

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11553 OF 2022

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|---|---------------------------------------|---|-----------------|
| 1 | Tahir M. Mushrif |] | |
| | Age 28 years, Occu: Service |] | |
| | residing at Dargah Chowk, Mali Galli, |] | |
| | District Sangli 416 410. |] | |
| 2 | Al-Amin Education Society, Miraj |] | |
| | having its office at Miraj 5883, |] | |
| | High School Road, Miraj, District |] | |
| | Sangli 416 410 through its |] | |
| | President/ Secretary |] | |
| 3 | Dr. Salim Urdu High School |] | |
| | through its Head Master, having |] | |
| | office at Miraj Malgaon Road, |] | |
| | Aman Nagar, Miraj, |] | |
| | Sangli 416 410. |] | .. Petitioners. |
| | v/s. | | |
| 1 | State of Maharashtra |] | |
| | through the Principal Secretary |] | |
| | Department of School Education |] | |
| | having office at Mantralaya |] | |
| | Mumbai 400 032. |] | |
| 2 | Deputy Director of Education |] | |
| | Kolhapur Division, Kolhapur |] | |
| 3 | Education Officer (Secondary) |] | |
| | Zilla Parishad, Sangli. |] | .. Respondents. |

Mr. Mandar G. Bagkar, for the Petitioners.

Mr. S. B. Kalel, AGP for Respondent Nos. 1 to 3-State.

**CORAM: A.S.CHANDURKAR &
FIRDOSH P. POONIWALLA, JJ.**
DATE : 29th NOVEMBER, 2023.

ORAL JUDGMENT (Per A.S.CHANDURKAR,J.):-

RULE. Rule is made returnable forthwith.

2 Heard learned counsel for the parties.

3 The Petitioner No.1 came to be appointed on the post of Junior Clerk on 1st January, 2021 with the Petitioner No.3. The proposal for grant of approval came to be rejected by the Education Officer (Secondary) for the reason that there was a ban pursuant to the Government Resolution dated 4th May, 2020.

4 According to the learned counsel for the Petitioners, though such ban on recruitment was operating pursuant to Government Resolution dated 4th May, 2020, as observed by the co-ordinate Bench in Writ Petition (St) No. 4493/2022, the post in question cannot perpetually remain vacant. Since the Petitioner was appointed after following the due process of law, the ban on recruitment cannot be put forth to refuse consideration of the proposal for grant of approval.

5 The learned Assistant Government Pleader has relied upon the affidavit-in-reply filed on behalf of the Education Officer, Secondary stating therein that the proposal was rejected only for that reason.

6 The issue with regard to refusal to grant approval in view of the ban on recruitment pursuant to Government Resolution dated 4th May, 2020 has been the matter of consideration by this Court in various Writ Petitions. In the case of **Gramvikas Shikshan Mandal & Ors** (*supra*), this Court has observed that such posts cannot be permitted to remain vacant for an indefinite period. The facts of the present case indicate that the recruitment has been made on 1st January, 2021 during which time, the pandemic situation had partly subsided. We find in addition that the

Petitioner no.3 School is a minority institution and therefore, we deem it appropriate to direct reconsideration of the proposals seeking such approval.

7 Accordingly, the following order is passed :

ORDER

- (i) The order dated 1st December, 2021 passed by the Education Officer (Secondary) refusing to grant approval to the appointment of the Petitioner No.1 is set aside. The Education Officer, Secondary to reconsider the respective proposals in accordance with law. He shall not reject the same by relying upon the Government Resolution dated 4th May, 2020. Necessary decision on said proposals be taken within period of 8 weeks of providing copy of this judgment.
- (ii) Needless to state that in case the appointment of the Petitioners is approved, the Deputy Director of Education, shall take all consequential steps in accordance with law.
- (iii) Rule is made in the aforesaid terms with no order as to costs. Writ petition is disposed of.

(FIRDOSH P POONTWALLA,J.)

(A.S. CHANDURKAR,J.)