

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10778 OF 2024

Mandad Shikshan Prasarak Mandal, Mandad
Through its President And Ors ...Petitioners

Versus

The State Of Maharashtra & Ors ...Respondents

Mr Prashant Bhavake for the Petitioners.

Ms R. A. Salunkhe, AGP for the Respondent Nos. 1 to 5-State

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

DATED : 6 AUGUST 2024

P.C.:

1. Heard learned Counsel for the parties.
2. The Petitioner No. 3-Employee (Shri Prashant Janardan Waghmare) working with the Petitioner No. 2-School run by the Petitioner No. 1-Education Institute, are jointly challenging the impugned order dated 5 September 2023 passed by the Respondent No. 5-Education Officer (Secondary), Raigad Zilla Parishad, Alibaug. By this impugned order the approval for the appointment of the Petitioner No. 3 as Junior Clerk is rejected.
3. Perusal of the impugned order shows that three reasons are given

for rejection. First reason is based on a ban under the Government Resolution (GR) dated 4 May 2020. It is an admitted position before us that the ban imposed by the said GR was due to situation brought about by Covid – 19 pandemic, which is now lifted. In that view of the matter, the said reason in the impugned order no longer survives and the same is set aside.

4. The second reason in the impugned order is based on the GR dated 10 June 2022 stipulating certain time limit for submission of the proposal. Learned Counsel for the Petitioners submits that for the reasons elaborately stated in the ground (G) of the Petition supported by the documentary evidence, the time limit under the said GR would not apply and on that count also the impugned order needs to be set aside. We note, however, that this is a factual aspect.

5. *Prima facie*, perusal of the said GR dated 10 June 2022, which is on record, would indicate that proposals should be submitted within a period of 3 months otherwise grant of approval would relate back burdening the exchequer and therefore a time limit is provided for. If that be the interpretation of the GR, suitable orders can be passed after considering the Petitioner's explanation. Since this aspect has not been considered at all by the Education Officer and decision is not taken on merits, the factual inquiry can not be undertaken first time in this petition.

6. Third reason in the impugned order is based on 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

7. In light thereof, we dispose of the Writ Petition by directing that the impugned order shall be treated as a show cause notice to the Petitioners about objection based on the GR dated 10 June 2022 and not a rejection order. Petitioners' proposal stands restored. If there are any other grounds on which the Respondent-Education Officer intends to return or reject the proposal, he is directed to communicate the same to the Petitioners within a period of 3 weeks from today. Upon receipt of the same, Petitioners will submit their explanation. After submission of the explanation, the Education Officer will pass order in accordance with law within a period of 8 weeks giving reasons, subject to earlier time bound directions. The order will be passed keeping in mind the directions issued by this Court in Part II Clause A(i) to (iii) of *Judgment dated 16 April 2024* in the matter of *Nitin B. Tadge Vs. State of Maharashtra in*

Writ Petition No. 204 of 2019 and other companion petitions. We have not expressed any opinion on the Petitioners' proposal and the same shall be decided on its own merits in accordance with law. In case Petitioner is to be granted the approval, further consequential steps be taken as per law.

8. Writ petition is disposed of in above terms. No costs.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)