



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.6523/2023

The Society of Sisters of St. Joseph's Nagpur through its Secretary and others
Vs.

The State of Maharashtra, through its Secretary, Department of School Education and
Sports, Mantralaya, Mumbai-32 and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri B.G. Kulkarni, Advocate for petitioners
Shri Nitin Autkar, AGP for respondents

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ..
DATED : 23/02/2024

The petitioner No.1 is an education society and has been recognized to be Minority Institution (Religious Christian Minority), School. Petitioner No.1 has established petitioner No.2 School which is a recognized grant in aid school. Petitioner No.1 had advertised total 3 posts of Assistant Teacher. The petitioner No.3 holds qualification M.A. B.A. and D.Ed. and being eligible, applied for the post and was selected. He was appointed as Shikshan Sevak on 01/07/2021. The petitioner No.2 submitted the proposal to respondent No.2 for grant of approval to the appointment of petitioner No.3. Respondent No.2 by its order communicated vide letter dated 04/08/2022 refused to grant approval on the ground that as per Government Resolution dated 04/05/2020, there was ban on recruitment.

2. It is contended that being Minority Institution, said Government Resolution was not applicable to the petitioner

Society. Respondent No.2 had issued another letter dated 09/05/2023 refusing to grant approval for the different reason, one of which that petitioner No.3 has not cleared the Teachers Eligibility Test. This issue is no more *res integra*.

3. It is covered by the judgment in ***Writ Petition No.15228/2023 (The Head Master Khawaja Nasiruddin Marathi Primary School and Others Vs. The State of Maharashtra through its Secretary and others)*** decided by this Court, Bench at Aurangabad. It is held by this Court as under:

“2. The issue as to whether the TET qualification would be mandatory to the teachers teaching in the minority institution, is before the Hon’ble Supreme Court.

3. In several matters, at the Principal Seat at Aurangabad and at Nagpur, the Education Officers have been directed to consider the proposals of the Petitioners for approval or for entering their name in the Shalarth ID, notwithstanding that they do not have the TET qualification. A recent order delivered on 02/11/2023 at the Principal Seat in Writ Petition No.6894/2023 and 6895/2023 is cited before us. The only difference is that in those 2 cases, the teachers had approval and were praying for inclusion in the Shalarth ID/Pranali.”

4. The learned AGP fairly conceded this position.

5. In view of the above, the petition is partly allowed. The communications dated 04/08/2022 and 09/05/2023 are quashed and set aside.

6. We direct that the Education Officer (Secondary), Zilla Parishad, Nagpur would reconsider the proposal of the petitioners without insisting on the TET qualification. The petitioners shall tender an affidavit undertaking in this Court as well as copies to the Education Officer and the Management, to the effect that if the Hon'ble Supreme Court concludes that the TET qualification is mandatory even to minority institutions and the petitioners' appointment would be deemed to be illegal, the petitioners would be willing to suffer the consequences. Let such affidavit/undertaking be filed on or before 29/02/2024 in this Court, with the Education Officer (Secondary) and the Management.

7. The petition is disposed of in above terms.

JUDGE

JUDGE

R.S. Sahare