



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3755 OF 2023

- 1 Ekta Education Society
Through it's Secretary
Sameer s/o Noor Mohammad Pathan,
Age 43 yrs., Occ. Service,
R/o Govindpura, Ahmednagar,
Tq. & Dist. Ahmednagar.
- 2 Shaikh Sahihabano Iliyas,
Age 26 yrs., Occ. Service,
R/o Tapowan Road, Ahmednagar,
Tq. & Dist. Ahmednagar.
- 3 Saniya Sajed Shaikh,
Age 23 yrs., Occ. Service,
R/o Mukundnagar, Ahmednagar,
Tq. & Dist. Ahmednagar.

... Petitioners

... Versus ...

- 1 The State of Maharashtra,
Through the Secretary for
Education and Sports Department,
Mantralaya, Mumbai.
- 2 The Education Officer (Primary),
Zilla Parishad, Ahmednagar,
Tq. & Dist. Ahmednagar.

... Respondents

...

Mr. A.D. Shinde, Advocate for petitioners
Mr. S.K. Shirse, AGP for respondent No.1
Mr. A.D. Aghav, Advocate for respondent No.2

...

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

RESERVED ON : 23rd FEBRUARY, 2024

PRONOUNCED ON : 12th MARCH, 2024

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

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 Petitioner Nos.2 and 3 are the employees of petitioner No.1. Petitioner No.1 is a minority institution to whom certificate has been issued on 03.10.2001 by the competent authority. The petitioners came to be appointed on 01.02.2023 and 01.01.2023 respectively after due procedure. Proposal was sent for grant of approval to their appointment, however, it has been rejected by order dated 13.03.2023. Their proposal has been rejected on two counts; first is that they do not have the TET qualification and secondly no permission was sought to advertise for the recruitment prior to their appointment by petitioner No.1. Hence, the writ petition has been filed.

3 Affidavit-in-reply has been filed by respondent No.2 through Bhaskar Jagannath Patil, Education Officer (Primary), Zilla Parishad

Ahmednagar, wherein he has stated that the Management has not obtained prior permission from respondent No.2 to publish the advertisement for the posts. The institutions which are exempted from Pavitra Pranali are governed by Government Resolution dated 06.02.2012 in respect of recruitment/appointments, even the draft of the advertisement is made part of Government Resolution dated 06.02.2012. Further, as per Clause No.2.2 of Government Resolution dated 10.06.2022 there was ban on the recruitment. The petitioner Nos.2 and 3 have not qualified in TET examination and, therefore, the proposal in respect of their appointment cannot be granted.

4 The petitioners have filed re-joinder and reiterated almost the same facts. According to the petitioners, TET is not compulsory for them.

5 Heard learned Advocate Mr. A.D. Shinde for petitioners, learned AGP Mr. S.K. Shirse for respondent No.1 and learned Advocate Mr. A.D. Aghav for respondent No.2.

6 As regards not qualifying TET examination the learned Advocate for the petitioners submits that the matter is now subjudice before Hon'ble Apex Court and in many matters this Court has issued directions to the Education Officer to grant proposal subject to decision of the Hon'ble Apex

Court in respect of TET qualification. As regards prior permission is concerned, he relies on the decision in **Parbhani Education Society vs. State of Maharashtra** in Writ Petition No.3707 of 2013, wherein it has been stated that various rules and Government Resolutions are not applicable to the minority institutions.

6.1 Similar view has been taken in **Canossa Society and another vs. Commissioner and others** [2014(3) Bom.C.R. 556], wherein order directing to absorb an employee who has been rendered surplus in the minority institution was held to be illegal.

6.2 Further reliance has been placed on the decision in **Sadaf Imamoddin Masood vs. State of Maharashtra and others** in Writ Petition No.6894 of 2023 with companion matter decided at Principal Seat by Division Bench of this Court on 02.11.2023, wherein after taking various decisions it is held that in view of the fact that the matter is before Hon'ble Apex Court as regards TET examination and in view of **Pramati Educational and Cultural Trust and others vs. Union of India and others** [2014 AIR SCW 2859] it is not open to the Education Officer to foist any condition of TET on the teachers employed in minority institution.

7 Learned AGP submits that though petitioner No.1 is a minority

institution, yet prior approval from the State before making any new appointment is expected. He relies on the decision in **Kolawana Gram Vikas Kendra vs. State of Gujarat and others** [2009 DGLS (SC) 1372], wherein it has been observed that -

“The minority institutions are free to select their teaching and non teaching staff. No Government Officer or the representative of the Board was appointed in the selection committee of the minority institution. There is no interference by the Government in the administration of the schools. However, N.O.C. is required to be obtained to verify whether there is a vacancy of a teacher of a particular subject as per the workload fixed by the Gujarat Secondary and Higher Secondary Education Board specially when the government is providing grant-in-aid and that he possesses minimum required qualification for the post he is appointed.”

8 At the outset, we would like to say that the impugned order passed by respondent No.2 gives only two reasons; first is that petitioner Nos.2 and 3 have not qualified TET examination and second is that the prior permission for the advertisement was not obtained. Respondent No.2 was unjustified in digging out reasons while filing the affidavit-in-reply. He/she cannot add any other reason at the time of filing the affidavit-in-reply to the writ petition challenging the impugned order. The purpose of affidavit-in-reply to support the stand taken by him to support the impugned order or under which circumstances the impugned order came to be passed is the only

expected exercise. Therefore, taking into consideration the impugned order dated 13.03.2023 which gives only two reasons we would be dealing with the same primarily.

9 The issue – as to whether the TET qualification would be mandatory to the teachers teaching in the minority institution, is before the Hon'ble Supreme Court. In many matters this Court has considered the said facts and passed further orders as unless the approval is granted and their names are taken in Shalarth Pranali, they will not be able to get the salary. We cannot keep such persons without salary till the decision of the Hon'ble Apex Court. Therefore, conditional order deserves to be passed in that respect.

10 As regards the second ground is concerned, it is stated that no permission was taken prior to the appointment or the issuing advertisement for the recruitment. Meaning thereby, it is accepted that there is no problem as regards the advertisement is concerned. Certainly as per the decision in **Kolawana Gram Vikas Kendra** (supra) it is held that it would be perfectly alright for a minority institution to select the candidates without any interference from the Government. It is then observed that No Objection Certificate should be insisted to verify whether there is vacancy of a Teacher

etc. It appears that there is another Government Resolution dated 13.07.2016 which had laid down the procedure of obtaining prior permission of the Government. The said Government Resolution was the subject matter in **Shital Kumar Patil** (supra), but in that case the appointment of the petitioners were prior to the Government Resolution dated 13.07.2016 and, therefore, it was held that it is not applicable. In this case it is stated that the advertisement was made on 27.12.2022 and the impugned order dated 13.03.2023 makes a mention that by communication dated 09.01.2023 the permission to advertise for the posts has been rejected. Perusal of the said letter dated 09.01.2023 would show that the said permission came to be rejected on the ground that by Government Resolution dated 05.05.2020 there was ban on the recruitment. When this Court has time and again held that the minority institutions have right to appoint Teachers and non teaching staff as per its choice, the rejection appears to be misconceived. The reliance by the petitioners on the decision in **Parbhani Education Society** (supra), **Canossa** (supra) is reiterated. That could not have been a reason to reject the proposal.

11 As regards the ban to the recruitment is concerned, again it can be seen that petitioner No.1 is a minority institution and in the above said authorities including the decision by the Hon'ble Apex Court in **Kolawana**

Gram Vikas Kendra (supra) it has been observed that the minority institutions are free to select their teaching and non teaching staff. The rejection is not on the count that there was no post available in **Zakir Husain Marathi Primary School, Mukund Nagar, Through Rehman Shafi Kazi vs. The State of Maharashtra and others** in Writ Petition No.8891 of 2018 decided by this Court on 16.12.2019 also this Court had dealt with similar issue and in that case a conditional approval was granted by the Education Officer. Similar stand could have been definitely taken in the present matter also by respondent No.2, but then rejection was uncalled for.

12 For the above said reasons, the petition, therefore, deserves to be partly allowed. In view of the decision in **The Head Master Khawaja Nasiruddin Marathi Primary School and others vs. The State of Maharashtra and others** in Writ Petition No.15228 of 2023 decided by this Court on 13.12.2023 it appears that the petitioners have already filed affidavit/undertaking and note thereof is therefore taken and following order is passed.

ORDER

1 The Writ Petition stands partly allowed.

2 The communication dated 13.03.2023 is hereby quashed and set aside.

3 We direct the Education Officer (Primary), Zilla Parishad, Ahmednagar to consider the proposal of the petitioner Nos.2 and 3 without insisting on TET qualification and the rejection of the application for advertisement for the recruitment dated 09.01.2023.

4 Copy of the undertaking/affidavit of petitioner Nos.2 and 3 or fresh affidavit containing similar contents be given to the Education Officer and the Management stating therein that if the Hon'ble Supreme Court concludes that the TET qualification is mandatory even to the minority institutions and the petitioners appointment would be deemed to be illegal, petitioner Nos.2 and 3 would be willing to suffer the consequences.

5 Such affidavit / copies of affidavit / undertaking or fresh affidavit / undertaking be filed before the Education Officer and the Management, within a period of one week from today, thereupon respondent No.2 to consider and grant the approval to the appointments of petitioner Nos.2 and 3 as Assistant Teacher by specifically mentioning the contents of the undertaking regarding TET.

6 The entire exercise be done within a period of one month after the undertaking is submitted.

7 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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