

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2920 OF 2020

Dipak S/o Macchindra Sonawane,
Age : 26 years, Occu. Nil,
R/o A/o Ghodegaon, Tal-Newasa,
Dist-Ahmednagar

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai-32
2. The Director of Education,
Secondary & Higher Secondary,
Dr. Anil Bezant Road,
Central Building,
Maharashtra State,
Pune-411 001

..RESPONDENTS

Mr Manoj A. Dond, Advocate for petitioner;
Mr S.K. Tambe, AGP for respondents

**CORAM : RAVINDRA V. GHUGE
AND
S.G. MEHARE, JJ.**

DATE : 28th July, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule. Rule made returnable forthwith, and heard finally by the consent of the parties.
2. The petitioner has putforth prayer clauses (A) and (B) which read as under:-

“(A) For writ of certiorari or any other appropriate writ, order or direction in the like nature, thereby calling for record and proceeding of the online communication given to the petitioner on Pavitra Portal website and after examining the legality, validity and propriety thereof online communication given to the petitioner on pavitra portal website may kindly be quashed and set aside and further direct the respondents to provide the petitioner with the preferences of junior colleges and to participate in the selection process for the appointment of teacher through online Pavitra Portal System.

B) For writ of mandamus or any other appropriate writ, order or direction in the like nature, the respondents, may kindly be directed to provide the petitioner with the preferences of junior colleges in the preference form and allow the petitioner to participate in the selection process for the appointment of teacher for junior colleges through online pavitra portal system.”

3. The contentions of the petitioner can be summarized as under:-
 - a) The petitioner completed his B.Ed. Course on 12.06.2015.
 - b) The State of Maharashtra published a notification dated 26.10.2017 calling for applications from the interested candidates for appearing for the TAIT-2017. The time limit for filing applications and payment of requisite fees was 2.11.2017 till 22.11.2017, both days inclusive. The time limit for taking a print out of the admit card was 1.12.2017 to 11.12.2017, both days inclusive. The online examination was held in three batches in between 12.12.2017 till 21.12.2017, both days inclusive.

- c) The applicants were expected to give details of having passed 10th standard, 12th standard, D.T.Ed./B.Ed., degree qualification and post graduate degree qualification, along with their caste/tribe details.
- d) On 1.3.2018, the petitioner has passed his Teachers Aptitude and Intelligence Test (TAIT).
- e) On 28.06.2018, the petitioner acquired the qualification of M.Sc.
- f) The petitioner is aggrieved by the denial of the competent authority from enabling him to putforth his options for junior colleges in the preference form of the selection process for the post of teachers to be appointed through the PAVITRA PORTAL (the portal which is visible to all interested candidates for recruitment of teachers), which is a State Government portal.
- g) When the PAVITRA PORTAL invited preferences on 25.05.2019, the petitioner was allowed to express his preferences in between 25.05.2019 till 30.07.2019.
- h) When the petitioner tried to log in on the website of PAVITRA PORTAL for filling his preferences, the portal was shut down due to a technical error.

- i) After the Portal became active on 20.06.2019, the petitioner logged in. However, the petitioner was disallowed from giving the preferences of junior colleges and instead, a renewed preference form was given wherein options of junior colleges were not provided.
- j) The petitioner has the requisite qualifications under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 for being a teacher in a junior college and his right to express his options was arbitrarily taken away.
- k) The petitioner has learnt from latest instructions available on the website of PAVITRA PORTAL that a new list of recommended candidates for Junior Colleges was published and those candidates were asked to contact the concerned educational institutions by 15.02.2019. The candidature of the petitioner was not considered for junior colleges.

4. The learned A.G.P. has relied upon the affidavit-in-reply filed by Shri Anil Sampatrao Sable, Deputy Director of Education, Aurangabad Region, Aurangabad dated 16.03.2021. His submissions can be summarized as under:-

- a) The qualifications for appointment of teachers are provided in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules of 1981 framed thereunder.

- b) As per Government Resolution dated 23.06.2017, the process for recruitment of teachers at various levels was to be monitored by the State Government through a State wide examination titled as TAIT.
- c) Those candidates who hold qualifications for appointment of teachers at different levels as per the MEPS Act and the Rules, were eligible to appear for the TAIT in view of the Government Resolution dated 23.06.2017.
- d) The first TAIT was conducted as per procedure and for which the notification was published on 26.10.2017 (details of which have been referred to in the submissions of the learned Advocate for the petitioner).
- e) The cut off date for being eligible to appear for TAIT was 22.11.2017, which was the last day for filing of the online applications, in the light of the judgment delivered by the Honourable Apex Court in **Ashok Kumar Sonkar vs. Union of India & ors., 2007 (4) SCC 54.**
- f) When the petitioner applied for the TAIT in between 2.11.2017 and the cut off date 22.11.2017, he was not holding the qualification of M.Sc., which is a post graduate qualification necessary for teaching students admitted in the junior colleges.
- g) The TAIT is equipped with a software designed for the said purpose and which permits zero human interference.

- h) There can be no dispute that teachers who desire to opt for imparting education in junior colleges, have to possess the post graduate degree in the said subject as per the MEPS Act and the Rules.
- i) It was under fortuitous circumstances that the form of the petitioner was accepted by the software used for TAIT when he was not possessing the qualification of M.Sc. Yet, the software noticed this lack of qualification on the cut-off date of TAIT and did not permit him to opt for any junior college.
- j) Nevertheless, a candidate could appear for the TAIT even by being a graduate, whose eligibility would be tested not for teaching junior college students since a graduate cannot teach students of the junior college as per the Rules, and he could opt for secondary schools (5th to 7th std.).
- k) The TAIT is conducted by keeping in focus the available vacancies and it is a continuous process.
- l) Now that the petitioner is equipped with the M.Sc. Degree and desires to teach junior college students (higher secondary schools), he would always be at liberty to appear for TAIT and lodge his options for teaching in any of the available junior colleges, if he passes TAIT.

- m) In order to clear ambiguities if any, though the State Government does not find any of its Rules to be ambiguous, the respondents published general clarificatory instructions on 19.06.2019, which is analogous to the guidelines published in the Government Resolution dated 23.06.2019, so as to make it more clear that those teachers who desire to teach students of the 9th standard till the 12th standard divisions of the Science faculty, they should be possessing the degree of M.Sc.
- n) Schedule 'B' under the MEPS Rules, prescribes qualifications for teachers in junior colleges under title III, clause (1) (a) as 'master's degree of a statutory university in second class in the respective subjects + B.Ed. or a Diploma or Certificate in Teaching approved by the Department.

5. The petitioner has laid foundation to his petition by contending that he was holding the degree of M.Sc. when the Portal opened for registering the options of the candidates. He desired to teach junior college students and, therefore, he had improved his qualifications by acquiring the degree of Master in Science. He was not aware that the cut off date would be presumed to be 22.11.2017 insofar as the TAIT – 2017 examination is concerned.

6. We find that the submission of the petitioner, as recorded above, would be unsustainable since the TAIT-2017 notification clearly indicated that all those candidates who desired to teach the primary, higher primary (5th to 7th standard), secondary and higher secondary (9th to 12th standard) were eligible

to appear for the said examination. That would not convey any different meaning and there is no room for creating any misunderstanding that any candidate appearing for the TAIT would be capable of opting for any level of education, viz. primary up-to junior college, irrespective of his qualification.

7. The TAIT-2017 was held in three batches and candidates who had acquired qualifications at particular levels were placed in those three different batches. There is no dispute that TAIT-2017 was the first experiment made by the State Government after this Court delivered a judgment on 24.06.2015 at its Nagpur Bench in Public Interest Litigation No.8 of 2015 by recording the following observations:-

“The Perusal of the petition would reveal that a large issue regarding selection of teaching and non-teaching staff in private schools run by private management on grant and no-grant basis has been raised in the present petition.

Undisputedly the schools on grant-in-aid basis receive grant for the entire salary from the public exchequer. Even in spite of that the recruitment in such schools is by the private management. It is a common knowledge that the factors while making selection and recruitment by such a private management at times are other than the merit.

By now it is the settled principle of law that a back door entry in public employment is not permissible. If the salaries of the staff in the private management are paid from the public exchequer, there is no reason as to why the employment in such management should not be only on the criteria of merit. We are well aware about our limitation that we cannot issue a direction

to the State to frame a particular policy. However, the State in order to bring about the fairness in the selection process of the staff whose salary is paid from the public exchequer, is expected to frame such a policy, which would ensure that the selection is only on the basis of the merit and it should be ensured that the malpractices are avoided.

We expect the State to consider the petition from that angle.”

8. Considering the above, in the event of any technical glitch in the software or the operating system would not permit any candidate, as like the petitioner herein, to take advantage of such a glitch and claim that he is eligible for imparting education to the junior college students in view of he having acquired the requisite qualifications, after he had passed the TAIT-2017 examination which was the qualifying examination. The petitioner cannot be permitted to take advantage of such a technical glitch when apparently, he was not qualified to teach the students of the junior college when he gave his aptitude test in the form of TAIT-2017.

9. In Ashok Kumar Sonkar (*supra*), the Honourable Apex Court concluded that any candidate who applies for acquiring a requisite educational qualification, has to be eligible at the time of filling such form and if a particular period is prescribed for filing of such applications, the last date of such period would be considered as the cut off date, if there is no specific cut off date specified in the advertisement or the Rules applicable.

10. In view of the above, we do not find any merit in this petition. The same is, therefore, dismissed.

11. Needless to state, the petitioner would be entitled to appear for the forthcoming TAIT, if he has not already appeared for such a test after acquiring M.Sc. qualification and in the event of he clearing such test, he would be eligible to enter his options for teaching the students of the junior colleges as per the availability of colleges.

12. Rule is discharged. No order as to costs.

[S.G. MEHARE, J.]

[RAVINDRA V. GHUGE, J.]

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