



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8852 OF 2019

1. Yasmeen Begum Abdul Khaleel Qureshi,
age major, Occ. Service,
R/o Madarse Qureshia Urdu Prathmik Shala,
Maniyar Galli, Nanded, Tq. Dist. Nanded. Deleted.
 2. Quazi Umara Parveen Quazi Azeemuddin,
age 25 yrs, Occ. Service,
R/o. As above.
 3. Shaikh Sumayya Firdous Shaikh Ahmed,
age major, Occ. Service, R/o. As above. ..Deleted..
 4. Aneesa Kausar Mohammed Younus,
age major, occ. Service, r/o as above. ..Deleted..
- ... Petitioners...

Versus

1. The State of Maharashtra,
through the Secretary,
Department of School Education and Sports,
Mantralaya, Mumbai.
 2. The Education Officer, (Primary)
Zilla Parishad Nanded,
Tq. & Dist. Nanded.
 3. The Head Master,
Madarse Qureshia Urdu Prathmik Shala,
Maniyar Galli,
Nanded – 431 604.
 4. The Secretary,
Qureshi Education Society,
Maniyar Galli,
Nanded – 431 604.
- Respondents

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Mr. R.C. Brahmanekar, advocate for petitioner.
Mr. N.S. Tekale, AGP for Respondent No.1.
Mr. S.B. Pulkundwar, Advocate for respondent no.2.
Mr. S.B. Ghatol Patil Advocate for respondent nos.3 & 4.

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

Dated : 21st February, 2024.

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FINAL ORDER :- (Per S.G.Chapalgaonkar, J.)

1. The petitioner has approached this Court under Article 226 of the Constitution of India, impugning the order dated 8.4.2019 passed by the Respondent no.2-Education Officer, thereby rejecting the proposal for grant of approval to the petitioner's appointment in pursuance of proposal dated 18.9.2018 forwarded by respondent no.3 Head Master. The petitioner also seeks to issue a writ of mandamus to grant such approval.

2. The petitioner contends that she is qualified to be appointed as an assistant teacher. In pursuance of the advertisement published by respondent no.4-Management, she had responded and after going through selection process, she has been appointed with respondent no.3 School. As such, she is discharging her duty as 'Assistant Teacher' with effect from 24.7.2017.

3. The respondent no.3 Head Master forwarded proposal dated 29.9.2017 to the Education Officer for grant of approval to the petitioner's appointment. Again a revised proposal was sent on 18.9.2018. The respondent no.2

Education Officer rejected the proposal vide impugned order dated 8.4.2019. According to the petitioner, the impugned order is erroneous and contrary to well established legal position, emerging from the various Government Resolutions holding the field and pronouncements by this Court.

4. Respondent No.2 filed the affidavit-in-reply and justified rejection of the proposal for grant of approval to the appointment of the petitioner and others. It is stated that the Respondent/Management made appointment without soliciting permission to advertise the post. Reservation Roster was not followed. There are surplus teachers available for appointment. Further recruitment is not routed through “Paviatra Portal” introduced by the Government. The petitioners do not fulfill requisite qualification of TET. As such does not qualify for appointment as Assistant Teacher.

5. Mr. R.C. Barmhankar, learned advocate appearing for the petitioner would submit that the reasons indicated in the impugned order are perverse. The petitioner is appointed in a minority institution. Having specific privileges under Article 30 of the Constitution of India, the reservation roster would not apply to such Institution. Management has every right to appoint candidates of its choice. The petitioner possesses requisite qualification. She is appointed by following due process of law. Further, minority institution are not obliged to absorb surplus teachers. Provisions of Right to Education Act would not override the autonomy of minority Institute. The ‘Pavitra Portal’ would not be applicable to the minority institution as per clause AA of the Government

Resolution dated 23.6.2017. He would therefore submit that the impugned order is liable to be quashed and set aside and directions as prayed may be issued to grant approval in favour of the petitioner.

6. Mr. S.B. Pulkundwar, learned advocate appearing for respondent no.2, however, supports the impugned order.

7. We have considered the submissions advanced by the learned advocates appearing for the respective parties. Apparently, the Education Officer refused to accord approval to appointment of the petitioner giving following reasons :-

“4. I say and submit that the approval to the appointment of the petitioner is rejected by an order dated 18.4.2019 on following grounds :-

i] No permission is obtained to the publication of advertisement in daily newspaper for appointment of petitioners.

ii] On the date of appointment of petitioner, the petitioner was no possession the TET qualification which is one of the mandatory requirement as per the provisions of RTE Act.

iii] Management did not produce the copy of roaster with the respondent no.2 Education Officer (Primary), Zilla Parishad, Nanded.

iv] As per the Government Resolution dated 22.4.2018 the Management did not allow the surplus teachers sent by the Education Officer to resume the duty therefore, the Education Officer as per the Government Resolution dated 24.8.2018 should reject the approval to appointment of teachers therefore, the approval is rejected.

v] As per the clause -B of the Government Resolution dated 24.8.2018 the recruitment is not as per the roster filed up by the backlog.

vi] As per clause C of Government Resolution dated 24.8.2018 the recruitment of teachers is decided to be done by the Pavitra Pranali and the appointment of the petitioner is not done as per the Pavitra Pranali.

vii] Lastly, the approval is rejected on the ground that as per the clause -D of the Government Resolution dated 24.8.2018 the points referred in Government Resolution dated 24.8.2018 is also applicable for pending proposal.”

8. It is not in dispute that respondent no.4 is a Minority Education Institution, who runs Respondent no.3 School. The Management of the minority institution would not be required to follow the reservation policy of the State nor it is under obligation to absorb the teachers on the list of surplus, maintained by the Education Officer.

9. This Court in case of **The Canossa Society, Canossa Convent and others Vs. the Commissioner, Social Welfare and others decided on 7.5.2014 (WP 1049 of 2012)** held that minority education institute is not obliged to absorb the surplus teachers. Further, in case of **Pramati Educational and Cultural Trust ® and others Vs. Union of India and others reported in AIR 2014 SC 2114** the Supreme Court of India held that Right of Children to Free and Compulsory Education Act, 2009 does not apply to minority schools. Even, the State of Maharashtra vide its Government Resolution dated 13.7.2016

dispensed with application of reservation of seats into recruitment within minority institutions.

10. So far as Government Resolution dated 23.6.2017 by which the common recruitment procedure is prescribed for Assistant Teachers, exemption is given to the minority institutions. Therefore procedure of appointments through 'Pavitra Portal' wouldn't bind minority institutes.

11. So far as ground regarding applicability of TET qualification for appointments of teachers in the minority institution is concerned, this Court in the group of matter alongwith Writ Petition No.13770 of 2018 in case of ***Burhani National Education Society through its Secretary and another Vs. State of Maharashtra and others*** referred the question to be decided by Larger Bench, which reads thus :-

“Whether the Teachers Eligibility Test (TET) qualification is necessary for the appointment so also for continuation of the teachers in minority aided or unaided institutions ?”

12. In pursuance to Reference, the Full Bench is constituted, however, Supreme Court of India in SLP (Special) Diary No.17702 of 2021 filed by the **Director of School Education, Chennai and another Vs. B. Annie Packiarani Bai** and Special Leave to appeal (Civil) No.29014 of 2018 between **Azad Education Society, Miraj through its President Vs. The State of Maharashtra**, framed the similar issue for consideration, hence pending issue before the Supreme Court

of India hearing before full bench of this court has been deferred.

13. It is not disputed that even the issue as regards to applicability of the TET is pending before the Supreme Court. In this backdrop, this Court in many cases issued directions by balancing equities subject to final decision by the Supreme Court of India and issued directions to grant conditional approval or continue services of the candidates, who does not possess TET qualifications. The similar course can be adopted in present case. Consequently we proceed to pass the following order.

ORDER

- i. Writ Petition is partly allowed.
- ii. The impugned order dated 8.4.2019 passed by the Respondent No.2 - Education Officer (Primary), Zilla Parishad, Nanded is hereby quashed and set aside.
- iii. Matter is relegated back to the Respondent No.2 - Education Officer, who shall re-consider the proposal for grant of approval in favour of the petitioner, in light of the aforesaid observations, and shall pass the appropriate orders within a period of eight (8) weeks from the date of this order.
- iv. Further, the petitioner's approval shall not be rejected on the ground that she does not hold

TET qualification, if she files an undertaking that she would abide the conclusion that would be drawn by the Hon'ble Supreme Court and if the verdict is adverse, on requirement of TET qualification, w.e.f. 31.3.2019, she would abide by the same and she would not claim equity.

v. Such an undertaking to be filed before the Education Officer within a period of Fifteen (15) days. If petitioner found otherwise eligible, conditional approval shall be issued to her appointment.

vi. Writ Petition is accordingly disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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