

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

WRIT PETITION NO.3266 OF 2020

1. Francilian Education Society, through its
Secretary, Reg. Office at St. John's School,
Mohan Nagar, Nagpur.
2. St. John's High School,
through its Headmaster,
Mohan Nagar, Nagpur.
3. Mr. Deepakkumar Dhanraj Pilley,
Aged about 36 years,
Occ. Peon.
4. Mrs. Sarika Sanjay Francis,
Aged about 40 years,
Occ. Peon.
5. Mrs. Munika Anil Dungdung
Aged about 34 years,
Occ. Peon.

(Petitioner No. 3 to 5 R/o C/o St. John's
High School, Mohan Nagar, Nagpur) **PETITIONERS**

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

1. The State of Maharashtra, through its
Secretary, Department of Education,
Mantralaya, Mumbai-32.
2. The Education Officer (Sec.),
Zilla Parishad, Nagpur. **RESPONDENTS**

 Mr. Prashant P. Thakare, Advocate for Petitioners.
 Mr. M. K. Pathan, AGP for Respondents 1 & 2/State.

CORAM: **ROHIT B. DEO AND Y. G. KHOBRAGADE, JJ.**
DATE: **2nd FEBRUARY, 2023.**

ORAL JUDGMENT: (PER ROHIT B. DEO, J.)

The petitioners are assailing the communication dated 16.12.2019 issued by the Education Officer (Sec.), Zilla Parishad, Nagpur communicating that the proposal of the management for grant of approval to the appointment and promotion of petitioners 3 to 5 to the posts of Peon cannot be approved.

2. In the affidavit in response dated 13.01.2022 filed by the concerned authority reliance is placed on Government Resolution dated 12.02.2015 and the assertion is that since the appointments are made after the recruitment ban, approval cannot be granted.

3. It is common ground that the issue is squarely covered by catena of decisions of this Court. We may refer only to one of them. In *Writ Petition 4273/2019 Shital Kumar Patil v. State of Maharashtra and others decided on 16.07.2021*, after considering the earlier decisions the observations of the Coordinate Bench read thus:

17. The respondent no.2 in the impugned order

did not consider the crucial aspect that neither the said Government Resolution dated 23rd October, 2013 nor the Government Resolution dated 12th February, 2015 were applicable to the minority institutions. The Government of Maharashtra itself had issued a subsequent Government Resolution dated 13th July, 2016 after adverting to the judgment of Hon'ble Supreme Court in case of T.M.A.Pai Foundation vs. State of Karnataka (supra) and in case of Secretary, Malankara Syrian Catholic College (supra) and had clearly stated that the minority institutions had to be excluded from the applicability to the section 5(1) of the MEPS Act. It was further stated that if the minority institutions seek permission before recruitment, then permission should be given by following the procedure stated in the said Government Resolution. But if an appointment is made by minority institutions without taking permission then in that case appropriate action shall be taken for granting individual approval to such appointment.

18. The respondent no.2 in the impugned order has totally overlooked the Government Resolution dated 13th July, 2016 which was issued in conformity with the principles of law laid down by the Hon'ble Supreme Court in case

of T.M.A.Pai Foundation vs. State of Karnataka (supra) and in case of Secretary, Malankara Syrian Catholic College (supra). In our view, the respondent no.2 thus could not have relied upon the Government Resolutions dated 12th February, 2015, 8th August 2017 and the Government Resolution dated 23rd October, 2013 in the impugned order while rejecting the proposal submitted by the respondent no.4 in respect of the appointment of the petitioner made to the post of peon. Section 5(1) of the MEPS Act is excluded and is not applicable to the minority institutions including the respondent no.3 in this case. The respondent no.2 did not consider all these crucial aspects in the impugned order and has mechanically rejected the proposal made by the respondent no.4 to the appointment of the petitioner to the post of the peon.

19. The judgment of Aurangabad Bench of this Court in Writ Petition No.5547 of 2013 in case of St.Francis De Sales Education Society & Ors. (supra) after adverting to various judgments of the Hon'ble Supreme Court and this Court has held that the minority institutions are entitled to make appointment of teachers of its choice and such appointments cannot be vetoed until the time surplus teachers are accommodated/absorbed. The principles of law

laid down by the Aurangabad Bench of this Court in the said judgment would apply to the facts of this case.

4. For reasons recorded by the Coordinate Bench, we allow the petition in part and direct that the proposals seeking approval shall be considered on their merit and shall not be rejected on the ground that the appointments are after the ban on recruitment, since the Institution is a minority Institution.

5. We make it abundantly clear, that every other relevant aspect shall be duly considered by the concerned authority.

6. The petition is disposed of.

(Y. G. KHOBRADE, J.)

(ROHIT B. DEO, J.)

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