



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.15092 OF 2023

Vidya Pratishthan (Maharashtra)
College of Education, P & G
College & Research Centre,
Ahmednagar.
Through its Joint Secretary
Murlidhar Dattatraya Pawar,
Age 46 yrs., Occ. Legal Practitioner,
R/o Gulmohar Residency,
Gulmohar Road, Savedi,
Ahmednagar.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through its Secretary,
Higher and Technical Education,
Mantralaya, Mumbai.
- 2 The Divisional Joint Director,
Higher Education,
Pune Division, Pune.
- 3 The Joint Director,
Higher Education,
Pune Division, Pune.

... Respondents

...

Mr. A.N. Kakade, Advocate for Petitioner
Mr. N.S. Tekale, AGP for respondent Nos.1 to 3

...

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

DATE : 03rd JANUARY, 2024

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

1 Rule. Rule made returnable forthwith. Heard learned Advocates for the parties finally, by consent.

2 The petitioner is a registered Trust running B.Ed. College since 1965 at Ahmednagar. Earlier the petitioner had filed Writ Petition No.5292 of 2022 before this Court challenging letter dated 06.04.2022 issued by respondent No.3, thereby refusing to grant NOC/permission for filling of vacant teaching and non teaching posts in the petitioner college. The said writ petition came to be partly allowed. The impugned communication was quashed and set aside and the respondents were directed to consider the request of the petitioner on its own merits. It is contended that the Trust is running the said college with the sanctioned strength of 50 sheets each for the first and second year. University of Pune by order dated 09.06.1965 granted affiliation to the said college. The details of the vacant posts has been given. Of course, this is against the sanctioned strength. Respondent No.1 informed vide communication dated 22.11.2023 stating that the

proposal for determining the revised work load of the teachers working in aided education/physical education colleges at the State level in terms of notification issued by National Teachers Education Council, New Delhi dated 28.11.2023 has been submitted to the Government and it is before the Finance Department as per the prevailing policy. It is then stated that the creation of new posts of teachers/or grant of no objection for filling the post of teaching category in the petitioner's college cannot be accepted unless the Finance Department gives its approval for filling the post of teaching category in all aided education/physical education colleges at State level. It was then informed that the petitioner may appoint clock hour basis teachers on vacant post against full time teacher. The said communication travelled through the hierarchy and respondent No.3 has given the similar letter to the petitioner which is the impugned letter.

3 Heard learned Advocate Mr. A.N. Kakade for the petitioner and learned AGP Mr. N.S. Tekale for respondent Nos.1 to 3.

4 It is submitted on behalf of the petitioner that the respondents have not considered the proposal of the petitioner in its true spirit. The college which is run by the petitioner is recognized by the Government and provides 100% grant in aid towards staff salary of teaching and non teaching. The Joint Director, Higher Education, Pune Division, Pune by its letter dated

02.04.2012 has already granted staff sanction/approved the post and as per the said letter there are ten sanctioned teaching posts as per the work load and nine non teaching posts. There are five vacancies of teaching staff. Several representations have been made in the past but those have not been considered at all. Since the petitioner is running the professional education college it requires only duly qualified staff as per the norms of NCTE. The guidelines issued by NCTE specifies for appointment of full time qualified teachers and, therefore, the respondents should confine with those guidelines and should not issue such guidelines which are contrary to NCTE and, therefore, once again the petitioner was required to come to this Court.

5 Affidavit-in-reply has been filed on behalf of respondent Nos.1 to 3 by Dr. Keshav Parbat Tupe, Joint Director of Higher Education, Pune Region, Pune. Almost all the facts are admitted by him in the affidavit-in-reply, however, he has reiterated the contents of the impugned letter. It is said that the proposal for finalization of the revised staffing pattern in respect of teaching and non teaching posts in aided Education/Physical Education colleges in the State is based on NCTE rules and the revised notification dated 28.11.2014 is under consideration. NCTE regulations have been adopted by the Government vide its resolution dated 03.12.2018. It has been categorically stated that the said proposal for revised staffing pattern in

respect of all the colleges at the State level is under process for consideration and decision.

6 The first and the foremost fact that is required to be considered is that the petitioner has adopted legal procedure. By order under earlier Writ Petition No.5292 of 2022 the communication by the respondents was quashed and set aside and then they were directed to consider the petitioner's request on its merits. It is not disputed that No Objection is required before taking up the action of filling up of the posts. The chart given by the petitioner would show that one post is vacant since 1999 and thereafter at a regular interval. It would be totally unjust to ask the petitioner to run the educational institution without sufficient trained staff. When the respondents are not disputing that the petitioner's college is recognized affiliated, is receiving grant in aid, then for some reason which appears to be pending for consideration with the Government since 2018 an excuse has been put forward. In the affidavit it is absolutely not mentioned as to when the Government would take the final call.

7 Another important point to be considered is that the vacancy is in respect of sanctioned posts. It cannot be asked that it should be fulfilled with some other mode i.e. clock hour basis. The same rules and regulations which were applicable for the post which later on became vacant would be

applicable to that post. Government cannot in such a way change the nature of the post. Even if for the sake of argument it is accepted that the staffing pattern gets changed, it should be prospective in nature and cannot be made applicable retrospectively, unless for the reasons the Government decides to make it retrospectively. Still it would be a debatable question. We are of the opinion that unnecessarily the respondents are dragging the matter. By this time, the No Objection Certificate ought to have been issued by the respondents. Therefore, the case is made out for exercise of the constitutional powers of this Court by issuing writ of mandamus. Hence, following order.

ORDER

- 1 The writ petition stands allowed in terms of prayer clause 'B'.
- 2 Such NOC be issued within a period of two months from today.
- 3 Rule is made absolute in the aforesaid terms.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)