



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4595 OF 2024

- 1 Dr. M. Iqbal Education Society,
Latur
Through it's Secretary
Md. Ashraf Khan Hayat Khan Pathan,
Age 73 yrs., Occ. Farmer,
R/o Maqbool Manzil,
Near Hamidiya Masjid, Khorl Galli,
Latur, Dist. Latur.
- 2 The Head Mistress,
Dr. M. Iqbal Urdu Primary School,
Khorl Galli, Latur, Dist. Latur.
- 3 Smt. Ustad Javeriya Fatima Syed Alim,
Age 29 yrs., Occ. Service,
R/o C/o Dr. M. Iqbal Urdu Primary School,
Khorl Galli, Latur, Dist. Latur.

... Petitioners

... **Versus** ...

- 1 The State of Maharashtra
Through it's Secretary
School Education and Sports Department,
Mantralaya, Mumbai.
- 2 The Deputy Director of Education,
Latur Region, Latur.
- 3 The Education Officer (Primary),
Zilla Parishad, Latur.

... Respondents

...

Mr. P.B. Gapat, Advocate for petitioners
Mr. S.J. Salgare, AGP for respondent Nos.1 and 2
Mr. P.R. Tandale, Advocate for respondent No.3

...

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

DATE : 10th MAY, 2024

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

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

2 Present petition challenges the order dated 06.03.2024 passed by respondent No.3 – Education Officer (Primary), Zilla Parishad, Latur, thereby rejecting the proposal of the transfer of petitioner No.3 from no grant-in-aid post to the 100% grant-in-aid post. The consequential prayer has also been made.

3 The facts giving rise to the present petition are that petitioner No.3 came to be appointed as Assistant Teacher in petitioner No.2 school run by petitioner No.1 institution on 15.06.2015. Petitioner No.1 is a minority institution. Respondent No.3 has granted approval to the appointment of

petitioner No.3 by order dated 06.08.2018. Initially her appointment was on no grant-in-aid post. One of the teachers from 100% grant-in-aid post retired in the month of January, 2022 by superannuation and, therefore, petitioner No.1 issued transfer order, however, respondent No.3 rejected the proposal by its order dated 03.03.2023. Respondent No.1 had issued Government Resolution on 01.04.2021 and the petitioners were expecting that the decision would be taken in the light of that Government Resolution, however, the rejection was on the ground that a circular came to be issued on 01.12.2022 by respondent No.1 stating that the effect of the amendment to Section 41 of the Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977 has been stayed. Petitioner No.3 and others had challenged the said order of rejection dated 03.03.2023 before this Court by filing Writ Petition No.3937 of 2023. This Court directed respondent No.3 to re-consider the proposal by quashing the order dated 03.03.2023 by order dated 13.04.2023. However, again respondent No.3 has rejected the approval of the transfer on the ground that petitioner No.3 has not cleared Teacher Eligibility Test (TET). According to the petitioners, the TET is not compulsory for the employees working in the minority institution. 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. Hence, the writ petition.

4 At the outset, it can be certainly said that respondent No.3 had not considered the scope of the proposal. The services of petitioner No.3 were already approved by order dated 06.08.2018. The proposal that was then forwarded was the transfer of petitioner No.3 from non aided post to 100% aided post. For that purpose the point to be considered cannot be - as to whether she has cleared TET examination or not. Therefore, the impugned order dated 06.03.2024 is totally without application of mind and deserves to be set aside. The matter deserves to be relegated to respondent No.3 to consider it in the light of Rule 41-A of the M.E.P.S. Rules and also taking into consideration the observations in the order of this Court dated 13.04.2023 in Writ Petition No.3937 of 2023. Hence, we proceed to pass the following order.

ORDER

- i) The Writ Petition stands partly allowed.
- ii) The impugned order dated 06.03.2024 passed by respondent No.3 is hereby quashed and set aside.
- iii) The matter is relegated to respondent No.3 and the proposal submitted by petitioner No.1 in respect of transfer of petitioner No.3 to the

100% aided post be considered by respondent No.3 in the light of Rule 41-A of the M.E.P.S. Rules and observations of this Court in the order dated 13.04.2023, within a period of three months from today.

iv) The decision so taken be communicated to petitioner No.1 within a period of 15 days from taking such decision.

v) Rule is made absolute in the above terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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