



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

WRIT PETITION NO. 7417 OF 2023

1. Ku. Ashwini d/o. Wishwasrao Kadu,
aged about 30 years, Occ. Service,
R/o. C/o. Shri Dadasaheb Gawai
Vidyalaya, Ratnapur,
Tahsil Dharni, District Amravati,
2. The President,
Rahul Vyam Prasarak Mandal,
Bhumiptra Colony, Amravati,
Tahsil and District Amravati
3. The Head Master,
Shri Dadasaheb Gawai Vidyalaya,
Ratnapur, Tahsil Dharni,
District Amravati.

.....PETITIONERS

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

1. The State of Maharashtra,
through its Secretary, the Department of
School Education and Sports Department,
Mantralaya, Mumbai 32.
2. The Education Officer (Secondary),
Zilla Parishad, Amravati, Tahsil and
District Amravati.

.....RESPONDENTS

Mr. S. U. Ghude, Advocate for Petitioners.
Mr. A. M. Ghogare, AGP for Respondents/State.

CORAM:- NITIN W. SAMBRE & ABHAY J. MANTRI, JJ.
DATE : 20.12.2023

JUDGMENT (Per: Abhay J. Mantri, J.)

Rule. Rule made returnable forthwith.

Heard finally with the consent of the parties.

2. Petitioner No. 1 is an Assistant Teacher, holding qualifications of B.Sc. B.Ed, and MSCIT. As per the advertisement of petitioner No. 3 – School, she was selected and appointed as Shikshan Sevak on 14.11.2022. Petitioner No. 3 is a minority institution run by Petitioner No. 2 - institution. After the selection of petitioner No. 1, petitioner No. 3 forwarded a proposal to respondent No. 2 for approval for the post of Shikshan Sevak. However, vide communication dated 9.2.2023, respondent No. 2 rejected the proposal, on the ground, that as per Government Resolution dated 4.5.2020 and communication dated 5.5.2020, there is a ban on recruitment. Being aggrieved by the order/communication impugned dated 9.2.2023, the petitioner is before this Court.

3. Learned advocate for petitioners vehemently submits that respondent No. 2 – Education Officer without considering the settled position of law and the decision of this Court dated 7.3.2020 in Writ Petition No. 1050/2021, passed the impugned order, therefore, the same is liable to be quashed and set aside. He has further relied upon the decisions of this Court in Writ Petition

Nos. 4037/2022 and 2538/2021 dated 2.3.2023 and dated 16.11.2021, respectively. According to the learned advocate, in Writ Petition No. 2538/2021, this Court has already dealt with the issue involved in the present petition and held that the said GR and letter/communication do not apply to the minority institutions while making any recruitment and therefore, he has prayed for allowing this petition.

4. Learned AGP for respondents/State submits that the Court may pass an appropriate order in the light of settled position of law.

5. Having heard rival contentions of the parties and on perusal of the orders passed by this Court in the petitions referred above, it seems, that while passing the order in Writ Petition No. 2538/2021, this Court has clarified that the ban on recruitment would not be applicable to the minority institutions. Likewise, it reveals from the decision in Writ Petition No. 4037/2022 that the State Government has taken a decision to lift the ban on recruitment and to permit minority institutions to fill in vacant posts. Perusal of Government Resolution dated 4.5.2021, *prima facie* it seems that for the 2021 financial year, the State

Government has imposed restrictions on account of the Covid pandemic, it does not appear that the said restrictions are applicable for further financial years.

6. It is to be noted that despite the opportunity given, the respondent/State has not filed a reply to the petition to resist the claim of the petitioners.

7. On perusal of the impugned communication, it seems that respondent No. 2, by referring Government Resolution dated 4.5.2020 and letter dated 5.5.2020, observed that due to the ban on recruitment, respondent No. 2 has rejected the proposal forwarded by petitioner No. 3, without considering the settled position of law and the decisions in the petitions referred supra. In view of the above discussion, it seems that the issue raised by respondent No. 2 has already been dealt with by this Court in Writ Petition Nos. 2538/2021 and 1050/2021(supra) and therefore, the present case is also covered by the said orders. That being so, we deem it appropriate to set aside the impugned communication/order dated 9.2.2023. The petition is allowed accordingly.

i) Impugned communication/order dated 9.2.2023 issued by respondent No. 2 – Education Officer is quashed and set aside.

ii) Respondent no. 2 is directed to take a fresh decision on the proposal sent by petitioners No. 2 and 3 for grant of approval to the appointment of petitioner No.1, as expeditiously as possible, and in any event, within 12 weeks from the date of receipt of this order.

iii) Needless to clarify that the proposal be decided on its own merits and the decision taken be communicated to the petitioners, immediately.

8. Rule made accordingly. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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