

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6306 OF 2024

Smt. Renu Venkatesh Bugulu And Anr ...Petitioners

Versus

The State Of Maharashtra And Ors. ...Respondents

Mr. Narendra Bandiwadekar, Senior Advocate a/w Vinayak Kumbhar, Rajendra khaire, Aniket Phapale i/b Ashwini Bandiwadekar for the Petitioner.

Mr. K.S. Thorat, 'B' Panel Counsel for the Respondent/State.

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

DATE : 3 MAY 2024

P.C. :

. Heard the learned counsel for the parties.

2. The Petitioners have challenged the order passed by the Respondent No.3/Education Officer (Secondary) Zilha Parishad, Thane rejecting the approval for the proposal submitted by Petitioner No.2/Management on the appointment of Petitioner No.1 as Junior Clerk. The Petitioners' proposal was earlier rejected by order dated 6 November 2019 on the ground that there was a ban on recruitment in view of staffing pattern made applicable. This decision was challenged by the Petitioners by way of Writ Petition No. 13219 of

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2022 which was disposed of by order dated 17 November 2022 setting aside the ground taken regarding ban on recruitment and directing the Education Officer to reconsider the proposal. Thereupon, the impugned order came to be passed on 31 January 2023 by the Education Officer-Lalita Dahitule taking 9 grounds for rejection. The Petitioners have assailed these grounds on various reasons.

3. The grounds of rejection stated in the impugned order (as reproduced in the reply) are as under:

“1) Advertisement for Recruitment in newspaper having wide circulation in Region as per M.E.P.S Rules 1981 Rule No. 9 was not submitted.

2) Chart showing Sanction and Vacant Post as per Staffing Calculation.

3) Copy Of Pay bill was not submitted.

4) As per Government Resolution Dated 12/02/2015 there was Ban on Recruitment.

5) The appointment was made for the post of Junior clerk on the said post which was not made available as per Government Resolution Dated 28/01/2019 .

6) Surplus Junior Clerks Were available for absorption at District level.

7) As per order in Wp 5058/2021 there was interim stay for the operation of Government Resolution dated 28/01/2019, 07/03/2019 and Circular Dated 01/03/2021 and As per order in Wp 8007/2021 there was interim stay for the operation of Government Resolution dated 28/01/2019, 07/03/2019 and Government Circular Dated 26/03/2021 and stay for the letters issued by the director of education Pune dated 01/03/2021 and 22/06/2020.

8) As per Government Resolution dated 04/05/2020 there was a Ban for Recruitment.

9) No objection Certificate prescribe under M.E.P.S Act 1977 Rule No 5(1) from the Education officer Regarding the Recruitment as per Government Resolution dated 06/02/2022 and 10/06/2022 was not submitted.”

4. The Petitioners have asserted in the petition that as far as reason at Serial Nos. 1 to 3 are concerned, which pertain to non submission of documents that the advertisement was already annexed to the application as regards the staffing pattern. Same was also annexed and the staffing pattern dated 23 July 2023 was sanctioned by the very same Officer Lalita Dahitule was also on record. It is stated that pay bill for month of February 2023 was also placed on record. As regards Serial No.4, it is stated that in Petitioners' own case that is Writ Petition No. 13219 of 2022, the Division Bench by order dated 17 November 2022 has held that ban on recruitment will not apply being a minority Education Institute. As regards ground at Serial No. 5 is concerned, it is stated that the Director of Education had informed Respondent No.3 regarding allotment of non teaching post and name of the Petitioners' school appears in the said list. As regards ground No.6 is concerned, it is asserted that since the Petitioner No.1's appointment is made in the Petitioner No.2 minority Institution, this institution cannot be directed to absorb surplus employee from another institution. It was also asserted that Respondent No.3 has not placed on record that there are any surplus of Junior Clerk. In the same way reasons given at Serial Nos. 7, 8 and 9 are concerned, explanations have been given i.e. either the grounds on ban on recruitment etc. are after the appointment of the

Petitioners or do not apply to the Petitioners as minority institution. All these averments are made on oath.

5. We note that without there being any notice issued or the petition coming on board, the same Education Officer-Lalita Dahitule has filed a reply affidavit wherein any grounds of the impugned order are reproduced. The Education Officer has asserted in the reply that the reply is filed after having perused the copy of the petition and having gone through the record. All these explanations given in the Writ Petition regarding the grounds in the impugned order have not been dealt with in the impugned order at all by the Education Officer. Clearly therefore, this Education Officer-Lalita Dahitule has accepted all the assertions as correct as even though more than enough opportunity was available, the Education Officer has chosen not to controvert any of these reasons. The Petitioners have annexed to the petition all the documents on which the Petitioners have sought to rely upon, which were available to the Education Officer for filing reply. Therefore, in view of the above position and the affidavit filed by the Education Officer not controverting any of the explanation given by the Petitioners are deemed to have been accepted by the Respondents, the Petitioners are entitled to succeed.

6. Accordingly, writ petition is allowed in terms of prayer clauses (b) and (c), which read thus:

“b] By a suitable writ, order or direction, this Hon'ble

Court may be pleased to quash and set aside the impugned order dated 31.1.2023 issued by the Respondent No. 3, and accordingly the Respondent No. 3 may be directed to grant approval to the appointment of the Petitioner No. 1 as a Junior Clerk in the aided Secondary School of the Petitioner No. 2 Management on monthly honorarium for the period 1.3.2017 to 29.2.2020 and to release the grant-in-aid for payment of the said monthly honorarium to the Petitioner No. 1; and the Respondent No. 3 may be also directed to grant the approval to the appointment of the Petitioner No. 1 as a Junior Clerk on regular basis and on payment of salary in pay scale w.e.f. 1.3.2020 onwards, with all arrears.

c] After the approval would be granted as per prayer clause [b] above, that by a suitable writ, order or direction, this Hon'ble Court may be pleased to direct the Respondent No. 2 to grant permission to enter the name of the Petitioner No. 1 in Shalartha Pranali and to allot her Shalartha I.D. as a Junior Clerk in the aided school of Petitioner No. 2 Management with all consequential benefits.”

7. Writ Petition is disposed of in the above terms.

(M.M. SATHAYE, J.)

(NITIN JAMDAR, J.)