

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8227 OF 2022

Shri Linesh Pandurang Dhuri.

Age: 33 Years, Occupation: Service,

R/o. At/Post: Nivaje, Taluka: Kudal,

District: Sindhudurg..

... Petitioner.

V/s.

1. The State of Maharashtra,
Through the Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-400 032.
2. The Commissioner of Education
School Education Department,
Maharashtra State, Pune.
3. The Director of Education,
(Secondary and Higher Secondary),
Maharashtra State, Pune-1.
4. The Deputy Director of Education,
Kolhapur Region, Kolhapur, having
office at Somwar Peth, Hatti Mahal,
Ganji Galli, Kolhapur - 416 002.
5. The Education Officer (Secondary),
Zilla Parishad, Sindhudurg,
Having Office at, Zilla Parishad
Building, Sindhudurg.

SANJAY
KASHINATH
NANOSKAR

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6. The Sindhudurg Diocesan Educational Trust, Sawantwadi, Having Head Office at Bishop's House, Kankavali, Tal. Sindhudurg, Dist. Sindhudurg, Through its President/Secretary.
7. Miligris High School, Sawantwadi, Taluka: Sawantwadi, District: Sindhudurg Through its Head Master. ... Respondents.

Mr.Prashant Bhavake for the Petitioner.

Ms.Rupali Shinde, AGP for Respondent Nos.1 to 5- State.
Mr.Mushtaq Shaikh, Education Officer, Mumbai North present.

**CORAM : NITIN JAMDAR, AND
M.M. SATHAYE, JJ.**

DATE : 19 April 2024.

ORAL JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Taken for disposal.

2. The Petitioner has filed this writ petition challenging the order passed by Respondent No.5- Education Officer dated 14 March 2022 rejecting the proposal made by Respondent No.6- Management for approval to the appointment of the Petitioner on

the post of Librarian. The Petitioner has asserted that Respondent No.6- Management is a minority institution. The approval was initially rejected by an order dated 15 March 2022. This rejection was challenged by Writ Petition No.2116/2021. By order dated 23 June 2021, the petition was disposed of permitting the Petitioner to place on record certain Government Resolutions and legal position and thereafter directing the Education Officer to take a decision. On 1 July 2021, the Respondent- Management made a representation to the Education Officer placing the legal position on record and also placing the copy of the order dated 30 September 2013 passed by the Division Bench of this Court (Aurangabad Bench) in Writ Petition No.5547/2013 (*St.Francis De Sales Education Society v. The State of Maharashtra*). The Petitioner also pointed out that there are various decisions taking a view that the ban on recruitment will not apply to the appointments made by minority institutions. In spite of the Petitioner placing this decision and the legal position on record, the impugned order came to be passed by the Education Officer Dr. Mushtaq Shaikh on 14 March 2022; wherein apart from other grounds again the ground of ban on recruitment was taken. There is absolutely no reference to the legal position cited by the Petitioner even though the impugned order refers to the representation of the Petitioner. Therefore, the Petitioner is again back to the Court seeking to challenge the order of the Education Officer.

3. Once a judicial pronouncement in respect of the position of law is cited on the very subject matter and the Education Officer is made aware of the law, he is expected to keep the same in mind. Considering that this is not a unique case and in various cases, this Court has come across similar conduct of the education officers not referring to the order of the Court deliberately or otherwise and passing the orders rejecting the proposals for approval, on 7 March 2024 the following order was passed:

“ Leave to amend to place the entire copy of Exhibit-J. Amendment to be carried out within one week.

2. *This is a third occasion the Petitioner has approached this Court. The Petitioner earlier had filed Writ Petition No.2116/2021 which was disposed of by order dated 23 June 2021. In the said order, the Court had kept the contention of the Petitioner that the ban on recruitment is not applicable being a minority institution open to be considered by the Education Authority. Thereupon, the Petitioner made a representation in which the following stand was taken:*

“(e) The issue of choice of minority institution over employing its employees has been well settled in Writ Petition No.5547 of 2013 decided by the Aurangabad Bench of this Hon’ble Court on 30.09.2013 (copy is enclosed). In fact, this Hon’ble Court has relied upon a catena of judgments in coming to the said conclusion that the Minority Institutions can appoint any person of its choice if the said person is eligible for the appointment. “

We had expected the Education Officer to deal with this issue relying on the orders of the Court, which was squarely raised by the Petitioner.

3. *In the impugned order passed by the Education Officer Dr. Mushtaq Shaikh again the ground is taken that*

there is ban on recruitment. The issue raised and referred in the order dated 23 June 2021 is not decided at all. Being an Education Officer we would presume that this Education Officer would have basic domain expertise in the subject. Therefore, the only conclusion, prima facie, is that the Education Officer has deliberately avoided to deal with the issue.

4. *We note that such a conduct on the part of the education officers avoiding to deal with the judgments of the Courts placed before them is giving rise to the needless litigation which is clogging the docket of this Court.*

5. *Issue notice to Dr. Mushtaq Shaikh, Education Officer to explain as to why the impugned order should not be considered as deliberate attempt not to apply the law laid down by this Court. The office of the Government Pleader will submit the current address of Dr. Mushtaq Shaikh to the Registry within two weeks. Notice and copy of the petition be sent to Dr. Dr. Mushtaq Shaikh. Notice is made returnable on 19 April 2024.*

6. *As regards the contention of the Petitioner that the Management may terminate the services of the Petitioner because approval is not granted, the same is misplaced in view of the law laid down by the Full Bench of this Court in the case of St.Ulai High School v. Devendraprasad Jagannath Singh¹ which is applicable to the Respondent- Management.”*

4. Today, the concerned Education Officer is present in the Court. The learned AGP states that due to inadvertence the impugned order came to be passed without referring to the decision of the Court. We find it difficult to accept this explanation as we are informed that the concerned Education Officer has been working as

¹ 2007 (1) Mh.L.J. 597

an Education Officer for 10 years and, therefore, a substantial number of proposals for approval must have been dealt with by the Education Officer in his career and he must have acquired domain expertise. Even today, the Education Officer does not state that the judgments cited by the Petitioner was not relevant and did not cover the issue.

5. In *Shri Nitin Bhika Tadge and others v. The State of Maharashtra*², this Court has taken serious note of such conduct of the Education Officers leading to harassment to the teachers and the management giving rise to substantial litigations. It is laid down therein that such a conduct of ignoring the legal position when cited would be viewed seriously and even in contempt jurisdiction. The relevant observations are as under:

“36. To summarize, the earlier orders reproduced above are self-explanatory, as are the Government Resolutions. Therefore, taking an overall view of the matter and the purpose for which the entire exercise is carried out, we propose to issue certain directions. Our main emphasis is on the refusal of educational authorities to follow the legal position in judicial pronouncements. Almost all authorities of the Education Department of the State are well-versed in their subject, and it cannot be that it is out of ignorance that the judicial pronouncements are side-stepped. Such conduct results in notices for contempt being issued. Either an apology is tendered, or the Court proceeds to pass a deterrent order. Therefore, we make it clear that if any judicial pronouncement is cited before the Educational Authority, which has a bearing on the subject matter, then it shall be the duty of the concerned officer to deal with the same. If the officer intends to

² Writ Petition No.204/2019 and others decided on 16 April 2024.

distinguish the same as not applicable to the facts of the case, then reasons can be given, but if it completely ignores the decision placed before it, it cannot be countenanced. Therefore, such conscious refusal to deal with the decisions cited will amount to and would be considered a breach of the directions of the Court. This is necessary because this behaviour is giving rise to unwarranted litigation. Furthermore, the same is also expected from the appellate forum. In fact, the Government Resolution dated 6 February 2012 specifically provides for the same.

PART- II

- A. (i) *We direct that upon receipt of a proposal seeking approval, the Educational Authority, as per the methodology laid down in the Government Resolution dated 6 February 2012, will communicate the shortfalls/ objections in the proposal submitted by the Management/ Employer as the case may be calling for explanation giving them reasonable time. Upon receipt of such explanations, the Educational Authority will examine the explanation and pass a reasoned order.*
- (ii) *If any judicial pronouncement is cited regarding the shortfalls/ objections in the explanation, then in the reasoned order, the Educational Authority will specifically address the legal position laid down by the said judicial pronouncement.*
- (iii) *It is emphasized that avoiding referring to and avoiding considering the legal position laid down in the judicial pronouncement would be viewed seriously and may result in action under the contempt jurisdiction of this Court.*
- (iv) *The State Government will issue necessary instructions or government resolutions in furtherance of the Government Resolution dated 6 February 2012, incorporating the aforesaid directions to all Educational Authorities in the State within six weeks. We place the responsibility on the Director of Education, State of Maharashtra, for the issuance of such instructions.*

6. In these circumstances, while we note that a clear case for taking action under the contempt jurisdiction against this Education Officer is made out, the learned AGP, on instructions, states that the Education Officer would compensate the Petitioner by paying litigation costs and will not indulge in this conduct again. On his undertaking that he will pay the Petitioner a litigation cost of Rs.25,000/- within a period of one week, we are not proceeding further though this is a contempt.

7. As far as the merits of the impugned order are concerned, the ground of ban on recruitment does not exist is accepted before us by the Education Officer. The other grounds require a factual explanation from the Petitioner and the Management. Here also there is a breach of the Government Resolution dated 6 February 2012 as no opportunity is given to the Petitioner and the Management calling upon for an explanation and the Education Officer has unilaterally rejected the proposal, even though the impugned order mentions this Government Resolution.

8. Accordingly, we set aside the impugned order dated 14 March 2022 and restore the proposal submitted by the Respondent-Management to the file of the Education Officer who will pass necessary orders. The Education Officer, apart from the ground regarding the ban on recruitment, will call for an explanation from

the Petitioner and the Respondent- Management and upon submitting the same will pass a reasoned order accordingly within a period of six weeks. If the approval is granted, consequential actions be taken.

9. Rule is made absolute in the above terms. Writ petition is disposed of.

10. In view of the judgment in the case of *Shri Nitin Bhika Tadge and others*, wherein for this conduct it is noted that deliberate avoidance of the Court 's decision would be viewed seriously, let the copy of this order be sent to the Secretary of the education Department for the purpose of the service record of the Education Officer, Dr.Mushtaq Shaikh.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)