



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

WRIT PETITION NO. 1016 of 2023

National Education Society, Khamgaon
through its President, R/o. Khamgaon and four others **PETITIONERS**
versus
The State of Maharashtra, through its Secretary,
School Education and Sports Department,
Mumbai and another. **RESPONDENTS**

.....
Shri A.D.Bhate, Advocate for petitioners.
Shri N. R. Patil, Assistant Government Pleader for respondents.
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CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 30th NOVEMBER, 2023

P. C.

We have heard Shri A.D.Bhate, learned counsel for the petitioners and Shri N. R. Patil, learned Assistant Government Pleader for respondents.

2. The challenge raised in this writ petition is to the order dated October 07, 2022 by which the respondent no.2-Education Officer (Secondary), Zilla Parishad, Buldhana has refused to grant approval to the appointment of the petitioner nos. 3 to 5.

3. The petitioner no.1, is a society registered under the provisions of law and a public Trust, which is running the petitioner no.2- School/Junior College. The petitioner no.1 claims to be a minority institution. By this petition, the petitioners have prayed for quashing and setting aside of the impugned order dated October 07, 2022 passed by the respondent no.2- Education Officer (Secondary), with direction to the Education Officer (Secondary) to re-consider the proposal dated October 21, 2020 submitted by the petitioner nos. 1 and 2 for grant of approval to the appointment of the petitioner nos. 3 to 5.

4. The facts necessary for deciding the present writ petition are as under:

(i) It is the case of the petitioners that in view of superannuation of non-teaching staff, the petitioner no.1 has decided to fill up those posts. Advertisement to that effect was published in local daily newspaper.

Accordingly, the petitioner nos.3 to 5 came to be appointed on the post of Junior Clerks on the pay roll of the petitioner no.2-School/College on 11.03.2020 for the period from 11.03.2020 to 10.03.2023 by following due procedure contemplated under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'Act of 1977').

(ii) On 21.10.2020 the petitioner no. 2 has forwarded the proposal for grant of approval to the appointment of the petitioner nos. 3 to 5 to the respondent no.2-Education Officer (Secondary). Such an approval was sought as the posts on which the petitioner nos. 3 to 5 appointed fell vacant due to superannuation of non-teaching staff. On receipt of the said proposal, the respondent no.2 has notified some defects in the proposal and asked the petitioner no.2 to rectify the defects. The petitioner nos. 1 and 2 have rectified the defects vide communication dated 19.05.2022.

(iii) Subsequent thereto, the respondent no.2-Education Officer (Secondary) vide impugned communication dated October 07, 2022 refused to grant approval to the appointment of the petitioner nos. 3 to 5 on the ground that there was a ban imposed by the Government on the recruitment of non-teaching staff. Being aggrieved, the petitioners have approached this Court by filing present writ petition.

5. Shri A.D.Bhate, learned counsel for the petitioners would invite our attention to the fact that the posts were advertised and thereafter were filled in as against the sanctioned vacant posts. According to him, the issue as regards the ban imposed by the State Government will not operate as an embargo on the rights of the petitioners in the matter of grant of approval by the Education Officer, is already decided by this Court in catena of judgments.

6. Shri N. R. Patil, learned Assistant Government Pleader would oppose the prayers made in the writ petition. According to him, even if the issue as regards rejection of approval cannot be justified in view of embargo placed by the Government on the recruitment of teachers, still this Authority can look into the availability of the sanctioned vacant posts.

7. We have appreciated the aforesaid submissions.

8. The fact remains that rejection of the approval is purely based on the fact that the recruitment of the petitioners was during the ban imposed by the State Government.

9. Even if there was a ban imposed by the State Government, this Court has already held that such ban imposed by the State Government will not operate an embargo on the rights of the candidates like the petitioners to seek approval.

10. That being so, we are of the view that the impugned order dated October 07, 2022 cannot be said to be sustainable based on the reasons reflected in the said order. As such, the impugned order dated October 07, 2022 is hereby set aside. We direct the Education Officer (Secondary) to consider the claim of the petitioners afresh and in case if they are appointed on sanctioned vacant posts, proceed to re-evaluate their claim as expeditiously as possible and in any case within a period of three months from the date of production of copy of this order.

11. The writ petition stands allowed in aforesaid terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

Andurkar.