



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.11096 OF 2022

Rahul s/o Subhash Kshirsagar,  
age 28 years, Occ. Service as Peon,  
R/o Rahman Ganj, Jalna.  
Tq. & Dist. Jalna.

Petitioner.

Versus

1. The State of Maharashtra,  
Through its Principal Secretary,  
Education Department,  
Mantralaya, Mumbai – 32.
  2. The Education Officer (Secondary),  
Zilla Parishad, Jalna.
  3. Shri Jalna Gujrathi Samaj Education Society,  
Jalna, Tq. & Dist. Jalna,  
Through its Secretary.
  4. C.T.M.K. Gujrathi Vidyalaya,  
Sarojini Devi Road, Jalna,  
Tq. & Dist. Jalna,  
Through its Head Master.
- Respondents.

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Mr. V.S. Panpatte, Advocate for petitioner.  
Mr. V.M. Jaware, AGP for respondent nos.1 and 2.  
Mr. Sachin Deshmukh h/f Mr. N.B. Garje advocate for  
respondent nos.3 and 4.

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| CORAM       | : | SMT. VIBHA KANKANWADI &<br>S. G. CHAPALGAONKAR, JJ. |
| Reserved on | : | January 24, 2024                                    |
| Decided on  | : | April 12, 2024                                      |

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

1. The Petitioner approached this Court under Article 226 of the Constitution of India, impugning the order dated 18.7.2022 passed by Respondent No.2-Education Officer (Secondary), Zilla Parishad, Jalna thereby declining to grant approval to the appointment of the petitioner as Peon with Respondent No.4-School.

2. Mr. Panpatte, learned advocate appearing for the petitioner submits that respondent no.3 is a Minority Education Institution and runs respondent no.4-School. The school receives 100% grant-in-aid. Since year 2008 there were vacancies of the teaching and non-teaching staff in the respondent no.4-School. Therefore, correspondence was made to the Education Officer seeking permission to advertise the post. The repeated representations were made and last such representation was made on 10.2.2016. However, Education Officer failed to take cognizance of the requests made by the School. Since the school was running short of the teaching and non-teaching staff and there was no response from the respondent No.2-Education Officer, advertisement was issued in widely circulated newspaper, thereby inviting applications from the eligible candidates. As per the said advertisement, one post of peon was notified. Petitioner responded to the said advertisement dated 11.9.2016. He was interviewed and being suitable and eligible came to be appointed vide order dated 21.9.2016. The proposal seeking approval was made to Education officer, however, Education Officer sat over file without any decision. Therefore, the petitioner approached

this Court seeking directions against Education Officer to decide the proposal. In pursuance of the directions of this Court, respondent no.2 decided the said proposal. He rejected the proposal giving reason of surplus teachers being available for the appointment. The said order was also assailed before this Court in Writ Petition no.8975 of 2017. This Court disposed off said writ petition vide order dated 18.9.2019 and directed the Education Officer to re-consider the proposal submitted by the School with specific rider that the proposal shall not be rejected giving the same reason i.e. availability of the surplus non-teaching staff or ban under the Government Resolution dated 12.2.2015.

3. Mr. Panpatte, learned advocate would further point out that inspite of specific rider incorporated in the order passed by this Court, respondent no.2-Education Officer rejected the proposal seeking approval to the petitioner's appointment giving the same reason i.e. ban imposed under Government Resolution dated 12.2.2015. He would therefore submit that the impugned order is contrary to the directions given by this Court and also violates the protection available to minority institutions under Article 30(1) of the Constitution of India.

4. To buttress his submission, he relies upon the Judgment of this Court in Writ Petition No.7962 of 2017 in case of **Jaydev Subhash Manerkar Vs Sate of Maharashtra and others** dated 27.6.2019. He would further submit that ban imposed under the Government Resolution dated 12.2.2015

would not apply to minority institutions, who possess constitutional right to administer educational institution and appoint staff as per their choice.

5. Mr. V.M. Jaware, learned AGP appearing for respondent nos.1 and 2 vehemently opposes the prayers in the petition. He would submit that although respondent nos.3 and 4 are minority institutions, they were not exempted from application of the Government Resolution dated 12.2.2015. A policy decision was taken by the Government to ban the recruitment till decision of the Committee working on fixation of staffing pattern for the institutions receiving grant-in-aid. He would further point out that as per the staffing pattern for 2015-2016, no post of peon was approved for the school. As per the Government Resolution dated 11.12.2020, new policy is brought in vogue and post of peon in schools has been abolished from staffing pattern. He would therefore support the impugned order.

6. We have heard the learned advocates appearing for the respective parties. We have gone through the documents annexed to writ petition. It is not in dispute that respondent nos.3 and 4 are the minority institutions and such recognition can be ascertained through communication dated 16.1.1995 issued by the Deputy Director of Education, Aurangabad Division. Pertinently, there were large number of vacancies of teaching and non-teaching staff in the school. Respondent no.4 had appraised of such vacancies to respondent no.2-Education Officer vide his communication

dated 11.6.2014 and sought permission to advertise the posts. Although said communication is acknowledged by the office of respondent no.2, he failed to respond the same. The copies of communications made on 23.6.2014, 18.6.2015 and 10.2.2016 are placed before us. Unfortunately, respondent no.2 or his office did not bother to respond the correspondence made by respondent nos.3 and 4.

7. Staffing pattern as on 30.9.2015 shows that in all six class-IV employees were working in the school as against sanctioned 8 posts. Considering the inconvenience in day to day working of the school, respondent nos.3 and 4 advertised vacancies on 11.9.2016 in two widely circulated newspapers. Petitioner responded to the said advertisement and applied for the post of peon. He was interviewed, being suitable candidate and came to be appointed vide order dated 21.9.2016.

8. On 9.12.2016 respondent no.4 forwarded the proposal seeking approval to the appointment of in all four appointees including the petitioner. Education Officer declined to entertain the proposal vide his communication dated 31.3.2017. Said order was challenged before this Court in Writ Petition No.8975 of 2017 filed by petitioner and others. This Court took note of submissions advanced by learned AGP that proposals have been ostensibly turned down for absorption of surplus non-teaching staff and ban for further appointments till receipt of the report of the Committee constituted for deciding new staffing pattern under Government Resolution dated 12.2.2015. This Court, after considering the submissions

advanced, set aside the impugned order passed by the Education Officer with further direction to re-consider the proposals, with specific rider, that it shall not be rejected on the grounds referred in the impugned order.

9. Apparently, the Education Officer vide order, dated 18.7.2022, impugned in this petition, rejected the proposal seeking approval to the appointment of the petitioner giving reason that the Government has introduced policy under Government Resolution dated 11.12.2020 by which the post of peon has been abolished and appointment of the peon can be made only on contract basis for which consolidated sum would be released. From perusal of the impugned order, it can be gathered that rejection of the proposal for grant of approval to the petitioner's post is again for the similar reason i.e. ban on recruitment introduced under the Government Resolution dated 12.2.2015 and subsequent policy introduced under GR dated 11.12.2020. As such, the order is inconsistent with the specific directions given by this Court in Writ Petition No.8975 of 2017. Pertinently, this Court in case of **Parbhani Education Society, Parbhani Vs. State of Maharashtra and another ( Writ Petition No.3707 of 2013 dated 2.9.2013)** and **St. Francis De. Sales Education Society and ors Vs. The State of Maharashtra and another (Writ Petition No.5547 of 2013 dated 30.9.2013)**. took a view that policy of state government to ban recruitment in minority institutions may violate their constitutional right U/A 30(1). Similar view is reiterated by this Court in Writ Petition No.7962 of 2017 in case of Mr. Jaydev Manerkar Vs.

State of Maharashtra vide judgment and order dated 27.6.2019.

10. Apart from the aforesaid legal position, on facts, we find that 8 posts of peon were sanctioned for respondent school as per staffing pattern and two posts were vacant from 2008 onward. Respondent nos.3 and 4 continuously made correspondence to Education Officer seeking permission to advertise the posts and fill up vacancies since 2010 onward. The copies of representations dated 11.6.2014, 23.6.2014, 18.6.2015 and 10.2.2016 are placed before us. It is apparent that respondent nos.3 and 4 took sufficient efforts to seek permission to advertise the post much before introduction of the policy under Government Resolution dated 12.2.2015. However, there was no response from the Education Officer. Therefore, institution was compelled to issue advertisement and endeavor to fill up vacancies. It is therefore evident that appointment of the petitioner was against vacancy that was existing as per approved staffing pattern from 2008 onward and because of reluctance to respond on the part of the Education Officer, such vacancy could not be filled in before imposition of ban under GR of 2015. If Education officer would have acted promptly in response to representations of school, vacancy could have been filled much before 2015. It was unfair on part of education officer to sit over representations for years together from 2008 and then decline approvals to appointments, under pretext of ban introduced in 2015.

11. In that view of the matter, in the present case, policy under Government Resolution of 2015 or subsequent Government Resolution of 2020 would not be impediment for grant of approval to the appointment of the petitioner. Consequently, we are of the considered opinion that the impugned order cannot be sustained in law and liable to be quashed and set aside. Resultantly, we proceed to pass the following order.

**ORDER**

- i. Writ Petition is allowed.
- ii. The impugned order dated 18.7.2022 passed by Respondent No.2- Education Officer (Secondary), Zilla Parishad, Jalna is hereby quashed and set aside.
- iii. Respondent No.2 – Education Officer (Secondary), Zilla Parishad, Jalna shall grant approval to the appointment of the petitioner as per policy as on date of his appointment and release consequential benefits.
- iv. Writ Petition is accordingly disposed off. No costs.

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

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