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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10578 OF 2022

Deshmukh Aamerali Hamidali,
Age 22 years, Occ. Shikshansewak,
R/o. Gunjoti, Tq. Omerga,
Dist. Oamsnabad.

.. Petitioner

versus

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
Pune.
3. The Deputy Director of Education,
Latur Division, Latur,
4. The Education Officer, Primary,
Zilla Parishad, Osmanabad.
5. Urdu Primary School
Through its Head Master,
Gunjoti, Tq. Omerga, Dist. Osmanabad.
6. Mohammadiya Education Society,
Gunjoti, Tq. Omerga, Dist. Osmanabad
through its Secretary.

.. Respondents.

Mr. G.R. Syed, Advocate for petitioner,
Mr. S.K. Shirse, AGP for respondent Nos. 1 to 3
Mr. B.B. Bhise, Advocate for respondent No.4.
Mr. P.B. Pawar, Advocate for respondent Nos. 5 and 6.

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

DATE : 30TH APRIL, 2024

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. The petitioner has approached this Court under Article 226 of the Constitution of India, impugning the order dated 26.3.2022 passed by respondent No.4 Education Officer, thereby refusing to grant approval to the appointment of the petitioner as Shikshan Sevak.

2. Mr G.R. Syed, learned advocate for the petitioner submits that the petitioner holds the requisite qualification for appointment as Assistant Teacher. The respondent No.6 runs respondent No.5 school. They issued an advertisement dated 4.7.2008, inviting applications from the eligible candidates for appointment on the post of Shikshan Sevak. The petitioner responded to said advertisement and after going through the selection process came to be appointed vide order dated 5.8.2021. Immediately, the petitioner joined her duties. He would submit that respondent Nos.5 and 6 are minority institution. The appointment of the petitioner is against a clear and vacant post. The respondent No.5 forwarded the proposal seeking approval to petitioner's appointment. However, respondent No.4-Education Officer declined to grant approval vide order dated 26.3.2022. he would submit that before passing the impugned order, respondent No.4 failed to inform deficiencies in proposal to respondent Nos. 5 and 6 and rejected the same without application of mind. He would, therefore, urge to quash and set aside

the impugned order and direct the respondent No.4 to grant approval to the appointment of the petitioner.

3. Mr. S.K. Shirse, learned AGP for respondent Nos. 1 to 3 justifies the impugned order. He would submit that the requisite documents like copy of advertisement, staffing pattern, TET certificate of petitioner etc. were not accompanied alongwith the proposal. Similarly, as per the Government Resolution dated 5.5.2020, there was ban on recruitment teaching staff even at minority institutions. As such, no fault can be found in the impugned order.

4. We have considered the submissions advanced on behalf of the respective parties. We have perused the record tendered into service. The copy of advertisement is placed at page 35. It shows that applications were invited by respondent Nos. 5 and 6 for post of Shikshan Sevak from candidates holding qualification as H.S.C. D.Ed. The petitioner was holding requisite qualification as per the advertisement. The copies of staffing pattern for academic years 2020-21, 2021-22, and 2022-23 have been placed on record before us. Apparently, 5 posts of undergraduate teachers are sanctioned at respondent No.5 school. So far as requirement of TET qualification for appointment of teachers at minority schools is concerned, the issue is sub-judice before the Supreme Court of India in the matter of **Director of School Education, Chennai and another vs. B.Annie Packinarani Bai and another Special Leave Petition (Civil) Diary No. 17702 of 2021**, wherein a specific issue has been framed, which states as under :-

“The important question of law which is raised in the

present SLP is whether the Department can insist for TET examination passed in case of a Teacher of a minority institution and whether providing such a qualification would affect any of the rights of minority institution guaranteed under the Constitution of India.”

5. In similar circumstances, this Court adopted course of directing grant of conditional approval to the appointments of the teachers, who were not compliant of the TET qualification. Reference can be given to such an order passed in **W.P. No. 2556 of 2023, dated 10.3.2023**, alongwith companion matters. In para. 8 of the said judgment, the conditions are stipulated for granting approval to the appointment of teachers, who are non compliant of TET qualification, which are readily referred hereunder for the purpose of convenience :-

- [A] All those teachers who are presently in employment and are protected against termination, shall be paid their monthly salaries as per the scale payable to them, beginning from the month of February, 2023 payable in March 2023 and the regular salary for the succeeding months, until further orders.
- [B] The above direction would not apply to teachers who have been terminated from the service.
- [C] To balance the equities, each of these Petitioners and/or teachers who would be benefited by this order, would tender and affidavit/undertaking to the concerned Education Officer of the concerned Zilla Parishad, declaring that if the Hon'ble Supreme court concludes that teachers who have

failed in the T.E.T. or have not passed the T.E.T. before the cut off date or that the provisions of the T.E.T. are applicable even to minority institutions, they would abide by the directions as may be set out by the Hon'ble Supreme Court.

[D] Monthly salaries would be paid depending upon the duties performed by such teachers and only if the services of such teachers are already approved.

[E] Arrears of unpaid salaries would not be released at this stage and this would depend upon the law that would be laid down by the Hon'ble Supreme Court in the pending SLP.

6. The impugned order dated 26.3.2022 depicts that the proposal for grant of approval to the petitioner's appointment has been declined for following reasons :-

[a] Certificate of TET is not annexed;

[b] Staffing pattern for year is not available;

[c] Advertisement is not given/permission not sought for advertisement.

[d] G.R. Dated 5.5.2020 bans recruitment of staff in schools.

7. The aforesaid reasons in the impugned order were never communicated to the respondent Nos. 5 and 6 before passing the impugned order. As stated in aforesaid paragraphs, copies of advertisement and staffing pattern for the academic year 2020 to 2023 are placed on record before this Court. So far as TET qualification is concerned, that can be dealt with by putting requisite conditions, as referred above.

8. So far as ban under Government Resolution dated 5.5.2020 on recruitment is concerned, it had limited application during the period of COVID-19 pandemic and cannot be treated as an absolute bar for appointments. In that view of the matter, we find that the impugned order is passed without application of mind that too in violation of principles of natural justice. Therefore, we deem it appropriate to quash and set aside impugned order and relegate the matter for reconsideration to the respondent No.4 in the light of the aforesaid observations. Hence following order :-

ORDER

- [a] Writ petition is partly allowed;
- [b] The impugned order dated 26.3.2022 passed by respondent No.4 Education Officer on proposal bearing No. 18/21-22 dated 28.12.2021, is hereby quashed and set aside;
- [c] Respondent No.4 shall reconsider the proposal seeking approval to the appointment of the petitioner after granting due opportunity of hearing to the petitioner as well as respondent Nos. 5 and 6.
- [d] For that purpose, petitioner and respondent Nos. 5 and 6 shall appear before the respondent No.4 on 8th May, 2024 and furnish the requisite documents, in support of their proposal.
- [e] Respondent No.4 shall pass further orders in accordance with law, keeping in mind observations made hereinabove, within a period of two months, from the date

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of appearance of the petitioner and respondent Nos. 5 and 6 before him.

[f] Writ petition is disposed of in aforesaid terms.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-