



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

31 WRIT PETITION NO.3857 OF 2024

Shabbir Yusuf Pathan s/o Yusuf,
Age 34 yrs., Occ. At present Nil,
R/o Shevgaon, Naikwadi Mohalla,
Shevgaon, Dist. Ahmednagar – 414 502.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through it's Principal Secretary,
School Education Department,
Mantralaya, Mumbai - 32.
- 2 The Education Commissioner,
Maharashtra State, Central Building,
Pune, Pune – 1.
- 3 The Director of Education,
(Secondary and Higher Secondary
Education) Maharashtra State,
Pune, Central Building, Pune – 1.
- 4 The Divisional Deputy Director of Education,
Pune.
- 5 The Education Officer (Secondary),
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar.
- 6 Madarsa-E-Riyazul Uloom,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.
Through it's Secretary.
- 7 The Head Master,

Urdu High School,
Shevgaon, Tq. Shevgaon,
Dist. Ahmednagar.

- 8 Mohammed Sayyed Mohammed Zakir
s/o Mohd. Zaker Hafizuddin Qazi,
Age 28 yrs., Occ. Service,
R/o Near Neharu Bhavan,
1-20-83/P, Buddilen Kabadipura,
Chhatrapati Sambhajinagar – 431 001.

... Respondents

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Mr. V.G. Salgare, Advocate for petitioner

Dr. Kalpalata B. Patil Bharaswadkar, AGP for respondent Nos.1 to 5

...

WITH
CIVIL APPLICATION (STAMP) NO.11162 OF 2024
IN WP/3857/2024

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CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

DATE : 15th APRIL, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

- 1 The present petition has been filed for following reliefs :

“(B) By writ, order or directions the impugned appointment order

of the respondent No.8 dated 28.08.2023 as Shikshan Sevak on the post of trained graduate teacher under respondent No.7 Urdu High School may kindly be declared illegal and invalid and may kindly be quashed and set aside in the interest of justice.

(C) By writ, order or directions the respondent No.5 and 7 may kindly be directed to issue appointment order to the petitioner as Shikshan Sevak on the post of Trained Graduate Teacher for the subject of History/Social Science to teach 9th and 10th classes or to teach the subject of Social Science to the classes from 6th to 8th under the respondent No.7 Urdu High School as the petitioner is possessing requisite qualification for the said post and is next to respondent No.8 in the merit list in the interest of justice."

2 Learned Advocate for the petitioner then tendered Civil Application (Stamp) No.11162 of 2024 in Court which was for amendment and by amendment the petitioner wanted to add following relief :

“(C-1) By writ order or direction the respondent No.5 Education Officer may kindly be directed not to accord approval to the appointment of respondent No.8 and direct to respondent No.6 and 7 to declare the applicant selected for the post of Shikshan Sevak and appoint the applicant on the post of Shikshan Sevak in place of respondent No.8.”

He submitted that in view of the decision by Hon’ble Supreme Court in **St. Marys Education Society and others vs. Rajendra Prasad Bhargava and others** [(2023) 4 SCC 498] it has been held that -

“Application under Article 226 of the Constitution of India is maintainable against a person or body discharging public duties or public functions. The public duty cast may be either statutory or otherwise and where it is otherwise, the body or the person must be shown to owe that duty or obligation to the public involving the public law element. Similarly, for ascertaining the discharge of public function, it must be established that the body or the person was seeking to achieve the same for the collective benefit of the public or a Section of it and the authority to do so must be accepted by the public.”

It was further held that -

“Even if it is assumed that an educational institution is imparting public duty, the act complained must have a direct nexus with the discharge of public duty. It is indisputably a public law action which confers a right upon the aggrieved to invoke the extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through a writ petition under Article 226. Wherever Courts have intervened in their exercise of jurisdiction under Article 226 or either the service conditions were regulated by the statutory provisions or the employer had the status of ‘State’ within the expansive definition under Article 12 or it was found that the action complained of has public law element.”

He then states that in view of this decision the writ jurisdiction under Article 226 of the Constitution of India may not be exercised in respect

of the prayer clauses in the main petition, but certainly it can be in respect of proposed prayer clause in the amendment and, therefore, he pleaded for the amendment and entertaining the petition.

3 In view of the aforesaid circumstances, facts are required to be considered as to what the petitioner wants to get redressed. The petitioner contends that he is M.Sc. (Computer Science), B.A. (History), B.Ed. He appeared for the interview in response to the advertisement published by respondent No.6 for the post of Shikshan Sevak for the subject of Social Science. Even respondent No.8 also appeared. It is said that respondent No.8 is the son of Secretary of respondent No.6 – Educational Institution. According to him, respondent No.8 does not possess requisite qualification for the said post of Trained Graduate Teacher. Still, respondent No.6 appointed respondent No.8 in respondent No.7 school and the proposal for approval of his appointment was sent to respondent No.5 – Education Officer. The petitioner contends that he had made complaint to respondent No.5 in respect of appointment of respondent No.8. According to the petitioner, the appointment of petitioner No.8 is illegal and invalid. Respondent No.5 verified the proposal submitted by respondent Nos.6 and 7 in respect of appointment of respondent No.8 and rejected the same on the ground that there is complaint by the petitioner, there was one vacant post in group 6th to

8th class and respondent No.8 has not cleared Teacher Eligibility Test (TET) Examination. Respondent No.5 had taken a decision that there is no post of teacher available for 9th and 10th class. Since the petitioner was next in merit to respondent No.8, he should be appointed in place of respondent No.8.

4 Thus, it is to be noted that the petitioner was seeking enforcement of contract of service on the basis of the interview. The petitioner had no right to seek appointment as contract of service is unenforceable. He had taken the objection in respect of appointment order of respondent No.8. It appears that inquiry has been made by Education Officer (Secondary) into the complaint filed by the petitioner and observations have been made, but it appears that there is no specific order regarding refusal of proposal for appointment of respondent No.8. When already respondent No.5 has applied his mind, there is no question of issue any further directions against him. Further, as on today the petitioner has no *locus standi* to seek any such declaration by way of writ. In fact, in view of the decision in **St. Marys Education Society** (supra) the writ petition under Article 226 of the Constitution of India is not maintainable against respondent Nos.6 and 7 for declaring the petitioner as a selected candidate and to direct the Management to issue appointment order in favour of the petitioner. Under the said circumstance, the petition itself is not

maintainable. The writ petition, therefore, stands dismissed at the threshold.

Civil Application stands disposed of.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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