



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

927 WRIT PETITION NO. 4328 OF 2019

1. Iqra Education Society
Through President
Abdul Kareem Abdul Majid Salar,
age 66 years, Occ. Business,
R/o. 387, Shani Peth, Jalgaon.

2. Najma Bee Bhuri Deshmukh,
age 62 years, Occ. Service,
R/o Deshmukhwada, Bornar,
Tq & Dist. Jalgaon.

3. Shaikh Shabbir s/o Abdul Nabi,
age 41 years, Occ. Service,
R/o Erandol, Tq Erandol,
Dist. Jalgaon.

Petitioners

Versus

1. The State Of Maharashtra
through Principal Secretary
of School Education Department,
Mantralaya, Mumbai – 32.

2. The Education Officer (Secondary),
Zilla Parishad, Jalgaon.

Respondents

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Advocate for the Petitioner : Mr. A.S. Deshpande h/f Mr. S.S.
Kazi a/w Mr. M.N. Shaikh
AGP for Respondents : Mr. S.K. Shirse

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

Dated : February 23, 2024

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FINAL ORDER :-

1. Present Petition challenges the order dated 8th March, 2018 passed by the Deputy Secretary, School Education Department of the Government.

2. The facts leading to the petition are that the Petitioner-Trust is running schools, colleges in Jalgaon District. Permission was granted to petitioner by letter dated 9.6.1994 to start High School with effect from June, 1994. The renewal was granted by the letter dated 11.6.1997. Thereafter, it appears that 5th Standard, 6th Standard onwards were started. According to the Petitioner, as regards non-teaching staff is concerned, only two posts were sanctioned, when, in fact, there ought to have been sanction for four posts. Persons came to be appointed at least in all four and proposal was sent for approval of their appointment. When, the proposal was pending for approval and decision not yet taken, the Petitioner came before this Court by filing Writ Petition No.5129 of 2016 which came to be disposed off with directions to the Respondents to decide the proposal keeping in view the relevant Government Policy. It appears that, thereafter, impugned order came to be passed.

3. Learned advocate for the petitioners, after taking us through the documents on record, submits that Secondary School Code would be applicable, and, therefore, since beginning there ought to have been sanction to the post of non-teaching staff to the extent of four; when permissions were

granted to run further standards in the school. In the impugned order, the Government is taking help of the Government Resolution dated 23.10.2013, which is not applicable. The Government ought to have considered the position in respect of the Two additional non-teaching posts from the year 1996-1997. The Resolution dated 23.10.2013 cannot have a retrospective effect and in order to support his contention, he relies on a judgment in case of **Shrikrishna Bhikaji Bondge Vs. State of Maharashtra and others** reported in **2021(3) Mh.L.J. 177** and **Dilip Mohan Desai Vs. State of Maharashtra and another** reported in **2020 DGLS (Bom) 919**. He also points out that since 2002, hundred percent (100%) grants have been sanctioned to the School. There ought to have been a clear decision after directions were given in the earlier round of litigation to the Respondents.

4. Per contra, learned AGP places reliance on the Government Resolution dated 25.11.2005 and 23.10.2013 and submits that on the basis of affidavit-in-reply of Mr. Digambar Murlidhar Devang, Deputy Education Officer (Secondary), Zilla Parishad, Jalgaon wherein details have been given that in view of strength of the students, two posts were sanctioned and even the period between the proposal that was pending and till the decision is taken has been considered while taking decision on the approval and, therefore, the impugned decision is perfectly legal and correct.

5. At the outset, it is to be noted that, this Court in the earlier round of litigation i.e. in Writ Petition No.5129 of

2016, taking into consideration the proposal that was pending, issued directions to the respondent no.1 to take decision and then it was specifically stated that recommendation by the Director of Education, Secondary and Higher Secondary to be considered as well as the relevant Government Policy. From the record, it appears that the proposal was sent on 16.7.2002 and, therefore, in view of the order passed by this Court on 5.7.2016 at the cost of repetition, Government ought to have decided it in view of the relevant Government Policy that means the Government Policy as on prevalent on 16.7.2002 ought to have been considered. We fully agree that the subsequent Government Policy will not govern the field and cannot have a retrospective effect. Therefore, the ratio in both the above decisions of this Court support the Petitioner. It is also to be noted that as regards the Government Resolutions dated 28.6.1994 in the impugned order itself, it has been stated that the Policy was not consistent and it was also in respect of the Government Resolution dated 25.11.2005. As regards the Government Resolution dated 25.11.2005, reference of the same is in Government Resolution dated 23.10.2013 and it is specifically stated that said Government Resolution was not implemented taking into consideration the complaints received by the Government. If that Government Resolution was not implemented, then it cannot be considered for any purposes by the State. However, it appears that there should have been a policy on which basis the decisions were taken by the Government to sanction approval for the appointment in non-teaching schools in the State.

6. Suffice it to say that the impugned order does not adhere to requirement and directions issued by this Court in its order dated 5.7.2016 and, therefore, the matter is required to be relegated to the respondents to take appropriate decision in pursuant to the specific directions given by this Court in the above said order. Hence, the following order. :-

ORDER

- i. The Writ Petition stands partly allowed.
- ii. The impugned order dated 8.3.2018 passed by the Deputy Secretary, School Education Department of Maharashtra State is hereby set quashed and aside.
- iii. The Deputy Secretary, School Education Department of Maharashtra State is hereby directed to decide the proposal dated 16.7.2002 of the Petitioners in the light of the order passed by this Court on 5.7.2016 and also in the light of observations made in this Petition. Such decision be taken within a period of Four (4) Months from today.
- iv. Writ Petition is accordingly **disposed off**. No costs.

(S. G. CHAPALGAONKAR, J.) (SMT. VIBHA KANKANWADI, J.)

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