



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 WRIT PETITION NO.8689 OF 2021

- 1 Rashtrawadi Sports and Education Society,
Galli No.3, Beribag, Harsul T-Point,
Aurangabad,
Through it's Secretary.
- 2 Sayyada Ajara Batul Sayyad Iptekharoddin,
Age 31 yrs., Occ. Assistant Teacher,
R/o Galli No.3, Beribag, Harsul T-Point,
Tq. & Dist. Aurangabad.
- 3 Yasmin Shaikh Samad,
Age 31 yrs., Occ. Assistant Teacher,
R/o Galli No.3, Beribag, Harsul T-Point,
Tq. & Dist. Aurangabad.
- 4 Nousin Tabbasum Abdul Gani,
Age 33 yrs., Occ. Assistant Teacher,
R/o Galli No.3, Beribag, Harsul T-Point,
Tq. & Dist. Aurangabad.
- 5 Ujama Anjum Mo.A. Zahir Khan,
Age 32 yrs., Occ. Assistant Teacher,
R/o Galli No.3, Beribag, Harsul T-Point,
Tq. & Dist. Aurangabad.
- 6 Shaikh Aasefa Shaikh Jafar,
Age 36 yrs., Occ. Assistant Teacher,
R/o Galli No.3, Beribag, Harsul T-Point,
Tq. & Dist. Aurangabad.
- 7 Khan Navid Usasaher Zahir Ahemad Khan,
Age 33 yrs., Occ. Primary Teacher,
R/o Galli No.3, Beribag, Harsul T-Point,
Tq. & Dist. Aurangabad.

... Petitioners

... **Versus** ...

- 1 The State of Maharashtra
Through Principal Secretary,
Primary Education Maharashtra State,
Mantralaya, Mumbai.
- 2 The Director of Education (Primary),
Maharashtra State, Pune.
- 3 Deputy Director of Education,
Aurangabad Region, Aurangabad.
- 4 The Education Officer (Primary),
Zilla Parishad, Aurangabad.

... **Respondents**

...

**WITH
CIVIL APPLICATION NO.12796 OF 2021
IN
WRIT PETITION NO.8689 OF 2021**

...

Mr. D.J. Choudhary, Advocate for petitioner
Mr. K.S. Patil, AGP for respondent Nos.1 to 3
Mr. U.S. Bondar, Advocate for respondent No.4

...

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

DATE : 26th MARCH, 2024

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

1 Rule. Rule made returnable forthwith. Heard learned Advocates

for the parties finally, by consent.

2 All the petitioners are challenging the impugned order dated 12.03.2021 passed by Deputy Director of Education, Aurangabad Division, Aurangabad, thereby cancelling the orders passed by Education Officer (Primary), Zilla Parishad, Aurangabad dated 15.01.2015 and 03.07.2015.

3 The petitioners are contending that petitioner No.1 is a minority institution running a Urdu Primary School. Petitioner Nos.2 to 7 came to be appointed in the year 2013 after due procedure of law. The said school was on non grant basis up to 2013-2014. The petitioner No.1 society had submitted the proposal dated 04.06.2014 for grant of approval of the appointment of petitioner Nos.2 to 7 on 09.06.2014. The approval was granted on 15.01.2015. Thereafter, petitioner No.1 submitted proposal on 23.06.2015 for permanent approval of continuation of the services of petitioner Nos.2 to 7. The said proposal came to be allowed on 03.07.2015. Thereafter, Education Officer (Primary) had issued notice dated 10.09.2020 seeking explanation from Petitioner No.1 society which came to be replied on 23.09.2020. Deputy Director of Education without considering the explanation and without adhering to the natural justice cancelled the approval that was granted to petitioner Nos.2 to 7. Hence, the writ petition.

4 Heard learned Advocate Mr. D.J. Choudhary for the petitioner, learned AGP Mr. K.S. Patil for respondent Nos.1 to 3 and learned Advocate Mr. U.S. Bondar for respondent No.4. In order to cut short, it can be said that they have argued in support of their respective contentions.

5 As the facts are almost undisputed regarding the exchange of communication between the Education Officer and Deputy Director of Education, we need not have a close scrutiny for the same. It also appears that a First Information Report came to be lodged against the Management after the concerned person had resorted to Section 156(3) of the Code of Criminal Procedure and certain documents have been taken in possession by the police, however, now, the Education Officers are contending that though the order dated 15.01.2015 was a genuine order, the order dated 03.07.2015 is not acceptable to them as issued by Education Officer (Primary), Zilla Parishad, Aurangabad. After the complaint was filed, hearing appears to have been given by the Deputy Director of Education and in his impugned order he has taken so many objections; yet, when it comes to operative order, it appears that the proposal is rejected only on the ground that the applicant Nos.1 to 7 therein had not passed Teacher Eligibility Test (TET) and their appointment is not procedurally done. Reliance can be placed on the decision in **Pandharinath Shivajirao Jogdand vs. The State of Maharashtra**

and others in Writ Petition No.9688 of 2022 decided on 22.02.2024, wherein upon relying on the decision in **Datta vs. State of Maharashtra and others** [2022 (4) AIR Bom R 131], this Court has concluded that the Deputy Director of Education has no power to interfere with the order passed by the Education Officer granting the approval to the appointment of the petitioner therein.

6 The documents on record would show that when once again the Education Officer was directed to investigate or submit a report, it is stated in communication dated 01.03.2021 that the approval to the appointment of the petitioner Nos.2 to 7 by order dated 15.01.2015 cannot be said to be a genuine order issued by respondent No.4. The communication dated 01.03.2021 though says that order dated 15.01.2015 is not acceptable, but only on the basis of checking the outward register, the said conclusion has been drawn. In the said report/communication dated 01.03.2021 the Education Officer does not say that he had made inquiry with the then working/serving staff and the Education Officer in respect of the said lapse. Further, when the order dated 15.01.2015 was the order in respect of granting approval, copy of the same was given to Superintendent, Pay Unit (Primary), Zilla Parishad, Aurangabad also. No inquiry was made with this authority also regarding the order dated 15.01.2015, as to whether received

by the said office or not. Same is the case in respect of order /communication dated 03.07.2015.

7 It appears that the Education Officer (Primary) himself had given letter dated 06.11.2020 and suggested to disapprove the appointments of petitioner Nos.2 to 7. Whether the said Education Officer is having the jurisdiction to make such statement, is a question. It also appears from the contents of the petition that after the permanent approval was given on 03.07.2015, payment of salary was also made to the petitioners till the notice dated 10.09.2020 was given to petitioner No.1. If the approval came to be executed, then without having a thorough inquiry, whether respondent No.3 was justified in passing the impugned order.

8 The issue, as to whether the TET qualification would be mandatory to the teachers in the minority institutions, is pending before the Hon'ble Supreme Court. Under the said circumstance, the impugned order deserves to be set aside. The matter deserves to be relegated to the Deputy Director of Education, Aurangabad Division, Aurangabad, to have thorough inquiry including calling upon Mr. Nitin Upasani, who was the then Education Officer, who had granted the approval and letter dated 03.07.2015 and by giving further opportunity to the petitioners to decide the issue which

appears to have been cropped up, in view of the report submitted by respondent No.4. Hence, we proceed to pass the following order.

ORDER

1 The Writ Petition stands partly allowed.

2 The impugned order dated 12.03.2021 passed by respondent No.3 is hereby quashed and set aside.

3 The matter is relegated to respondent No.3 and in view of the observations by this Court in the above paragraphs, he should hold an inquiry once again and to give opportunity to all the concerned and then take a decision within a period of six months from today.

4 The decision so taken be communicated to the concerned persons within a period of 15 days from taking such decision.

5 In view of the disposal of the writ petition, civil application also stands disposed of.

6 Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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