

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 11499 OF 2022

1. Yashwant Shikshan Sanstha,
Surur, Taluka : Wai,
District : Satara,
Through its President/Secretary
 2. Tarkatirtha Laxmanshastri Joshi
Vidyalaya, Wai, Taluka : Wai,
District : Satara
Through its Head Master
 3. Dattu Sitaram Kale,
Age : 38 years, Occupation : Service,
R/o. A/P. Surur, Taluka : Wai,
District : Satara
- ... Petitioners

V/s.

1. The State of Maharashtra
Through the Secretary,
School Education and 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 Hatti Mahal,
Ganji Galli, Somwar Peth, Kolhapur
5. The Education Officer (Secondary),
Zilla Parishad, Satara, Having Office
at Zilla Parishad Building, Satara ... Respondents

Mr. Prashant Bhavake for the Petitioners

Ms. Neha Bhide, 'B' Panel Counsel with Ms. Rupali Shinde, AGP for
Respondent Nos. 1 to 3

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

DATE : 09 FEBRUARY 2024

Oral Judgment (Per Nitin Jamdar, J.) :-

Heard the learned Counsel for the parties. **Rule.** Rule made returnable forthwith. Taken up for final disposal.

2. The Petitioner No.1 is an Educational Institute registered under the Public Trust Act and receives grant-in-aid. The Petitioner No.3 is appointed as a junior clerk in the Petitioner No.2 – School. The Petitioners submitted a proposal for approval of the appointment of the Petitioner No.3. This proposal was rejected by the impugned order dated 28 June 2022 by the Education Officer (Secondary), Zilla Parishad, Satara. Being aggrieved, the Petitioners

are before this Court. Reply affidavit is filed on behalf of the Respondent No.5.

3. In the impugned order reasons for rejecting the proposal for approval of the Petitioner No.3 is that in view of the Government Resolutions dated 4 May 2020 and 5 May 2020, there is a ban on recruitment and therefore, the proposal cannot be considered.

4. As regard this ground of rejection is concerned, the learned Counsel for the Petitioners has placed on record two Government Resolutions dated 12 April 2022 and 31 October 2022. It is an admitted position before us that the ban imposed by the Government Resolutions dated 4 May 2020 and 5 May 2020 which were due to the situation brought about by Covid-19 Pandemic have been lifted. Therefore, the ground in the impugned order would no longer survive.

5. However, in the reply affidavit filed, the following contention is raised :-

“5. I say that, the Director of Secondary and Higher Secondary Education, Pune sanctioned the Post of Non-Teaching employees by order dated 01.03.2021. I say that, vide GR dated 29.01.2019 and 07.03.2019, the post will be sanctioned by the Director Office vide its letter dated 01.03.2021. However, the Hon’ble Court in

Writ Petition No. 5058 of 2021 has granted ad-interim relief vide its Order dated 06.09.2021. By way of ad-interim reliefs, the execution in implementation of Government Resolutions dated 29.01.2019 and 07.03.2019, and Circular dated 01.03.2021 has been stayed by this Hon'ble Court. Therefore, even if the post of the Petitioner is sanctioned by way of new staffing pattern the same cannot be implemented due to the ad-interim relief granted by this Hon'ble Court in Writ Petition No. 5058 of 2021. By letter dated 01.08.2022, the Director of Education has informed to all the authorities below about the stay granted by this Hon'ble Court."

6. The Writ Petition referred to in the Reply, the Writ Petition No. 5058 of 2021 and the connected Writ Petition No. 8007 of 2021, were heard by this Court on 6 February 2024 and the Petitions were disposed of. The relevant portion of the order reads thus :-

"6. What we have before us are not public interest litigations. In both petitions, the Petitioners/Associations have made it clear though they have not even detailed their membership, that they seek to espouse the cause of their members who are working as Laboratory Assistants and on various non teaching posts. The apprehension of the Petitioners, by interpreting the impugned Government Resolution, is that by deduction/change in staffing pattern, the services of their members would be terminated.

7. The learned Advocate General points out that this interpretation is not correct as the reading of the

Government Resolution would show that the members of the Petitioner Associations, for that matter other similarly situated employees, would not be terminated from the services pursuant to the impugned Government Resolution. The learned Advocate General points out that even if the posts are declared surplus, since the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act and Rules thereunder are applicable, being approved on the posts, absorption will have to be done as per the governing Rules 26 and 27 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and till that time such employees are absorbed, their salary will be borne as per the Rules.

8. Since, the Government Resolution is interpreted as such by the learned Advocate General, whose interpretation we accept, the apprehension of the members of Petitioners/Associations regarding termination from services and being rendered jobless no longer survives. The members of the Petitioners/Associations, approved employees would have the protection of Rules 26 and 27 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The learned Advocate General states that in light of what is observed above, necessary instructions would be issued by the State Government.

9. That being the position, it is not necessary for us to continue to entertain the challenge at the behest of these petitioners. Leaving the larger question open, if and when it is brought before the Court by the affected parties, we dispose of the Writ Petitions. All interim applications are also disposed of.”

Thus the Petitions referred to in the reply have been disposed of and the ad-interim relief is vacated. Therefore, the ground taken in the affidavit in reply does not survive.

7. The reply also refers to the letter of the Director of Education dated 1 August 2022. This instructions-cum-circular is addressed to all the Divisional Deputy Directors, Education Officers and the Education Inspector. By this communication, referring to the interim order passed by this Court in Writ Petition No. 5058 of 2021, instructions have been given as regard the process for non-teaching staff, that the proposal for approval for the post of non-teaching staff should be kept in abeyance. The basis of this communication does not survive any further in view of the disposal of the Writ Petition No. 5058 of 2021 and Writ Petition No. 8007 of 2021.

8. Accordingly, the Writ Petition is disposed of by directing the Respondent No.5 – Education Officer to consider the proposal regarding appointment of the Petitioner No.3 on its own merits, preferably within a period of eight weeks, subject to earlier time bound directions and other urgent public duties. If the approval is granted, all consequential steps be taken.

9. We also direct the Director of Education (Secondary and Higher Secondary) to examine the order dated 6 February 2024,

disposing of the Writ Petition No. 5058 of 2021 and Writ Petition No. 8007 of 2021, which we are reproduced above and issue necessary instructions to whom the communication is addressed on 1 August 2022.

10. Rule made absolute in above terms.

11. The Office of the Government Pleader will forward the copy of the order to the Respondent No.3 – Director of Education to issue the necessary instructions at the earliest.

M.M. SATHAYE, J.

NITIN JAMDAR, J.