



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

43 WRIT PETITION NO.9840 OF 2023

- 1 Maulana Mohammad Ali Johar
Education Society, Sillod,
Tq. Sillod, Dist. Aurangabad.
Through it's President
Shaikh Mohammad Kaisar Azad
Abdul Gafur,
Age 59 yrs., Occ. Agri. & Social Services,
R/o New Maulana Johar Colony,
Sillod, Dist. Aurangabad.
- 2 Mohammad Faizan s/o Mohammad Muntazir,
Age 21 yrs., Occ. Service,
R/o Near Noorul Islam Masjid,
Bharat Nagar, Sillod, Tq. Sillod,
Dist. Aurangabad.

... Petitioners

... Versus ...

- 1 The State of Maharashtra,
Through it's Secretary,
School Education and Sports Department,
Mantralaya, Mumbai - 32.
- 2 The Deputy Director of Education,
Aurangabad Division, Aurangabad.
- 3 The Education Officer (Primary),
Zilla Parishad, Aurangabad.

... Respondents

...

Mr. Quadri Syed Raheel, Advocate h/f Mr. S.S. Kazti, Advocate for petitioners

Mr. S.J. Salgare, AGP for respondent Nos.1 and 2

Mr. PP. Kothari, Advocate for respondent No.3

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

DATE : 18th MARCH, 2024

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

1 Heard.

2 Petitioner No.2 claims to be an employee with the Minority Institution. He came to be appointed as a Shikshan Sevak on 03.07.2023. On 05.07.2023 petitioner No.1 has forwarded the proposal to respondent No.3, for granting approval to the said post of Shikshan Sevak. The said proposal was rejected by order dated 24.07.2023 on the ground that the petitioner No.2 does not have the Teacher Eligibility Test (TET) qualification.

3 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.

4 It is being pointed out on behalf of the petitioners that in a proceeding under Section 41E of the Maharashtra Public Trust Act, 1950, by the order dated 01.08.2022 the Joint Charity Commissioner has temporarily

restrained the respondents therein which is the rival group from taking any policy decision in the matters of Trust till final decision of the main petition or acceptance of the change report. It appears that only a week prior thereto the Education Officer had informed petitioner No.1 on 27.07.2022 not to take any policy decision since the proceedings under Section 41E of the Maharashtra Public Trust Act and a change report under Section 22 were pending.

5 It appears that subsequently, even the persons in the Management had approached this Court in the Writ Petition No.11087 of 2022 and by the order dated 16.11.2022 following directions were issued :

“2) As such, we called upon the petitioners to indicate as to whether the latest Schedule-I, containing the names of the authorized representatives, is placed on record. The answer is in the negative. There are no pleadings in the memo of the petition, declaring that the names of these petitioners are approved in the Schedule-I, indicating that they are the authorized representatives of the Trust.

3) In view of the above, this petition is dismissed.

4) Considering the impugned communication, the Trust is at liberty to address the Education Officer, by placing the relevant record, maintained by the Maharashtra Public Trust department, before it, indicating that these petitioners are the authorized representatives of the Trust.”

6 In our considered view, it would be in the fitness of things to call upon respondent No.3 – Education Officer (Primary), Zilla Parishad, Aurangabad to take decision afresh on the proposal of petitioner No.2, on its own merits, bearing in mind the order passed by the Joint Charity Commissioner dated 01.08.2022 and also the order passed by this Court on 16.11.2022 in Writ Petition No.11087 of 2022. Hence, following order.

ORDER

1 The Writ Petition stands partly allowed.

2 The communication dated 24.07.2023 is quashed and set aside.

3 Respondent No.3 - The Education Officer (Primary) should take a fresh decision except the reasons mentioned in impugned order dated 24.07.2023, by extending the petitioner No.2 an opportunity of being heard.

4 Respondent No.3 shall take the decision as expeditiously as possible and in any case within four weeks.

5 Writ Petition, therefore, stands disposed of.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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