



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4238 OF 2024

Nahid Kausar Malik Basheer Ahmad
Age: 32 years, Occu.: Service,
R/o. At Post Khirwad, Tq. Raver,
District Jalgaon.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
(Secondary and Higher Secondary).
Directorate of Education, Maharashtra State,
Pune.
3. The Deputy Director of Education,
Nashik Division, Nashik.
4. The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
District Jalgaon.
5. The Superintendent,
Salary and Provident Fund Cell
(Secondary), Jalgaon, Dist. Jalgaon.
6. Mustafa Education Society,
Chopda, Tq. Chopda,
District Jalgaon,
Through its President/Secretary.
7. Mustafa Education Society's,
Mustafa Anglo Urdu High School
and Junior College, Chopda,
Tq. Chopda, Dist. Jalgaon,
Through its Head Master.

.. RESPONDENTS

...

WITH

WRIT PETITION NO.4239 OF 2024

Naziya Bi Imran Ali Saiyad,
(Jahgirdar Naziyabi Mukhtarahmad),
Age: 27 years, Occu.: Service,
R/o. Azad Chowk, Mothi Darga Ali,
Chopda, Tq. Chopda, Dist. Jalgaon.

.. PETITIONER

VERSUS

The State of Maharashtra and Ors.

.. RESPONDENTS

...

WITH

WRIT PETITION NO.4240 OF 2024

Mazhar Khan Shakil Kha,
Age: 34 years, Occu.: Service,
R/o. 3/23-K, Sundargadhi Road,
Chopda, Tq. Chopda, Dist. Jalgaon.

.. PETITIONER

VERSUS

The State of Maharashtra and Ors.

.. RESPONDENTS

...

WITH

WRIT PETITION NO.4241 OF 2024

Nadeem Khan Ahesan Khan,
Age: 33 years, Occu.: Service,
R/o. Near Ali Masjid, Darga Ali
(Zilani Manzil) 2839, Chopda,
Tq. Chopda, Dist. Jalgaon.

.. PETITIONER

VERSUS

The State of Maharashtra and Ors.

.. RESPONDENTS

...

WITH

WRIT PETITION NO.4242 OF 2024

Saeed Abdul Rashid,
Age: 33 years, Occu.: Service,

R/o. Near Ali Masjid, Darga Ali
(Zilani Manzil) 2839, Chopda,
Tq. Chopda, Dist. Jalgaon.

.. PETITIONER

VERSUS

The State of Maharashtra and Ors.

.. RESPONDENTS

...

WITH

WRIT PETITION NO.4243 OF 2024

Shoaib Khan Sultan Khan
Age: 37 years, Occu.: Service,
R/o. 17, Minal Society, Bhabha Nagar,
Nashik, Tq. And Dist. Nashik.

.. PETITIONER

VERSUS

The State of Maharashtra and Ors.

.. RESPONDENTS

...

WITH

WRIT PETITION NO.4244 OF 2024

Mohammad Parvez Mohammad Haroon,
Age: 27 years, Occu.: Service,
R/o. Near Masjid, Tq. Chopda,
Dist. Jalgaon.

.. PETITIONER

VERSUS

The State of Maharashtra and Ors.

.. RESPONDENTS

...

WITH

WRIT PETITION NO.4245 OF 2024

Pinjari Shakil Ahamad Shaikh Ayyub,
Age: 37 years, Occu.: Service,
R/o.38, Gut No.890/2, KGN Colony,
Chopda, Tq. Chopda, Dist. Jalgaon.

.. PETITIONER

VERSUS

The State of Maharashtra and Ors.

.. RESPONDENTS

...
Mr. Y. B. Bolkar, Advocate for the petitioners in all the writ petitions.
Mr. K. S. Patil, AGP for respondent Nos.1 to 5 in all the writ petitions.
Mr. V. B. Madan, Advocate for respondent Nos.6 and 7 in all the writ petitions.

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

DATE : 23rd APRIL, 2024.

ORDER [Per Smt. Vibha Kankanwadi, J.] :-

. All the matters pertain to the Employees of respondent No.6 employed with respondent No.7 School. They all are challenging the orders dated 12.10.2023 and 29.03.2024 passed by respondent No.4. Respondent No.6 is the minority institution which runs respondent No.7 School. The certificate of minority status has been granted on 20.11.2008. Respondent No.6 had made a request to respondent No.4 by communication dated 20.09.2018 to accord permission to fill vacant posts. Respondent No.4 replied vide communication dated 14.12.2018 that since respondent No.6 is a minority institution it is not required to seek permission to fill up the vacant posts. Thereupon respondent No.6 published an advertisement in widely circulated newspaper "*Daily Divya Marathi*" on 09.05.2023 for the post of Assistant Teachers / Shikshan Sevaks on aided division. Interviews were held on 15.05.2023 and the selected candidates were given appointment order on 15.06.2023. Accordingly, they have joined the

services. Thereafter, respondent No.7 forwarded the proposals to respondent No.4 for granting approval to the services of the petitioners by covering letter dated 11.07.2023 and along with the same, necessary documents were forwarded. When respondent No.4 had not taken any steps, some of the petitioners approached this Court by filing writ petitions for giving direction to respondent No.4 to take decision on the proposals. Such directions came to be issued by this Court by order dated 27.09.2023. By order dated 12.10.2023 it was then informed that since the change report in respect of respondent No.6 has been decided and the appeal is pending before the Assistant Charity Commissioner, Jalgaon, till the dispute comes to an end and new trustees take charge, no decision would be taken on the proposals. However, thereafter on 28.12.2023, notice was given by respondent No.4 stating that the matter would be heard on 03.01.2024 and the proposal is then objected by Ex-Chairman. The data from the office of Assistant Charity Commissioner, Jalgaon was collected in respect of pendency of the change reports. Then by order dated 07.03.2024, the then Education Officer (Secondary), Zilla Parishad, Jalgaon decided that since the change reports are pending, it will be appropriate to make a statement that a proper management had taken a decision to appoint the petitioners, thereby the proposals were kept pending by the said order. However, it appears that all of a sudden on 29.03.2024, the said proposal came to be rejected on the

ground that the change reports are pending before the Charity Commissioner authorities. Hence, those orders are under challenge.

2. Heard learned Advocate Mr. Y. B. Bolkar for the petitioners in all the petitions, learned AGP Mr. K. S. Patil for respondent Nos.1 to 5 in all the petitions and learned Advocate Mr. V. B. Madan for respondent Nos.6 and 7 in all the petitions.

3. Learned Advocate for the petitioners submits that pendency of the change reports before Charity Commissioner cannot be a ground to reject the proposal to accord approval to the appointments of the petitioners. The petitioners being the teachers have nothing to do with the internal dispute between the management. He relies on the decision in **Nita Pandurang Chavan v. State of Maharashtra, Through Department of Education and Others**, [2021 SCC OnLine Bom. 2978], wherein reliance has been placed on the decisions in **Narsinha Shikshan Prasarak Mandal v. Education Officer (Secondary) Zilla Parishad, Kolhapur**, [Writ Petition No.1847 of 2012 decided on 16.12.2016] and **Dr. Ishrat Ullah Khan v. The State of Maharashtra**, [Writ Petition No.4474 of 2012]. It was held that the Education Officer is not required to go into the *inter se* dispute between the management. He is required to see as to whether the teacher was entitled for grant of approval or not. The learned Advocate for the petitioners also relied on the circular / communication dated

05.03.2021 by the Director of Education (Secondary and Higher Secondary), wherein it was instructed that when there is dispute between the management and the change reports are still pending before the appropriate authority, then it should be noted as to whose name / which person's name is appearing in the PTR extract. The said communication dated 05.03.2021 was communicated by the Divisional Deputy Director of Education, Nashik on 04/16.06.2021 to all the Education Officers (Secondary) within his jurisdiction. Learned Advocate for the petitioners submits that the said circular / communication has not been adhered to and, therefore, those orders deserve to be set aside.

4. There is no doubt that the dispute appears to be pending before the Joint Charity Commissioner / Assistant Joint Charity Commissioner and the change reports are also pending under Section 22 of the Maharashtra Public Trust Act. However, taking into consideration the decision in **Dr. Ishrat Ullah Khan (Supra)**, **Narsinha Shikshan Prasarak Mandal (Supra)** and **Nita Pandurang Chavan (Supra)**, respondent No.4 ought not to have rejected the proposals. Furthermore, when the earlier Education Officer by order dated 07.03.2024 had kept the said proposals pending by giving reasons, all of a sudden, after taking charge, the present officer ought not to have passed the impugned order dated 29.03.2024. The subsequent officer has in fact stepped

into shoes of her predecessor and, therefore, without giving any intimation or notice, the proposals ought not to have been decided. The decision is on the only ground that change reports are pending for approval. That means, the communication dated 05.03.2021, in turn communication dated 04/16.06.2021 by the Higher Authorities and the aforesaid decisions of this Court were not considered by the present respondent No.4 (Smt. Kalpana Chavan) and, therefore, the said order deserves to be set aside. Necessary directions are then required to be given to respondent No.4 for deciding the proposals for approval. Hence, the following order :-

ORDER

- I) All the writ petitions are hereby partly allowed.
- II) The impugned orders dated 12.10.2023 and 29.03.2024 passed by respondent No.4 Education Officer (Secondary), Jalgaon, are hereby quashed and set aside.
- III) Respondent No.4 is directed to decide the proposals for approval of the appointment of the petitioners on its own merit, however, it should not be rejected on the ground that the dispute or change reports in respect of respondent No.5 are pending before Assistant/Joint Charity Commissioner. The said proposals for approval be decided within a period of (8) eight weeks from today.

IV) The decision so taken be informed to the respective petitioners within a period of one week from the date of the decision.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm