



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9943 OF 2023

1. Mohammadiya Education Society's ... **Petitioners**
Maulana Azad Urdu Girls High School,
Mukund Nagar, Ahmednagar,
Through its Secretary
shaikh Abdus Salam Abdul Aziz
Age 68 years, Occu: Retired, R/o 25,
Bagroza, Delhi Gate, Ahmednagar
2. Shaikh Tausif Ahmad Abdul Samim,
Age 38 years, Occu: Service,
R/o Winscentpura, Near Rangbhavan,
Ahmednagar.

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai 400 032
2. The Education Officer (Secondary) ... **Respondents**
Zilla Parishad, Ahmednagar,
Dist. Ahmednagar

Mr. A. D. Shinde, for the Petitioners
Mr. S. K. Tambe, AGP, for the Respondent-State

**CORAM : RAVINDRA V. GHUGE, &
Y. G. KHOBRAGADE, JJ.**

RESERVED ON : 19.01.2024

PRONOUNCED ON : 05.02.2024

JUDGMENT (Per: Y. G. Khobragade, J.)

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By the present Petition under Article 226 of the Constitution of India, the Petitioners have put forth prayer clauses (B) and (C) as under:

"(B) Issue a writ of certiorari or any other appropriate writ, order of direction in the nature of writ of certiorari to quash and set aside the impugned order dated 13/21.03.2023 passed by the respondent No. 2/Education Officer (Secondary), Zilla Parishad, Ahmednagar rejecting the proposal submitted by the petitioner No.1 for grant of approval to the services of the petitioner No.2 for the post of Lab Attendant.

(C) Issue a writ of mandamus or any other appropriate writ, order of direction in the nature of writ of mandamus thereby direct the respondent No.2 to grant approval to the appointment of the petitioner No.2 as Lab Attendant from his initial appointment dated 31.08.2012 with all consequential benefits."

3. Both the parties have filed their written notes of arguments, so also, argued the matter orally for a considerable period.

4. Mr. Shinde, learned Advocate for the Petitioners canvassed that, Petitioner No.1 is a minority education society and running a secondary school in the name and style of 'Maulana Azad Urdu Girls High School' at Mukund Nagar, Ahmednagar. Respondent No.2

Education Officer (Secondary) approved the staffing pattern of the School, wherein, one post of Lab Attendant has been sanctioned. On 25.08.2012, the post of Lab Attendant has fallen vacant on account of superannuation of Mr. Shaikh Abdul Latif Abdul Aziz on attaining age of superannuation. Therefore, Petitioner No.1, Education society published an advertisement for filling up the post of Lab Attendant, in two Newspapers namely '*Nava Maratha*' and '*Urdu*' Newspaper. The minimum qualification for the post of Lab Attendant prescribed is SSC pass (10th Standard) with Physics and Chemistry or General Science subjects. After following selection process, Petitioner No.1 Education Society, selected Petitioner No.2 for the post of Lab Attendant on 31.08.2012 as he was having HSC Certificate (12 standard) and additional qualification of MS-CIT. Accordingly, Petitioner No.1 submitted a proposal to Respondent No. 2 Education Officer on 08.03.2016 for approval to the appointment of Petitioner No.2. However, on 06.04.2016, Respondent No.2 pointed out certain deficiencies, which have been subsequently removed by Petitioner No.1. vide communication dated 15.12.2017. Despite of this, Respondent No.2 failed to decide the said proposal. Being aggrieved by the said inaction, the Petitioners had filed Writ Petition No. 357 of 2018 thereby prayed for issuance of directions to Respondent No.2 to decide the proposal for approval. Accordingly, on 10.01.2018, the Co-ordinate

Bench of this Court (Coram: S.S. Shinde And S.M. Gavhane JJ.) passed an order directing Respondent No.2 to decide the said proposal for approval within a period of eight weeks.

5. It is further canvassed that on 15.03.2018, Respondent No. 2 passed an order and rejected the approval on the grounds viz., (i) There is an embargo on recruitment of non teaching staff under Government Resolutions dated 12.02.2015 and 18.05.2015; (ii) Revised staffing pattern of non teaching staff not approved at the Government level, hence, there is no vacant post for appointment of Petitioner No.2; (iii) no prior permission sought from respondent No. 2 for recruitment to the post; and (iv) no approval can be granted as per Circular dated 08.08.2017.

6. The learned counsel for the Petitioners submits that, Government Resolutions dated 12.02.2015 and 18.05.2015 are applicable to the general Schools and the said Government Resolutions are not applicable to the Minority Schools. Petitioner No. 1 society, running the School, is already declared a minority institution. The Respondent No. 2 had sought guidance from the Deputy Director of Education for grant of approval as per decision of this Court and vide communication dated 3rd April, 2018, the Deputy Director of Education, Pune Division informed Respondent No. 2 Education Officer to take decision with regard to the approval of Petitioner No. 2 at his

level in pursuance of the order dated 10.01.2018 passed in Writ Petition No. 357/2018 so that there shall be no defiance of the order. However, Respondent No. 2 again passed an order and rejected the proposal for approval of appointment of Petitioner No. 2 to the post of Laboratory Attendant on ground that no prior permission was sought to fill up the said post and no staffing pattern was approved.

7. Being aggrieved by the said order, the Petitioners again approached this Court by filing Writ Petition No. 15387 of 2019. On 26.02.2020, the Co-ordinate Bench of this Court [Coram: S. V. Gangapurwala (as His Lordship then was) and Shrikant D. Kulkarni, JJ] directed Respondent No.2 to decide the proposal for approval to the appointment of Petitioner No.2, afresh within a period four months. But, again on 18.06.2020, Respondent No.2 passed an order and rejected approval for the appointment of Petitioner No. 2, because as per staffing pattern approved on 28.01.2019, post of Lab Attendant was not sanctioned. Therefore, the Petitioners again approached this Court by filing Writ Petition No. 4980 of 2021 and challenged the order dated 18.06.2020. On 21st July, 2022, the Co-ordinate Bench of this Court (Coram: C.V. Bhadang and Sandipkumar C. More, JJ.) passed an order and set aside the order dated 18.06.2020 passed by Respondent No.2 and directed Respondent No.2 to decide the proposal for grant of approval to the appointment, afresh, in the light of the observation

made in said order. The Co-ordinate bench of this Court observed in Paragraph No. 6 as under:-

"6. We have considered the submissions made. In our view, it is for the Education Officer to examine the approved staffing pattern as in August, 2012 when the petitioner came to be appointed as a Lab Attendant and then decide the proposal in accordance with law."

8. Thereafter, Respondent No. 2 passed the impugned order dated 13/21.03.2023 and refused to grant approval to the appointment of Petitioner No. 2 because of (i) failure to produce renewal copy of Minority certificate, (ii) no advertisement was published in the newspapers, (iii) no prior permission of the Department taken as contemplated as per Section 5 of the MEPS Act, and (iv) no merit list of candidates is annexed to the proposal.

9. The learned Advocate appearing for the Petitioners submits that, once any religious or linguistic minority institution is issued a certificate declaring the Minority Institution, said certificate does not restrict for the particular period and there is no need of renewal of said certificate. So also, prior to the appointment of Petitioner No.2, Petitioner No.1 Society had published an advertisement for recruitment of Laboratory Assistant in two leading newspapers, though it is not mandatory for the Minority Institution under Rule 9 (2-A) of the MEPS

Rule, 1981. It is further canvassed that, as per the said provision, issuance of advertisement is in respect of appointment of teaching, non teaching staff and the petitioner society already advertised in two leading news papers. So far as, 3rd and 4th grounds are concerned i.e. no permission was obtained prior to recruitment and non production documents related to interview and merit list etc. of the candidates, the learned Advocate for the Petitioners submits that, no prior permission is required to be obtained from Respondent No.2 for recruitment of teaching or non teaching staff for the minority institution. Petitioner No.1 already submitted merit list of the candidates whose interviews were conducted during selection process of Lab Attendant. Therefore, grounds for rejection of approval is not substantial. Therefore, impugned order is illegal and bad in law.

10. In support of his submissions, the learned Advocate for the Petitioners has placed reliance on the following case law:

- (1) Priyanka Santosh Hegishte & anr. Vs. State of Maharashtra & others, reported in 2023 (4) M.H.L.J. 581***
- (2) Order in Momin Education Society and another Vs. Education Officer (Primary) and others, in Writ Petition No.116 of 2012 dated 16.07.2022.***
- (3) Order in Parbhani Education Society Vs. The State of Maharashtra and another in Writ Petition No. 3707 of 2013 dated 02.09.2013.***

(4) Pramati Educational & Cultural Trust @ & Ors. Vs. Union of India and others, reported AIR 2014 SC 2114.

11. Per contra, Mr. Tambe, the learned AGP vehemently canvassed that, Petitioner No. 2 was appointed by the Petitioner Management as Lab Attendant vide order dated 31.08.2012 and submitted proposal for approval first time in the year 2016. After scrutiny of proposal, Respondent No. 2 found various deficiencies, hence, said proposal was rejected on 06.04.2016. Thereafter, again on 15.12.2027, a fresh proposal was submitted for approval to the appointment of Petitioner No.2, but proposal was rejected due to pendency of Writ Petition No. 357 of 2018. On 10.01.2018, this Court passed an order in W. P. No. 357 of 2018 and directed the Respondent No.2 to decide said proposal within 8 weeks. Accordingly, Respondent No.2 passed the order and rejected the said proposal on the ground that, as per G. R. dated 12.02.2015, recruitment of teaching and non teaching staff was banned. Thereafter, again Petitioner No. 1 submitted a proposal on 05.04.2018 by rectifying queries, but again proposal was rejected because of staffing pattern for academic years 2012-13, 2013-14, the Post of Lab Attendant/Assistance was not admissible due to less number of students. Therefore, considering the Government Policy framed under G. R. dated 23rd October, 2013, strength of students is

prescribed as 500 for one post of Lab Attendant and number of students in the school was less than 500. Accordingly, Respondent No.2 rejected the proposal for non compliance of various deficiencies, on 21.03.2023 as per order dated 21.07.2022 passed in Writ Petition No. 4980 of 2021.

12. The learned AGP further submits that, under G. R. dated 11.12.2020, the Government framed new staffing pattern regarding Class IV employees in partially aided and fully aided Private Secondary and Higher Secondary School. Under said G. R., Post of Lab attendant, Peon, Sweeper and all other Class IV posts were abolished after retirement of respective employees. Therefore, post of Lab Attendant does not exist with the school run by Petitioner No.1. Under these circumstance, no approval can be granted to the appointment of Petitioner No. 2.

13. In support of these submissions, the learned AGP has placed reliance on **State of U.P Vs. Principal Abhay Nandan Inter College & Ors., AIR 2021, SC 4968.**

14. Having regard to the rival submissions, we have gone through the record. It is not in dispute that, the Petitioner No. 1 Education Society is running a school in the name of Maulana Azad Urdu Girls High School, Mukund Nagar, Ahmednagar, which is declared

as a Minority Institution on 26.06.2003. The Respondents have not denied status of Minority Institution. It is an admitted fact that, earlier Mr. Shaikh Abdul Latif Abdul Aziz was working as a full time Lab Attendant with Petitioner No.1 and the said Post fell vacant on 25.08.2012 due to his retirement. It is a matter of record that, Petitioner No.1 Education society published advertisement in two Newspapers namely 'Nava Maratha' and Urdu Newspaper for filling the post of Lab Attendant. Petitioner No.2 has been selected as Lab Attendant after holding due selection process. The Petitioners have produced Merit List of the candidates at Page No. 34, which shows that, present Petitioner No.2 having qualification B.A. D.Ed., MS-CIT, whereas other two candidates were B.A. only. Therefore, Petitioner No.2 was selected and appointed vide order dated 31.08.2012.

15. No doubt, on 18-03-2016, Petitioner No. 1 submitted the proposal with Respondent No.2 for grant of approval to the appointment of Petitioner No.2 as Lab Attendant, but the said proposal was remained undecided for a considerable period. It is a matter of record that initially, the petitioners were required to approach this Court in W. P. No. 357 of 2018 as the Education Officer had not decided the proposal for approval dated 18.03.2016. By an order dated 10.01.2018 the Education Officer was directed to decide the proposal in a time bound manner. The Education Officer, by an order dated 19.07.2019,

refused to grant the approval inter alia on the ground that, the permission was not sought to fill up the post and the staffing pattern was not yet sanctioned. The Petitioners challenged the same in Writ Petition No.15387/2019 which was decided on 26.02.2020. This Court found that, the staffing pattern for the non-teaching class-III employees has been sanctioned by the Government on 28.01.2019 which was not taken into consideration by the Education Officer. In view of that matter, the order passed by the Education Officer on 19.07.2019 was set aside and the Respondent-Education Officer was directed to decide the proposal on its own merits indicating that, the same shall not be rejected on the ground mentioned in the order dated 19.07.2019. After this, the Education Officer by impugned order dated 18.06.2020 has again refused to grant approval for the reasons as indicated earlier mainly that, the staffing pattern approved on 28.01.2019 for the school does not show the sanctioned post of 'Lab Attendant'. Therefore, the Petitioners again approached this court by filing Writ Petition No. 4980 of 2021 challenging order dated 18.06.2020. By order dated 21st July, 2022, the Co-ordinate Bench of this Court (Coram: C.V. Bhadang and Sandipkumar C. More, JJ.) have set aside order dated 18.06.2020 passed by Respondent No. 2 and directed Respondent No.2 to decide proposal for grant of approval to the appointment afresh in the light of the observation made in the said order.

16. However, again Respondent No.2, passed impugned order dated 13/21.03.2023 and rejected the proposal of the Petitioners for approval to the appointment of Petitioner No.2 on the following grounds:

- (A) *The renewal copy of Minority certificate was not annexed.*
- (B) *Advertisement was not given in to newspapers which are widely circulated.*
- (C) *For appointment, prior permission of the Department is not taken as contemplated as per Section 5 of the MEPS Act.*
- (D) *Documents relating to interview of the candidate, i.e. merit list, selection list are not annexed to the proposal.*

17. On perusal of the orders of Respondent No. 2, it appears that Respondent No. 2 assigned different reasons in different orders while rejecting the proposal for approval to the appointment of Petitioner No.2 to the post of Lab Attendant.

18. In the case of **Principal Abhay Nandan Inter College (Supra)**, in Paragraph Nos. 41 to 45, the Hon'ble Supreme Court has observed as under:

"41. Section 9(4) of the Act is to be read in conjunction with Section 16G, as the provisions will have to be read keeping in view all the objects of the enactment. In this connection, we

need to point out that if the practice of recruitment, prior to the amendment of the impugned regulation, was done by tracing the power under it, then it is not open to the respondents to contend to the contrary.

42. Regulation 101, prior to the amendment, imposes strict compliance of getting prior approval. We find that except in Civil Appeal No.2753 of 2021, no such approval has been granted. Obviously, it only indicates the real intention of the respondents/ management which is to have their own recruitment other than anything else.

43. The Division Bench in considering the view has entered into an arena which was not required to be done. Much labouring was done in interpreting the word “Outsourcing”, however, such an exercise ought to have been avoided as it stands outside the scope of judicial review. We have already noted the fact that “Outsourcing” as a matter of policy is being introduced throughout the State. It is one thing to say that it has to be given effect to with caution as recommended by the Seventh Central Pay Commission, and another to strike it down as unconstitutional. “Outsourcing” per se is not prohibited in law. It is clear that a recruitment by way of “Outsourcing” may have its own deficiencies and pit falls, however, a decision to take “Outsourcing” cannot be declared as ultra vires of the constitution on the basis of mere presumption and assumption. Obviously, we do not know the nature of the scheme and safeguards attached to it.

44. Reliance is made on a decision of this court in the case of

Catering Cleaners of Southern Railway (supra), wherein the Petitioners were “catering cleaners” employed for cleaning in various railway station, and they were not even paid the minimum wages. Their grievance was that they had no security of service, while being paid a paltry sum as wages. The aforesaid decision has no application qua the present regulation, which has got its own laudable object, introduced on the basis of economic criteria apart from efficiency.

45. We are also not dealing with the scheme per se, and therefore, are in dark on the conditions of service. The challenge in the present case is not by the employee, recruited by way of “Outsourcing”, and hence, we hold the said decision on which much reliance is sought to be made by the respondents will not be of any help. One cannot simply presume that “Outsourcing” as a method of recruitment would necessarily be adopting contract labour and that there exists an element of unfair trade practice, as sought to be contended by the respondents."

19. In the case of **Priyanka Santosh Hegishte (Supra)**, the Co-ordinate Bench of this Court at the Principal Seat held that, there is no provision in the MEPS Rules for publication of Advertisement in two newspapers. In any case, this is just an irregularity and not illegality.

20. In the case of **Momin Education Society (supra)**, in Paragraph No. 13, the Division Bench of this Court has observed as under:

"It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person, who is not selected by it as a teacher."

21. Though, the Respondents have heavily relied on the Government Resolution dated 11.12.2020, whereby the State Government abolished the posts of Class IV cadre i.e. Peon, Lab Attendant, Sweeper, however, prior to the said G. R., staffing pattern of Petitioner No.1 school was approved in the year 2012, wherein the post of Lab Attendant is also approved and sanctioned. Since, the Certificate in respect of declaration of Minority institution does not stand for a specific period, unless it is revoked for some reasons, there is no need for renewal of certificate of minority institution issued to the religious, linguistic minority institution. Petitioner No.1 society

disclosed about publication of advertisement for filling up the post of Lab Attendant, in two Newspapers namely 'Nava Maratha' and one 'Urdu' Newspaper having wide circulation in Ahmednagar and produced the merit list of candidates who have participated in the interviews. The grounds set out in the impugned order for rejecting the approval were not justifiable and sustainable. Therefore, the impugned order dated 13/21.03.2023 passed by Respondent No. 2/Education Officer (Secondary), Zilla Parishad, is liable to be quashed and set aside and it is necessary to direct the Respondent No. 2 to grant approval to the appointment of Petitioner No. 2 on the post of Lab Attendant from 01.09.2012 as per the proposal 18.03.2016 with all consequential benefits.

22. In view of the above discussion, **this Petition is allowed** in terms of prayer Clauses (B) and (C). Rule is made absolute accordingly. No order as to cost.

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)

JPChavan