

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

KANCHAN
VINOD
MAYEKAR

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WRIT PETITION NO. 3846 OF 2021

Yuvraj Shankar Rathod

..... Petitioner

VERSUS

The State of Maharashtra & Ors.

..... Respondents

Mr.Narendra V.Bandiwadekar, a/w. Mr.V.R.Kumbhar, i/b. Mrs.Ashwini Navjyot Bandiwadekar for the Petitioner.

Mrs.P.N.Diwan, A.G.P. for the State.

**CORAM: R. D. DHANUKA AND
R.N.LADDHA, JJ.**

DATE : 17th DECEMBER, 2021

P.C:-

Learned counsel for the petitioner seeks leave to delete the names of the respondent nos. 3 and 4. Leave granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

2. Rule. Mrs.Diwan, learned A.G.P. waives service for the respondent nos. 1 and 2. By consent of parties, writ petition is heard finally.

3. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 20th October, 2020 passed by the respondent no.2 refusing to grant approval to the appointment of the

petitioner as peon in the respondent no.4 school, for a period of three years i.e. 1st February, 2014 to 31st January, 2017 and for grant of grant in aid and other reliefs.

4. Mr. Bandiwadekar, learned counsel for the petitioner invited our attention to the impugned order dated 20th October, 2020 passed by the Education Officer and would submit that the approval is rejected on 18 grounds, out of which 16 grounds are relating to the documents/information not allegedly supplied by the management along with the proposal or at the stage of hearing.

5. Insofar as the reasons recorded at serial no.17 is concerned, it is submitted by the learned counsel that the Education Officer could not have rejected the proposal on the ground that there was a ban on the appointment of the non teaching employees. He submits that the said ban would not apply to the minority institutions.

6. Insofar as the reasons recorded at serial no.18 is concerned, he submits that the said Government Resolution dated 28th January, 2019 pressed in service by the Education Officer would not apply to the appointment already made prior to the date of the said Government Resolution. He submits that the appointment in this case was on 3rd January,

2014.

7. Insofar as the reasons recorded at serial no.2 that 'no objection' was not taken from the Education Officer before filling of the said post is concerned, it is submitted that section 5 of the MEPS Act does not apply to the minority institution. In support of this submission, learned counsel placed reliance on the judgment of this Court delivered on 16th July, 2021, in case of ***Shital Kumar Patil vs. State of Maharashtra & Ors.***, in ***Writ Petition No.4273 of 2019*** and other companion matters.

8. It is submitted by the learned counsel that though all these details and documents as mentioned in paragraphs 1, 3 to 16 were furnished at the time of hearing, if the matter is remanded back to the Education Officer, the petitioner is ready and willing to submit those documents along with information as sought by the Education Officer. Statement is accepted.

9. Learned A.G.P. attempted to distinguish the judgment of this Court in case of ***Shital Kumar Patil*** (supra) on the ground that the Government Resolution considered by this Court in the said judgment was dated 16th July, 2016 whereas the appointment of the petitioner was made much prior to the date of the said Government Resolution.

10. Insofar as the reasons recorded by the Education Officer at serial nos. 1, 3 to 16 are concerned, the impugned order would indicate that the proposal has been rejected on the ground that the management has not furnished various information/documents relating to the appointment of the petitioner. The case of the petitioner on the other hand was that information/documents were submitted. In view of the rival contention, it would be appropriate if the impugned order is quashed and set aside and the matter is remanded back to the Education Officer with an opportunity to the petitioner to produce those information and documents for want of which the Education Officer has rejected the approval to the appointment of the petitioner.

11. Insofar as the reasons recorded by the Education Officer at serial no.2 that 'no objection' was not obtained from the Education Officer before appointing the petitioner in question is concerned, in our view section 5(1) of the MEPS Act does not apply to the minority institution. This Court in case of **Shital Kumar Patil** (supra) has considered various resolutions dated 23rd October, 2013, 12th February, 2015 and 13th July, 2016 and also the principles of law laid down by the Hon'ble Supreme Court in case of **T.M.A.Pai Foundation vs. State of Karnataka, 2002(8) SCC 481** and in case of **Secretary, Malankara Syrian Catholic College vs. T.Jose & Ors., 2007(1) SCC 386** and has held that minority institutions have been excluded from the

applicability of section 5(1) of the MEPS Act. If a minority institution seeks permission before recruitment, then permission should be given by following the procedure stated in the Government Resolution, but if an appointment is made by the minority institutions without taking permission then in that case appropriate action shall be taken for granting individual approval to such an appointment.

12. We are not inclined to accept the submission of the learned A.G.P. for the State that this Court in the said judgment of ***Shital Kumar Patil*** (supra) had considered the Government Resolution dated 13th July, 2016 and not the Government Resolution pressed in service by the Education Officer in the impugned order. This Court in the said judgment in case of ***Shital Kumar Patil*** (supra) considered the Government Resolution dated 23rd October, 2013 also which was in force when the appointment of the petitioner was made in the year 2014. Be that as it may, this Court also considered the judgment laid down by the Hon'ble Supreme Court in case of ***T.M.A.Pai Foundation*** (supra) and in case of ***Secretary, Malankara Syrian Catholic College*** (supra) which judgment had interpreted section 5(1) of the MEPS Act. In our view, the judgment of this Court in case of ***Shital Kumar Patil*** (supra) following the judgment of the Hon'ble Supreme Court in case of ***T.M.A.Pai Foundation*** (supra) and in case of ***Secretary, Malankara Syrian Catholic College*** (supra) applies to the facts of this case. The reasons

recorded in paragraph (2) of the impugned order are thus perverse and contrary to the principles of law laid down by this Court in case of ***Shital Kumar Patil*** (supra) and deserves to be quashed and set aside.

13. Similar reasons recorded in paragraph (17) that there was a ban on the appointment of the non-teaching staff and more particularly peon in this case also is contrary to the principles of law laid down by this Court in case of ***Shital Kumar Patil*** (supra) and is accordingly quashed and set aside.

14. Insofar as the reasons at serial no.18 that no permission can be granted in view of the Government Resolution dated 28th January, 2019 is concerned, in our view, the said Government Resolution would apply, with prospective effect and not retrospective effect. The said reason is also contrary to the well settled principles of law laid down by this Court in catena of decisions holding that Government Resolution does not apply with the retrospective effect. The said reason also is accordingly quashed and set aside.

15. Insofar as reasons recorded at serial nos. 1, 3 to 16 are concerned, those reasons are quashed and set aside. The proposal submitted by the management is restored to file before the Education Officer to reconsider the proposal after giving an opportunity to the petitioner as well as the

management to produce the documents and information. Such information if required, shall be requisitioned by the Education Officer from the petitioner as well as to the management within two weeks from today. The management to furnish such information and documents within two weeks thereafter. If any assistance is required from the petitioner, the petitioner also shall furnish such documents or details to the Education Officer.

16. The Education Officer shall pass a fresh order in accordance with law without being influenced by the observations made and the conclusion drawn in the impugned order dated 20th October, 2020 within six weeks from the date of the petitioner and the management furnishing information and documents. The order that would be passed shall be communicated to the petitioner as well as to the management. If the order is adverse against the petitioner, the same shall not be implemented by the management as well as by the respondent nos. 1 and 2 for a period of three weeks from the date of communication of such order. If the approval is granted, the name of the petitioner shall be entered into the Shalarth Pranali within two weeks from the date of granting such approval. In that event, all the consequential benefits including the payment of salary and the arrears shall be paid to the petitioner from the date of initial appointment within four weeks from the date of entering the name of the petitioner in Shalarth Pranali.

17. After the documents are furnished by the petitioner and/or the management, the Education Officer shall issue notice of hearing to the petitioner as well as to the management three days in advance of the proposed hearing.

18. Writ petition is allowed in the aforesaid terms. Rule is made absolute accordingly. No order as to costs.

19. The parties to act on the authenticated copy of this order.

[R.N.LADDHA, J.]

[R.D.DHANUKA, J.]