, Occu.Service
r/o Panewadi, Tq.Ghansavangi,
Dist.Jalna.

..PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Aurangabad Division,
Aurangabad.
3. The Education Officer (Secondary)
Zilla Parishad, Jalna.

..RESPONDENTS

Mr V. S. Panpatte, Advocate for petitioners;
Mr P.G. Borade, A.G.P. for respondents

**CORAM : PRASANNA B. VARALE
AND
R.G. AVACHAT, JJ.**

DATE : 4th JUNE, 2019

(2)

ORAL ORDER:

Heard Mr Panpatte, learned Counsel appearing for the petitioners and learned A.G.P. appearing for the respondents - State Authorities.

2. Petitioner No. 1 is an educational institute imparting education in District Jalna. Petitioner No.2 is a school, namely, Mahatma Phule Secondary and Higher Secondary, School running at the place Panewadi, through its Head Master, being run by petitioner institute and petitioner No.3 is an employee appointed by the petitioner institute in the cadre of non-teaching employees.

3. By way of present petition, following prayers are made by the petitioners.

(B) By a writ of certiorari or any other appropriate writ or direction in the like nature, the order dated 19.08.2014 issued by respondent no.3 (Exh.G) to the extent of deleting one sanctioned post of Peon out of previous 4 sanctioned posts of Peon in the petitioner No.2 school may please be quashed and set aside;

(C) By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no.3 may please be directed to revive/restore the post of Peon which has been deleted/decreased by order dated 19.8.2014 (at Exh.'G') and sanction fresh staff sanction for the post of Peon i.e. 4 posts in the petitioner no.2 school;

(3)

(D) By a writ of mandamus or any other appropriate writ or direction in the like nature, the respondent no.3 may please be directed to grant approval to the appointment of petitioner no.3 as Peon and release his salary accordingly as per the proposal dated 7.6.2014 submitted by the petitioner no.2;

4. In his extensive submission, Mr Panpatte, learned Counsel invited our attention to the documents placed on record. The sum and substance of the submission of learned Counsel is, petitioner institute is running petitioner No.2 school for quite some time and consistently the strength of students in the petitioner - school is sufficient enough to appoint required teaching and non-teaching staff. Mr Panpatte, learned Counsel invited our attention to a document in tabular form showing the strength of students for the year 2012-2013 and 2013-2014.

5. Mr Panpatte, learned Counsel submitted that for all these years, number of students available in petitioner No. 2 school for aided and unaided sections was more than 700 and precisely it was 732.

6. Mr Panpatte, learned Counsel by inviting our attention to the staff sanction granted under the signature of the Education Officer, Secondary, Zilla Parishad, Jalna was initially four peons i.e. non-teaching staff. He further submitted that though these many post of four peons were already sanctioned according to the strength of students, for no justifiable reasons, there is reduction in these posts and posts are brought down to three from

(4)

four for the reasons best known to the authorities. It was then submission of Mr Panpatte, learned Counsel that initially four posts were sanctioned to the institute and on superannuation, one peon Mr. Kale stood retired and petitioner No.1 institute initially approved authorities for seeking permission to fill up the post. The petitioner institute was under an impression that as there is sanction to post of four peons, petitioner No.1 institute is entitled to appoint fresh candidate in place of Mr.Kale, who stood retired and accordingly petitioner No.3 - Mr. Madhukar Narayan Khune was appointed. Mr Panpatte also invited our attention to the Government Resolution dated 23rd October, 2013 in support of his submission that the petitioner institute is-- required strength of students as has to appointed petitioner No.3. Mr Panpatte, learned Counsel then invited our attention to the copy of proposal placed on record at Exhibit - E. Perusal of the document shows that on 7th June, 2014, petitioner No.2 - Head Master submitted a proposal to respondent No.3 Education Officer (Secondary) for grant of approval to the appointment of Petitioner No.3. He submitted that though the proposal is submitted to the authority way back in the year 2014, same is pending consideration of the authority. On these submissions, Mr Panpatte, learned Counsel prays that the petition be allowed.

7. Per-contra, learned A.G.P. appearing for the State opposes the submission of Mr Panpatte, learned Counsel and invited our attention to the affidavit-in-reply. The basic objection of learned A.G.P. was to filling up the post by appointing Petitioner No.3 without prior sanction of the

(5)

authorities of the State Government. Learned A.G.P. submitted that merely because an institute is having a required number of strength of students and Government resolution qua strength of students, the institute may appoint the required number of teaching and non-teaching staff but strength of students cannot be construed as a *ip so facto* sanction granted to the institute to appoint a person on their choice without there being having due sanction from the State Government.

8. Learned A.G.P. in support of his submissions invited our attention to the additional affidavit-in-reply filed on behalf of the Education Officer (Secondary), Shri Manjaji s/o Sheshrao Choudhari and relevant statement finds place in Para-6 of affidavit in reply and same reads thus:

" I say and submit that, though the G.R. dated 23.10.2013 is not in force, or not acted upon, and as per that G.R. even the post are shown to be admissible, as per students strength, unless and until the Government sanctions the said post, the Petitioner school/institute is not allowed in fill up the said post. Only there is strength of students, it does not mean that, the petitioner institute can fill up the post. For filling up the post, the proposal is required to be sent to the Government and the sanction of the Government is important. Unless Government grants sanction and permit the institution to fill up the post, the institute cannot fill up the said post".

9. We have heard rival contentions of learned Counsel for the petitioners and learned A.G.P. for the respondents-State authorities. With the assistance of learned Counsel for respective parties, we have gone

(6)

through the material placed on record. On perusal of the material placed on record, what emerges is, petitioner No.1-institute is having sufficient strength of students from the year 2012-2013 till year 2014-2015 and 2015-2016. At the cost of repetition, we state that insofar as year 2012-2013 and 2013-2014 are concerned, number of students are 732 and this fact is admitted by the Education Officer. Insofar as year 2014-2015 and 2015-2016 are concerned, in the year 2014-2015 total number of students is 874, where as in the year 2015-2016 total number of students is 709. On the backdrop of strength of students, if we perused the Government Resolution dated 23rd October, 2013 which speaks of the staff strength. It reveals that the institute can fill up four post which are for non-teaching staff and these are class-IV category staff members. Sub clause (d) of Clause 5 deals with requisite number of students. For the strength of students from 1 - 200, the institute can fill up one post, for strength of students from 201 to 400 two posts, for the students from 401 to 600 three posts, 601 to 800 four posts. In view of this data which is reflected in the Government Resolution dated 23rd October, 2013, if the strength of students available with Petitioner No.1 institute is considered, Mr Panpatte, learned Counsel is justified in making the submission before us that petitioner institute which was already granted four posts for non-teaching employees and in view of the Government Resolution dated 23rd October, 2013 can retain that number of posts qua strength of students and reduction of one post is unsustainable is the submission which will have to accept. Though the State authorities have filed as many as three affidavit-in-replies, none of the reply provides logical or rational justification for

(7)

reduction of the post. It may safely be stated that even none of the reply, the State Government disputes strength of students shown by petitioner institute, as such, Mr Panpatte, learned Counsel was justified in making submission before us that there was no rational or logic in the impugned communication whereby there is reduction and number of four posts which petitioner No.1 institute is entitled to hold is reduced by one post is unsustainable.

10. Insofar as submission of Mr. Panpatte, learned Counsel that the petitioner institute is entitled to hold four posts of non-teaching staff and one Mr.Kale stood retired on attaining superannuation, petitioner institute was entitled to appoint petitioner No.3 is concerned, we are unable to accept the same for more than one reasons. As stated above, learned A.G.P. rightly submitted before us that entitlement cannot be treated as a right accrued in favour of petitioner institute. The strength of students may permit the institute to appoint the persons but prerequisite for such an appointment is, sanction by State Government. In the case of petitioner, there was no such sanction granted to the petitioner institute.

11. Learned A.G.P. was also justified in inviting our attention to the communication dated 11th November, 2014 placed on record at the instance of the petitioners. This communication is addressed to the Education Officer (Secondary) by petitioner No.2 - Head Master, where in petitioner No.2 himself admits that he assumes that the petitioner institute can appoint petitioner No.3 as the post fell vacant due to retirement of Mr.

(8)

Kale on superannuation and though petitioner No.2 had approached the office of Education Officer with an application, office of the Education Officer refused to accept the application. Now, this communication seems to be an impression of petitioner No.2 that the refusal to accept application can be treated by petitioner No.1-institute or petitioner No.2- Head Master as if it was a deemed sanction. Such course of treating refusal as deemed sanction cannot be accepted by any stretch of imagination. Resultantly, submission of Mr Panpatte, learned Counsel to the effect that there is deemed sanction cannot be accepted.

12. The proposal for grant of approval to the appointment of petitioner No.3 is submitted to the Education Officer, Secondary, on 7th June, 2014. Respondent State admits before us through learned A.G.P. that the said proposal for granting approval is still pending for consideration.

13. Mr Panpatte, learned Counsel for the petitioners in the course of his submissions submitted that the petitioners are not pressing prayer clause (D) and State authorities be directed to decide proposal expeditiously

14. In view of these facts, we direct respondent Authorities to decide the proposal if it is pending for decision till date. Needless to state on its own merits as expeditiously as possible and preferably within six months from today.

(9)

15. Resultantly, the petition is partly allowed in terms of prayer clauses (B) and (C).

(R.G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

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