

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

WRIT PETITION NO. 6873 OF 2019

Ku. Sony Shrirang Manjramkar,
Age : 30 Years, Occ. : Service,
R/o Shaktiparv, Opp. Police Head
Office, Dr. Babasaheb Ambedkar
Road, Vajirabad Nanded.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
2. The Director of Education,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Latur Division, Latur.
4. The Education Officer (Primary),
Zilla Parishad, Nanded.
5. Uday Shikshan Prasarak Mandal,
Near Police Paraid Ground,
Dr. Babasaheb Ambedkar Road,
Vajirabad, Nanded,
through its Secretary.
6. Kailaswasi Someshchandra Varma
Vidyalay, through its Headmaster
(Gangachal-Suryanagar),
Nanded.

.. Respondents

Shri Veer Shrikant T., Advocate for the Petitioner.
Shri S. B. Yawalkar, Addl.G.P. for the Respondent Nos. 1 to 3.
Shri Nitin S. Kadam, Advocate for the Respondent No. 4.
Shri Akshaykumar J. Mete, Advocate for the Respondent Nos. 5
and 6.

**CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.**

DATE : 28.09.2022.

JUDGMENT (Per Sandeep V. Marne, J.) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. By present petition, the petitioner challenges order dated 16 March, 2019 passed by the Education Officer (Primary), Zilla Parishad, Nanded rejecting the proposal for grant of approval to her appointment. The reasons for rejection *inter alia* are that (i) permission of the Education Officer was not sought before issuing advertisement for the petitioner's appointment, (ii) she did not possess qualification of TET at the time of appointment, (iii) appointment is after issuance of the Government Resolution dated 02.05.2012, (iv) there are surplus teachers in the school.

3. Appearing for the petitioner, Mr. Veer Shrikant T, learned counsel has submitted that the respondent No. 6 has been recognized as a minority educational institution vide certificate dated 31.10.2018. He therefore submits that the respondent-school being minority educational institution, it enjoys necessary autonomy to appoint teachers of its choice. He invites our attention to the staffing pattern to demonstrate that the post was available for petitioner's appointment. He prays for setting aside the order dated 16.03.2019 and for reconsideration of the proposal by taking into consideration minority status of the respondent-school.

4. Per contra, Mr. Yawalkar, learned Additional Government Pleader for the respondent Nos. 1 to 3 opposes the petition relying on the provision of Section 5 of the Maharashtra

Employees of Private Schools (Condition of Service) Regulation Act, 1977 (for short “Act of 1977”) and submits that the school did not seek permission of the Education Officer before issuance of advertisement or before appointing the petitioner. With regard to the minority status of the school, Mr. Yawalkar, would contend that the petitioner claims to have been appointed on 05.07.2014 and, therefore, subsequent minority status allegedly conferred on the respondent-school in the year 2018 would be inconsequential. Inviting our attention to the staffing pattern, he would contend that no post was available for Petitioner’s appointment and that there were surplus teachers in the school. Mr. Yawalkar also invites our attention to the register of trustees of the management-trust to demonstrate that the petitioner is one of the trustees. He, therefore, raises doubt about any selection process being conducted for appointment of the petitioner. He prays for dismissal of the petition.

5. Having heard learned counsel for the parties, we first proceed to examine the contention of the petitioner that on account of conferment of status of minority educational institution, the school management enjoyed autonomy to appoint teachers of its choice. For this purpose, we may refer to the provision of Section 3 of the Act of 1977, which reads as under :

**The Maharashtra Employees of Private Schools
(Condition of Service) Regulation Act, 1977**

1.

3. Application of Act. - (1) The provisions of this Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.

(2) Notwithstanding anything contained in sub-section (1), the provisions of this Act shall not apply to the recruitment [of the Head of a minority school and] any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to [the Director or, as the case may be,] the Deputy Director for this purpose.

6. Thus, only four posts have been excluded from application of provisions of the Act of 1977 viz Head of the school and three more persons. Thus, no doubt a minority educational institution has a choice to appoint atleast three persons (in addition to Headmaster) of its choice without adhering to the provisions of the Act of 1977. Since the Maharashtra Employees of Private Schools (Condition of Service) Regulation Rules, 1981 (for short “Rules of 1981”) are formulated under the provisions of the Act of 1977, such posts would also be excluded from purview of application of Rules of 1981. However, the precondition is that such posts are required to be notified to the Director or Deputy Director of Education before filling them. Once the three posts that minority educational institution wishes to fill in exercise of its autonomy are notified to the Director/Deputy Director of Education, the stipulation of the Act of 1977 and Rules of 1981 cannot be applied for filling up said posts. It is in the context of these provisions that Mr. Veer has contended before us that it was not necessary for the respondent-school to obtain prior approval of the Education Officer before issuing the advertisement.

7. There are two difficulties for the petitioner for seeking protection under Section 3 of the Act of 1977. Firstly, at the time of her appointment, admittedly the respondent-school was not

recognized as a minority educational institution. Therefore, at the time of her appointment provision of Section 5 of the Act of 1977 was applicable to the respondent-school, which mandated ascertaining of non-availability of surplus teachers from Education Officer before issuing an advertisement, in pursuance of which the petitioner was appointed. Since provisions of Section 5 of the Act of 1977 were applicable at the time of petitioner's appointment, her appointment is obviously in contravention of the said provisions. The second difficulty is that the post occupied by the petitioner was not notified to the Director/Deputy Director of Education as mandated under Section 3 of the Act of 1977. In fact, such notification could have been done before petitioner's appointment as the school was not a minority educational institution at that time.

8. A question that arises now is whether the post occupied by the petitioner can now be notified under the provision of Section 3 of the Act of 1977 and can be filled up by appointing her? We are afraid, this cannot be done. The petitioner is already appointed and is occupying the post. Her appointment is in violation of the provision of Section 3 of the Act of 1977 and consequently illegal. Admittedly, the petitioner did not possess the necessary qualification of T.E.T. at the time of her appointment and on this ground also her appointment is invalid. Mere subsequent conferment of status as minority educational institution would not cure these illegalities.

9. It also appears that the petitioner is one of the trustees of the management-trust. The school management had allegedly issued an advertisement and being trustee of the management,

the petitioner applied in pursuance of the advertisement and participated in the selection process. This renders the entire selection process a sham.

10. The Education Officer has also recorded finding that there are already surplus teachers available with the respondent-school. In such circumstances petitioner's appointment, who did not possess qualification; who is a trustee of the school management for whose appointment prior approval of the Education Officer was not sought, was clearly illegal. Consequently, we do not find any error being committed by the Education Officer (Primary), Zilla Parishad Nanded while rejecting petitioner's proposal.

11. We, therefore, find that the petition is devoid of merits. The same is dismissed without any orders as to costs. Rule is discharged.

[SANDEEP V. MARNE, J.]

[MANGESH S. PATIL, J.]

bsb/Sept. 22