

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION 1354 OF 2021

Shabbir Khan Zaffar Khan,
Aged about 52 years, Occ. Service,
R/o. Mominpura, 21 Mahal,
At Post Mahan, Tahsil Barshitakli,
District Akola

.....PETITIONER

...V E R S U S...

1. State of Maharashtra,
through its Secretary, School Education
and Sport Department, Hutatma
Rajguru Chowk, Madam Kama Marg,
Mantralaya Extension House,
Mumbai-32

2. Director of Education, Pune,

3. Deputy Director of Education
Amravati Division, Amravati

4. Education Officer (Secondary),
Zilla Parishad, Akola

5. The President,
Shamim Azad Urdu Education Trust,
Giroli, Tahsil Manora, District Washim

6. The Head Master,
Prof. Javed Khan Urdu High School
and Junior College of Arts and
Science,
Mahan, Tahsil Barshitakli,
District Akola

7. Mohammad Shahezad Sheikh Abdulla,
Aged about 30 years, Occ. Service,
R/o. At Post Giroli, Tahsil Manora,

Distrist Washim

..RESPONDENTS

Mr. A.S. Deshpande, counsel for petitioner,
Mr. M.K. Pathan, AGP for respondents 1 to 4/State.
Ms. Radhika Bajaj, counsel for respondent 5&6.
Mr. A.D. Mohagaonkar, counsel for respondent 7.

CORAM:- ROHIT B. DEO & MRS. VRUSHALI V. JOSHI, JJ.

DATE : 09.03.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Heard.

2. Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

3. The initial prayer in the petition was that respondent 5 – Management be directed to assign Higher Pay Scale to the petitioner, as is admissible to Trained Graduate Teacher and that the petitioner be permitted to work in High School on the post which is advertised and the advertisement issued be quashed. During the pendency of the petition, vide order dated 1.4.2021, respondent 7 was appointed to the post advertised and the appointment was approved by respondent 4 – Education Officer, and the petitioner amended the petition seeking the relief of setting aside of the appointment order issued in favour of respondent 7.

4. Petitioner is working as Assistant Teacher in school managed by a minority institution which is aided.

5. Petitioner claims to have graduated in Arts in 1994-1995. He was appointed as Graduate Untrained Assistant Teacher vide order dated 19.6.1996, at the Primary School. Petitioner claims that during the course of the employment, he acquired B.Ed. qualification in 1997 and M.A. in History in August 2016.

6. Petitioner refers to Government Resolution ("GR") dated 11.11.2011, which according to the petitioner, articulates that Graduate Teachers, who have B.Ed. qualification and are working in Primary School are entitled to be treated as Trained Teachers if their appointments are within the 25% quota. The petitioner further refers to an earlier GR dated 9.7.1987 and contends that the said GR provides that if Trained Graduate Teacher is required to be appointed for class VIII to X, the teacher who is qualified and is working in Primary School shall be considered subject to he fulfilling the seniority and other eligibility criteria. The petitioner claims that if Trained Graduate Teachers working in the Primary School are available, then open advertisement process to fill in the posts at the Secondary School

cannot be initiated.

7. The petitioner claims to have preferred application dated 21.8.2020 seeking appointment against the 25% quota. The petitioner avers that respondent 5 published an advertisement on 5.3.2021 inviting applications for the post of Assistant Teacher for IX and X standards. The prescribed qualification was B.A. B.Ed. in the subject Urdu/History. The respondent 3 – Education Officer permitted the Management to publish the advertisement. According to the petitioner, such permission ought not to have been granted since the petitioner was available for appointment to the post in the Secondary School and the Management ought to have permitted the petitioner in the 25% quota.

8. It is on these broad facts that the claim in the petition rests.

9. Affidavit in response is filed on behalf of the respondents 5 and 6 – Management and the Head Master, respectively, on 18.8.2021. It is averred that one Mr. Abdul Ansar Abdul Hamid was working as Assistant Teacher in respondent 6 – School since 20.6.1994 and he was promoted as a Graduate Teacher in the 25% quota with effect from 1.10.1996 initially to

teach V to VII standards and later to teach VIII to X standards. Mr. Abdul Ansar Abdul Hamid cleared B.Ed. qualification in Urdu. Mr. Abdul Ansar Abdul Hamid used to engage the periods of Urdu and History for standards VIII to X. He opted for voluntary retirement on 28.2.2021, and in view of the vacancy, the advertisement dated 5.3.2021 was issued pursuant to which, respondent 7 Mohammad Shahzad Shaikh Abdulla was appointed on 1.4.2021, which appointment was approved by the Education Officer. The Management avers that apart from the vacancy created due to the voluntary retirement of Mr. Abdul Ansar Abdul Hamid, no other vacancy was/is available.

10. The Management further avers that one Mr. Rayees Ahmad Nisar Ahmad was also promoted as a Graduate Teacher in respondent 6 School in the 25% graduate quota vide order dated 4.8.2009. This promotion was done when vacancy was created due to the assignment of standards VIII to X to Mr. Abdul Ansar Abdul Hamid.

11. The Management asserts that there was/is no other vacancy in the 25% graduate quota in respondent 6 – School.

12. The Management further asserts that respondent 6 –

School is a Urdu Medium School and the primary language which is taught is Urdu. For classes IX and X, the Urdu language question paper is assigned 100 marks while Hindi and Marathi question papers are assigned 50 marks each.

13. The Management contends that the petitioner has qualified in Hindi medium and not in Urdu medium. The Management claims that the petitioner has not cleared HSC examination and after SCC, he has completed further studies from Hindi Vishwa Vidyalaya, Allahabad. It is emphasized that the education of the petitioner is not in Urdu medium nor was Urdu subject in the graduation. Management contends that B.Ed. qualification of the petitioner is acquired from Kendriya Hindi Shiksha Mandal, Agra in correspondence course. Management avers that from certificate produced by the petitioner, it is discernible that the course was not a regular course, and none of the subjects was Urdu language. In so far as the communication on which the petitioner relies to claim equivalence, the Management asserts that the communication on which reliance is placed by the petitioner clarifies that the equivalence of Hindi Shikshan Parangat is only for the purpose of Pay Scale of Hindi Teachers in Hindi Medium Secondary Schools. The Management

then contends that the M.A.(History) qualification is acquired through Distance Education Course and no permission of the Management was sought for pursuing such course and the service record of the petitioner does not reflect any entry showing that the petitioner has acquired such qualification.

14. The Management emphasizes that the appointment of the petitioner for classes V to VIII was in view of his qualification of Hindi Visharad Madhyama, and therefore, the petitioner is not qualified or eligible for appointment to a course which requires teaching the subject Urdu along with History to standards IX and X.

15. The Management further contends that due to the peculiar qualifications of the petitioner, if he is appointed to teach classes IX and X, the weekly workload of 28 to 30 periods would not be completed. This, according to the Management, was one of the considerations, apart from the fact that the petitioner is not qualified and eligible.

16. The Management contends that the Government Resolutions on which reliance is placed by the petitioner do not apply since there is no vacancy in the 25% graduate quota in

respondent 6 – School and that even otherwise, the petitioner is not suitable much less qualified for the post advertised. The Management further relies on the status as minority institution to contend that its freedom of choice cannot be curtailed as would dilute its minority character.

17. The petitioner has filed a rejoinder affidavit dated 8.9.2021. The petitioner asserts that it is clear from the SSC and HSC certificates that Urdu was his first language. Petitioner further asserts that he is teaching Urdu subject to the students of V to VII standards since his appointment. Petitioner claims that on 16.11.1996, he was permitted by the Management to acquire training qualification. Petitioner further claims that he also sought permission to acquire higher educational qualification. In the rejoinder, the petitioner questions the appointment of respondent 7 and claims that since respondent 7 is a relative of a president of the institution, the claim of the petitioner was ignored.

18. The petitioner claims that the minority status of the institution is of no relevance inasmuch as fairness and transparency in the recruitment process cannot be a casualty. The petitioner endeavours to demonstrate his proficiency in the Urdu language and efficiency as Teacher.

19. We have also perused the affidavit in response of the Education Officer(Secondary), Zilla Parishad, Akola. We may extract the relevant averments in the affidavit dated 12.8.2022 filed on behalf of the Education Officer(Secondary), Zilla Parishad, Akola.

“3. It is submitted that, the petitioner Shri Shabbir Khan Jafer Khan, was appointed by the Society on 19.6.1996. The petitioner Shri Shabbir Khan Jafer Khan, is qualified B.A.B.Ed. Respectively from Hindi Sahitya Sammelan, Allahabad and Kendriya Hindi Shikshan Mandal, Agra.

4. It is submitted that, as both the institutes(1) Hindi Sahitya Sammelan Allahabad and (2) Kendriya Hindi Shikshan Mandal, Agra are not found in the list of University Grants Commission, the degrees obtained from these institutes are rejected for Trained Graduate Pay Scale. The Universities (1) Hindi Sahitya Sammelan, Allahabad and (2) Kendriya Hindi Shikshan Mandal Agra re not approved by the Government of Maharashtra.

5. In view of the submissions made above, the petition filed by the petitioner being devoid of substance and merit needs no consideration and same may kindly be rejected, in the interest of justice”.

20. We note that the petitioner has not rebutted the averments and stand of the Education Officer which is that the degrees obtained by the petitioner from Hindi Sahitya Sammelan, Allahabad and Kendriya Hindi Shikshan Mandal, Agra are not

recognized or approved either by University Grant Commission or Government of Maharashtra. We further note, that in rejoinder to the affidavit in response filed on behalf of the Management, the petitioner has not rebutted the averment that there is no post available in the 25% quota for Graduate Teachers.

21. We have heard learned counsel for petitioner Mr. A.S.Deshpande, learned AGP for respondents 1 to 4/State Mr. M.K. Pathan, learned counsel for respondents 5 and 6 Ms. Radhika Bajaj and learned counsel for respondent 7 Mr. A.D. Mohagaonkar.

22. We need not delve in the broader question touching the right of the minority institution under Article 30(1) of the Constitution of India. We are more than satisfied that the petitioner has, even *de hors* the said aspect, not made out a case for interference in writ jurisdiction, for reasons articulated infra.

23. The entire basis of the claim of the petitioner is the assertion that he is entitled to appointment as Trained Graduate Teacher under the 25% quota. We had already noted supra, that the petitioner has not rebutted two material assertions in the rejoinder filed to the affidavit in response. The assertion of the

Management that there is no vacancy available under the 25% quota is not denied nor is the assertion of the Education Officer that the educational qualifications acquired by the petitioner are not approved and recognized either by the University Grant Commission or then by the Government of Maharashtra denied. In view of the unrebutted assertions supra, the petition must necessarily fail.

24. The petitioner has not demonstrated that he is eligible in terms of the relevant clauses of the GR dated 9.7.1987, as would support his entitlement to be appointed to vacancy at the Secondary School, without taking recourse to the Open Recruitment Process. GR dated 9.7.1987 provides that apart from merit and seniority, Trained Graduate Teacher shall hold the qualifications and the Pay Scale prescribed in the GR. Evidently, the petitioner does not satisfy the eligibility conditions prescribed in the GR dated 9.7.1987. Similarly, and for reasons articulated supra, the petitioner is not entitled to the benefit of GR dated 19.11.2011. Clause A of the GR dated 12.11.2001 refers to treating Graduate Teacher's appointed in the 25% quota and provides that such teachers shall be considered as Trained Teacher from the date of appointment and shall be assigned the Pay Scale

of Trained Graduate Teacher. Clause B provides that if appointments are made at Primary Schools of graduate and even B.Ed. teachers, other than in the 25% quota, such teachers shall be entitled only to the Pay Scale assigned to D.Ed. Trained Teacher. We may note that D.Ed. is the qualification prescribed for Primary Teachers.

25. In any view of the matter, the petitioner is not entitled to any relief, much less the relief that the appointment made pursuant to the advertisement be quashed and that the petitioner be promoted and appointed at the Secondary School.

26. The petition is dismissed with no order as to cost.

(Mrs. Vrushali V. Joshi, J.) (Rohit B. Deo, J.)

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