

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

907 WRIT PETITION NO.2790 OF 2023

URDU EDUCATION SOCIETY AURANGABAD, THROUGH ITS MEMBER
ABDUL MUQEET ABDUL WAHEED AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA,
THROUGH ITS SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Sandip R. Sapkal.

AGP for Respondent/State : Mr. P. S. Patil.

...

CORAM : **RAVINDRA V. GHUGE &
SANJAY A. DESHMUKH, JJ.**

DATE : 16th March, 2023.

Per Court:

1. The Petitioner institution is before this Court seeking permission to fill in the post of a full time librarian, which was legally filled in and occupied by a person namely Shri Mohd. Shafiuddin Shamsoddin. He superannuated from employment on 30th November, 2020. The library in the said school caters to 1171 admitted students, who hail from rural, hilly and remote areas. The library has 11770 books. After the retirement of Shri Mohd. Shafiuddin, the appropriate authorities have sat over the repeated requests of the Petitioners for permission to fill in the post, which is sanctioned and vacant.

2. The learned AGP strenuously submits that there has been a ban on recruitment of posts in the State of Maharashtra in the light of

the Government Resolution dated 25th May, 2017. He then relies upon a Government Resolution dated 3rd November, 2018. Having perused the same, we find that the Government Resolution has been issued with the following object:-

“प्रस्तुत पदांचा आकृतिबंध दिनांक ०९.०८.२०१८ रोजी उच्चस्तरीय सचिव समितीसमोर ठेवण्यात आला असता, त्यांनी पदभरती संबंधीचे निकष तपासण्याचे निर्देश अपर मुख्य सचिव (सेवा), सामान्य प्रशासन विभाग, प्रधान सचिव लेखा व कोषागारे, वित्त विभाग सचिव (व्यय) वित्त विभाग व सचिव, उच्च व तंत्र शिक्षण विभाग यांच्या समितीस दिले. अशासकीय अनुदानित महाविद्यालयातील रिक्त असलेल्या शिक्षक व शिक्षकेतर पदभरतीच्या अनुषंगाने दाखल न्यायालयीन प्रकरणे लक्षात घेऊन, उक्त समितीने केलेल्या शिफारशी दिनांक १४.०९.२०१८ रोजी झालेल्या उच्चस्तरीय सचिव समितीच्या बैठकीत ठेवण्यात आल्या. आकृतिबंध अंतिम करण्यापूर्वी काही बाबींची पूर्तता करण्याचे निर्देश उच्चस्तरीय सचिव समितीने दिले. त्याचप्रमाणे विद्यार्थ्यांचे शैक्षणिक हीत विचारात घेऊन, शिक्षकीय एकाकी रिक्त पदे व काही अत्यावश्यक शिक्षकेतर तांत्रिक रिक्त पदे ही १०० टक्के तसेच सहायक प्राध्यापकांच्या रिक्त पदांच्या ४० टक्के पदे भरण्यास मान्यता दिलेली आहे. त्यानुसार राज्यातील अकृषि विद्यापीठाशी संलग्नित उच्च शिक्षण संचालनालयाच्या अधिपत्याखालील अशासकीय अनुदानित महाविद्यालयांमधील रिक्त असलेली शिक्षकीय व शिक्षकेतर पदे भरण्यावरील निर्बंध उठवून पदभरती करण्यास काही अटी व शर्तीच्या अधीन राहून मान्यता देण्याची बाब शासनाच्या विचाराधीन होती.”

(emphasis supplied)

3. The said Government Resolution dated 3rd November, 2018 has based its decision on the strength of the students as on 1st

October, 2017. The present Petition is with regard to the solitary post of full time librarian. The Government Resolution provides that there are 1154 posts of librarian, which are sanctioned for non-Governmental Colleges on grant-in-aid basis. 991 posts were filled in as on 1st October, 2017. 163 posts of librarian were vacant. In view of the above, the Government has sanctioned permission to fill in the posts of 163 librarians.

4. The record clearly indicates to us, in the light of the Government Resolution dated 3rd November, 2018, that the Petitioners, had a sanctioned permanent post of full time librarian, which was already filled in and was occupied by Shri Mohd. Shafioddin. As on 1st October, 2017, the post was filled in and hence, the chart in the said Government Resolution indicates 991 posts, which were filled in, naturally inclusive of this Shri Shafioddin, who, by passage of time, retired on 30th November, 2020. As such, neither a new post is created, nor are the Petitioners seeking permission for creation of a new post.

5. The Petitioners are only praying for leave to fill in the post. Since the post was already filled in on 1st October, 2017 and fell vacant on 30th November, 2020, due to superannuation of Shri Mohd. Shafioddin, the appropriate authorities were only required to either

forward the name of the surplus eligible librarian, who could be absorbed, or permit the Petitioners to fill in the said post, as it was an existing permanent vacant post. The appropriate authorities did not budge and sat over the requests of the Petitioners for more than 2 years. The genuineness of the requests of the Petitioners, cannot be ignored in the light of the fact that the Petitioners have 1171 students from the rural, hilly and remote areas, who are desperately in need of reading material for their educational curriculum. There are 11770 books available with the institution. The students strength is more than 1000. Permission to fill in the post has become imperative.

6. The learned Advocate for the Petitioners has placed before us a judgment recently delivered by this Court at the Nagpur Bench on 16th September, 2022 (Coram: Sunil B. Shukre and G. A. Sanap, JJ.) in Writ Petition No.1937 of 2020 (The Majilis-E-Madrassa-E-Saifiya and another Vs. The State of Maharashtra and others), wherein the Court has observed as under:-

“1. Heard. Rule. made returnable forthwith. Heard finally by consent.

2. The only reasons given for refusing permission to start recruitment process is of ban on the recruitment. Such ban, it is the settled law, is not applicable to the minority institutions like the petitioner. A useful reference in this regard be made to view taken by this Court in

Ubhajo Shikshan Sanstha and ors .v/s. State of Maharashtra and ors., Writ Petition No. 2538 of 2021, decided on 16.11.2021. The impugned communication, is therefore, illegal and deserves to be quashed and set aside. Accordingly, the writ petition is allowed in terms of prayer clauses (a) and (b) provided that there are vacancies available.

3. Rule made absolute in the above terms. No costs.”

7. In view of the above and more particularly in the light of the imminent necessity of the Petitioners to fill in the post of a full time librarian, **this Petition is allowed.**

8. Since Respondent Nos.2 and 3 were sitting over the requests of the Petitioners for quite some time, we observe that the Petitioners need not approach the said authority for seeking their approval, again. By an order, we grant approval to the Petitioners to fill in the said post by following the due procedure laid down in law. If this requires approval of the backward cell / draft advertisement approval etc., the Petitioners would comply with these formalities.

[SANJAY A. DESHMUKH, J.]

[RAVINDRA V. GHUGE, J.]