



Judgment

wp6706.23

1

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

WRIT PETITION No. 6706 OF 2023.

1.Balmukund Rathi Shikshan Sanstha,
Shirajgaon-Kasba, Tahsil Chandur Bazar,
District Amravati.
Through its President.

2.Balmukund Rathi Vidyalaya,
Shirajgaon-Kasba, Tahsil Chandur Bazar,
District Amravati.
Through its Head Master.

3.Shri Hemraj s/o Ratnakar Kahate,
Aged about 30 years, Occupation Service,

4.Shri Sagar s/o Namdeorao Rajas,
Aged about 30 years, Occupation Service,

5.Shri Ganesh s/o Himmatrao Pakde,
Aged about 29 years, Occupation Service,

6.Shri Pravin S. Rajas,
Aged about 29 years, Occupation Service,

Petitioners 3 o 6 are all resident of c/o.
Balmukund Rathi Vidyalaya, Shirajgaon Kasba,
Tahsil Chandur Bazar, District Amravati. ...

PETITIONERS.

VERSUS

Rgd.

1.State of Maharashtra,
through its Secretary,
Department of Education,
Mantralaya, Mumbai – 32.

2.The Education Officer [Secondary],
Zilla Parishad, Amravati.

... RESPONDENTS.

Mr.R.G.Vaishnav, Advocate for Petitioners.
Mr.K.R. Lule, A.G.P. for Respondents.

CORAM : VINAY JOSHI AND
M.S. JAWALKAR, JJ.

DATE : JUNE 24, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. Rule. Rule is made returnable forthwith and with consent of the learned Counsel appearing for the parties, the matter is taken up for final disposal.

2. By the impugned communication, the respondent no.2 Education Officer [Secondary] Zilla Parishad, Amravati once again

Rgd.

declined to grant approval to the appointment of petitioner nos. 3 to 6 on non-teaching post for the reason of ban on recruitment in terms of Government Resolution dated 12.05.2015, absence of approval of staffing pattern and non-compliance of appointment on compassionate ground.

3. It is brought to our notice that the petitioner School is a minority institution. The petitioner nos. 3 to 6 were appointed on the post of peon on 09.09.2016. Time and again their proposal was forwarded to the authorities, but, it came to be rejected. Each time the petitioners were required to approach this Court and the orders under challenge were set aside. Record indicates that initially the institution has sought approval of teaching staff, however, it was rejected for the reason that the institution has not absorbed surplus employees. In particular, the said decision was questioned and it came to be set aside by this Court by an order passed in Writ Petition No.6550/2016, wherein this Court has observed that minority institution cannot be compelled to absorb the surplus teachers from other schools.

Rgd.

The second proposal was rejected on the ground that previous permission for advertising the post was not obtained. This order was also set aside by this Court in Writ Petition No.242/2017 by holding that the petitioner is a minority institution recognized on 23.09.2016 w.e.f. 2016-17, hence, the said ground no more survives.

Once again the petitioners had applied for approval, and this time it was rejected for the reason that the staffing pattern does not refer about sanctioned post. The said order also came to be set aside by this Court in Writ Petition No.7464/2019, by clarifying that the approved staffing pattern for the academic session 2017-28 would be 5 Class-IV posts of petitioner school. Moreover, it is also reiterated that the government resolution dated 12.02.2015 is not applicable. In the circumstances, the petitioner was directed to apply afresh.

4. In above background, the petitioner has again applied for approval, however, this time also the approval was rejected by the respondent Education Officer vide the impugned order dated 06.01.2023, reiterating earlier two grounds about applicability of

government resolution dated 12.02.2015 and absence of sanctioned staffing pattern. Besides that, a new reason was assigned that there was waiting list of compassionate appointment, and the same has not been cleared.

5. So far as the first two grounds are concerned, they have been already concluded by this Court in above referred decisions. The last reason is about compassionate appointment. In this regard, the learned A.G.P. upon instructions, makes a statement that the compassionate employment has been given and approved to one Raut, and now the said reason would also not survive. The copy of communication dated 21.06.2024 tendered by the A.G.P. is taken on record and marked "X" for identification. It reveals that on each and every occasion new ground has been picked up by the Education Officer for rejecting the proposal. The communication tendered by learned A.G.P. also makes out another ground regarding government resolution dated 11.12.2020, about appointment on contractual basis, which ground was not taken earlier and according to us, that ground is not available for deciding the proposal

Rgd.

6

submitted by the petitioner. Thus, considering the existing position, the decision is required to be taken.

6. In view of above, the writ petition is allowed. The impugned communication dated 06.01.2023 issued by the respondent Education Officer is hereby quashed and set aside. The Education Officer is directed to reconsider the proposal of petitioners and to decide the same within a period of four weeks from today. This time we expect that the Education Officer would take an appropriate decision without quoting old reasons.

7. Rule is made absolute in aforesaid terms with no order as to costs.

JUDGE

JUDGE

Rgd.