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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2003 OF 2020

Vilas J. Londe	...Petitioner
V/s.	
The State of Maharashtra & Ors.	...Respondents

Mr.Chetan G. Patil with Mr.Mandar G. Bagkar for the Petitioner.

Mr.A.A. Alaspurkar, AGP for the State - Respondent Nos.1 to 3.

CORAM : R.D. DHANUKA &
A.K. MENON, JJ.
DATE : 23RD AUGUST, 2021.

P.C. :-

1. Mr.Patil, learned counsel for the petitioner seeks liberty to delete the respondent nos.4 and 5. Leave to amend is granted as prayed. The amendment to be carried out forthwith. Re-verification is dispensed with. By consent of the parties the petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the show cause notice dated 8th February, 2021 issued by the respondent no.2 and seeks an order and direction against the respondent no.3 to fix the pay scale of the petitioner described in prayer clause (A) of the petition. The petitioner also seeks an order and direction against the respondent no.3 to

release the grant-in-aid in accordance with the sanctioned pay scale to the petitioner to the post of Junior Clerk in the respondent no.5 school.

3. The petitioner was appointed to the post of Junior Clerk in the respondent no.5 on 1st June, 2017 on the vacancy having arisen for the said post of Junior Clerk. The respondent no.5 management submitted a proposal to the respondent no.3 along with requisite documents for approval to the appointment of the petitioner to the post of Junior Clerk on 1st March, 2019. The Education Officer granted individual approval to the petitioner with effect from 1st June, 2017.

4. It is the case of the petitioner that the Education Officer however in the said approval order dated 1st March, 2019 wrongly fixed the pay band of Rs.2000 only to the approved post of the petitioner. The petitioner thus filed this writ petition.

5. During the pendency of this petition, the respondent no.3 issued a show cause notice to the petitioner as to why the appointment granted to the petitioner shall not be cancelled. By a letter dated 24th February, 2021, the Deputy Director of Education however, stayed the said proceedings initiated pursuant to the said show cause notice.

6. Mr.Patil, learned counsel for the petitioner invited our

attention to various averments made in the affidavit in reply filed by the respondent nos.1 and 2. He states that in paragraph 6 of the said affidavit in reply that it is the case of the Government that in case of minority institutes, there is no permission for new recruitment or filling the vacant post without obtaining permission from the State Government.

7. The Deputy Director of Education in the said affidavit in reply however, alleged that the appointment of the petitioner to the said post was made on the ground that no prior permission had been obtained by initiating the proceedings. The recruitment has been done when there was ban on the recruitment. The Government Resolution dated 13th July, 2016 was not complied with by the management while appointing the petitioner on the said post.

8. Mr.Patil, learned counsel for the petitioner relied upon the judgment of this Court delivered on 16th July, 2021 in case of **Shital Kumar Patil vs. State of Maharashtra & Others** in Writ Petition No.4273 of 2019 along with Writ Petition No.4275 of 2019 and would submit that the issue raised by the Deputy Director of Education in the affidavit in reply is correct. He submits that the Government Resolution which is relied upon by the Deputy Director of Education in affidavit in reply and more particularly the Government Resolution dated 13th July, 2016 does not apply to the minority institutions. The

management who has appointed the petitioner is a minority institution.

9. Learned AGP on the other hand would submit that though the management is minority institution, no permission for new recruitment filling the vacant post without obtaining permission of the State Government can be granted in view of the said Government Resolution dated 13th July, 2016. Learned AGP does not dispute that the management having appointed the petitioner to the said post is a minority institution. Learned AGP could not distinguish the judgment passed by this Court in **Shital Kumar Patil** (supra).

10. After referring to the several judgments passed by this Court in the same judgment in case of **Shital Kumar Patil** (supra) has held that the Government Resolution itself had issued subsequent to the Government Resolution dated 13th July, 2016 after adverting to the judgment of the Hon'ble Supreme Court in case of **T.M.A. Pai Foundation vs. State of Karnataka** and in case of **Secretary, Malankara Syrian Catholic College** has clearly stated that the minority institutions have been excluded from the applicability of section 5(1) of the MEPS Act. In our view, the principles laid down by this Court in the said judgment clearly applies to the facts of this case. We do not propose to take a different view in the matter.

11. In our view, the Deputy Director of Education thus could not have issued any show cause notice for recalling of the approval already granted by the Education Officer. In our view the show cause notice issued by the Education Officer is without jurisdiction, the same deserves to be quashed and set aside. The petitioner has made out a case for grant of relief as prayed.

12. We therefore, pass the following order :-

a). The impugned show cause notice dated 8th February, 2021 issued by the Deputy Director of Education Department is quashed and set aside.

b). The respectfully no.3 is directed to release grant-in-aid in accordance with the sanctioned pay scale of the petitioner to the post of Junior Clerk in the respondent no.5 school from the date of initial appointment within four weeks from today.

c). The writ petition is allowed in aforesaid terms.

d). Rule is made absolute accordingly. There shall be no order as to costs.

(A.K. MENON, J.)

(R.D. DHANUKA, J.)