



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION NO. 14 OF 2025
IN
WRIT PETITION NO. 2888 OF 2023**

Shaikh Rafe Moinuddin and another .. Applicants

Versus

The State of Maharashtra and others .. Respondents

Shri V. D. Hon, Senior Advocate i/by shri Mohd. Aseem Mohd.
Abdul Kaleem, Advocate for the Applicants.

Shri S. V. Hange, A.G.P. for the Respondent Nos. 1 to 3.

Shri Sayyed Tauseef Yaseen, Advocate for the Respondent Nos. 4
and 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

DATE : 06 FEBRUARY, 2025.

FINAL ORDER (Per Shailesh P. Brahme, J.):-

. Heard both sides.

2. Our judgment and order dated 25.10.2024 passed in Writ
Petition No. 2888 of 2023 is sought to be reviewed by the present
application.

3. Learned senior advocate Mr. V. D. Hon submits that
circular dated 26 August 2021 had no retrospective application,
which mandated no objection certificate for the appointment to
the aided post. It is further contended that findings recorded in
paragraph Nos. 12 and 15 are mistakes apparent on the face of

record. It is further canvassed that the respondent No. 4 being minority institution was absolved from procedural technicalities in appointment of its employees in view of the larger bench judgment in the matter of the Ahmedabad St. Xavier College Society and another, etc. Vs. State of Gujrat and another reported in *AIR 1974 SC 1389*. It is further submitted that the Rules of 1984 were the extant Rules governing the matters of appointment. Those rules did not provide for any prior permission which aspect of the matter is overlooked in the judgment under review.

4. Per contra, the contesting respondents represented by the learned Assistant Government Pleader submits that all the aspects of the matter including conditions stipulated in staff approval, circular of 26.08.2021, its application and circular dated 30.01.2014 are properly dealt with in the judgment under review. Neither there was intimation, nor was prior permission solicited before appointing the applicants. Considering limited scope of review jurisdiction, no interference is called for.

5. The proposal seeking approval to the appointments of the applicants was rejected by the respondent No. 3/Joint Director of Education solely on the ground that no prior permission was solicited before appointing the applicants. Both the applicants were appointed as laboratory assistants on 20.12.2019 in a college run by the minority institution. At the time of their selection Rules of 1984 were in vogue. A careful perusal of those rules do not disclose any provision of prior permission or approval of the competent authority before undertaking selection

process for Class III or Class IV employees. Learned senior counsel Mr. Hon is justified in contending that at the time of selection of the applicants there was no requirement of prior permission.

6. Considering paragraph Nos. 12 and 15 of judgment under review, reliance is placed on circular dated 26.08.2021, which provides for no objection certificate for appointment. The circular cannot be made applicable to the appointment of the applicants made on 20.12.2019. We find that this is a mistake apparent on the face of the record, which is a good ground to review our judgment.

7. The submission of the learned senior counsel that in view of the judgment in the matter of Ahmedabad St. Xavier College Society and another, etc. Vs. State of Gujrat and another (supra), the respondent institution being minority one was exempt from following the procedure except the qualification of the incumbents, cannot be accepted. Rules of 1984 provide procedure which is applicable to the minority institutions also. Respondent No. 3/Joint Director is within his power to examine as to whether procedure of selection was followed or not by conducting objective scrutiny of the proposal.

O R D E R

- (i) The review application is allowed partly.
- (ii) The judgment and order dated 25.10.2024 is recalled.

(iii) The writ petition is partly allowed. Order dated 20.02.2023 passed by the respondent No. 3 /Joint Director of Higher Education, Aurangabad is quashed and set aside.

(iv) Respondent No. 3 shall reconsider the proposal of the petitioners on its own merits in the wake of prevailing provision of Rules and the norms, but he shall not reject the proposal on self same ground mentioned in order dated 20.02.2023.

(v) The decision shall be taken as expeditiously as possible and preferably within a period of four (04) weeks from today.

[SHAILESH P. BRAHME, J.]

[MANGESH S. PATIL, J.]

bsb/Feb. 25