

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12388 OF 2022

Miss Tehasin Shabbir Ahamad Inamdar

Age 36. Occu Service R/o Block no.

12, Lokhandwala Paradise Near

Modi Massid District Solapur

.....Petitioner

Vs.

1. The State of Maharashtra Through
its Secretary Department of Education
(Secondary & High S) Mantralaya, Mumbai.

2. The Deputy Director Secondary &
H.S. Pune Region Pune:- 411005.

3. Educational Officer [Primary]
Solapur Zilla Parishad, Solapur

4. Union Education Society, A
registered Public Trust Through its
President/secretary at 141/A
Siddheshwar Peth Solapur

5. Union Education Society's
Primary School. Through its Head Master
R/o at Siddheshwar Peth Solapur

6. The Administrative Officer. Municipal Corporation, Primary Shikshan Mandal, SolapurRespondents

Mr. Ajay Joshi for the Petitioner.

Mr. Akil Kapade for the Respondent No.4 and 5.

Ms. D. S. Deshmukh, AGP for the State.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.**

**RESERVED ON :- 30th JANUARY, 2025
PRONOUNCED ON:- 26th FEBRUARY, 2025**

P.C. :-

1. **Rule.** Rule made returnable forthwith by consent of the parties.

2. By the present petition, the Petitioner assails the order dated 26.05.2017, passed by the Respondent No.3, refusing to grant approval to the proposal dated 17.05.2017, submitted by the Respondent No.5 seeking approval to the appointment of the Petitioner as a Shikshan Sevak ("Impugned order")

Factual Matrix:-

a) Respondent No.4 is a Minority Educational Institution managing and running the Respondent No.5 School, which receives 100% aid from the State of Maharashtra. Reliance is

placed on Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act).

b) Petitioner has completed HSC in the year 2004 and completed D.Ed. in the year 2008. Petitioner has also completed the course of MS-CIT.

c) Public advertisement was issued by the Respondent No.4 inviting applications from eligible candidates to fill up a vacant, sanctioned and permanent posts of Shikshan Sevak Respondent No.5 School.

The said vacancy arose upon retirement of Mr. Naushad M. Hussen Imadar w.e.f. 31.01.2013.

d) Various candidates applied for the said post. Petitioner applied for the said post. Petitioner was found qualified and eligible in the selection process and was appointed as Shikshan Sevak w.e.f. 17.06.2013.

e) Proposal dated 17.05.2017 was submitted by the Respondent No.5 to the Respondent No.3 (Education Officer) seeking approval of the Petitioner's appointment as a Shikshan Sevak.

f) The Respondent No.2 (Deputy Director) vide letter

dated 14.11.2014, forwarded the said proposal to the Director of Education for consideration.

g) The Director of Education in turn forwarded the said letter 14.11.2014 to the Principal Secretary, Education and Sports Department, State of Maharashtra for consideration. By letter dated 03.11.2015, the Education and Sports Department, Mumbai informed the Respondent No.3 about the Government rejecting the said proposal.

h) The Respondent No.5 once again submitted the proposal dated 17.05.2017 to the Respondent No.3 seeking approval of the Petitioner's appointment as a Shikshan Sevak.

i) By the Impugned order, the Respondent No.3 has rejected the proposal dated 17.05.2017. Ground for rejection for the proposal is that surplus teachers/non teaching staff are available for absorption and until and unless the said surplus teachers are fully absorbed the proposal submitted by the Respondent No.4 cannot be considered, as such rejected. Reference is made to the Government Decision dated 02.05.2012, imposing a ban on recruitment until the surplus teachers are adjusted.

3. Though the Respondents are served, they have chosen

not to file any replies.

Submissions:-

4. Mr. Ajay Joshi, learned Advocate for the Petitioner has raised the following arguments:-

a) The Respondent No.4 is a Minority Educational Institution and, therefore, it is the prerogative of the Respondent No.4 to fill up the said post.

b) That the ban on recruitment as per Government Resolution dated 02.05.2012 is in relation to surplus teachers and ban imposed on recruitment of teachers till 100% absorption of surplus teachers, would not be applicable to the Respondent Nos. 4 and 5.

c) By relying on the document at Exhibit-E i.e. a chart, it is submitted that vacancies were available in the Respondent No.5 School. Similarly, reliance is placed on a chart at Exhibit-L to contend that the Respondent No.5 has absorbed a total number of 6 teachers who were declared as surplus and sent by Respondent No.3 by absorption.

d) Petitioner has been appointed on a post which was vacant, a permanent post and a post sanctioned as per the staffing pattern. Vacancy in the said post arose on account of

retirement of the incumbent teacher Mr. Naushad M. Hussien Imadar who retired on 31.01.2013. Petitioner has been appointed after a through selection process.

e) Ms. D. S. Deshmukh, learned AGP appearing for the State/Respondents, supports the reasons given in the Impugned order for rejection of the proposal dated 17.05.2017.

f) From the rival contentions, the question for determination is whether the Respondent No.3 was right in rejecting the proposal dated 17.05.2017 submitted by the Respondent No.4 seeking approval of the Petitioner's appointment as Shikshan Sevak?

Analysis:-

5. The Impugned order rejected the proposal dated 17.05.2017 submitted by the Respondent No.4 on the ground that surplus teachers are available and until and unless such surplus teachers are absorbed, the proposal cannot be considered and therefore, rejected. A perusal of the Impugned order would indicate that the Respondent No.3 has neither considered the Respondent No.4 being a Minority Educational Institution nor does the Impugned order deals with the right of the Minority Educational

Institution to fill up vacancies in such institution.

6. The Respondent No.3 in the Impugned order has made reference to the order of this court in the case of *Vasant Shikshan Prasarak Mandal Through its President and Ors. Vs. The state of Maharashtra and Ors.*¹. In the said case, this Court was considering a challenge to the order of refusal of approval dated 06.08.2016 passed by the Educational Officer holding that as 172 surplus teachers in Latur Zilla Parishad are yet to be absorbed and since, the Petitioner is recruiting new candidates thereby, truncating the right of surplus teachers, approval to the appointment of the Petitioner therein could not be granted. It is in the said context that this Court held that the Managements in the said case who were Petitioners, could not be ignored important provisions of MEPS Act by not complying with the mandate of absorbing surplus teachers and by appointing fresh teachers.

This Court after considering provisions of Section 5 (1) and the proviso, has held that the Management are under a mandate to ascertain from the Education Officer whether there are suitable candidates available in the surplus list maintained by the Education Department before filling up the vacancies. The said decision does

¹ Writ Petition No.9076 of 2016

not deal with appointments in respect of Minority Education Institutions.

7. In the instant case, Respondent No.4 is a Minority Educational Institution, as such it would be the prerogative of such institution to fill up the post.

8. In the case of *Sindhi Education Society and Anr. Vs. Chief Secretary Government of NCT of Delhi and Ors.*², the Hon'ble Supreme Court in paragraph No.63 has observed as follows:-

“63. The Court considered the question whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioner's right to appointment is a reasonable restriction. After following the law stated in T.M.A. Pai's case, the court held as under: (Brahmo Samaj Education Society Case SCC pp 227 & 229, para 6-8)

“6. The question now before us is to decide whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioners' right to appointment is a reasonable restriction in the interest of general public or not. The petitioners have a right to establish and administer educational institution. Merely because the petitioners are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a government-owned one. Of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration....

7. But that control cannot extend to the day- to-day administration of the institution. It is categorically stated in T.M.A. Pai (SCC at p.551, para 72) that the

2(2010) 8 SCC 49

*State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. **The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET-qualified candidates.***

8. *Argument on behalf of the State that the appointment through the College Service commission is to maintain the equal standard of equation all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by NET/SLET. Similarly receiving aid from State Coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise.”*

In the above case, the Court did not rest with laying down the above law but even directed the State Government to take due notice of the declarations made in the T.M.A. Pai's case (supra) and to take appropriate steps in that regard.”

(emphasis & underlining supplied)

9. *In the case of St. Francis De Sales Education Society v.*

State of Maharashtra, (2001) 3 Mah L.J. 261 in paragraph No.36

held as under:

“36. In our judgment, the petitioner, being a minority institution, cannot be directed to appoint teachers or other staff on the basis of the reservation policy followed by the State as evidenced in rules 9(7) to 9(10), of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981. We therefore hold that the said rules 9(7) to 9(10), if applied to the petitioner, would violate the fundamental right guaranteed to the petitioner as a minority institution under Article 30(1). Hence, we allow the writ petition.”

10. In the case of *Pramati Education & Cultural Trust v. Union of India*³ in paragraph No.46 has observed as under:-

*“.... In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act in so far it is made applicable to minority schools referred to in clause (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the minority judgment of this Court in *Society for Unaided Private Schools of Rajasthan v. Union of India and Anr. (supra)* insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.”*

11. The Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (MEPS Act), regulates the recruitment and conditions of service of employees in certain private schools in the State of Maharashtra. Section 3 of MEPS would be relevant for the subject matter of this petition and as such is transcribed herein under:-

³ (2014) 8 SCC 1

“Application of the Act

(1) The provisions of this Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not.

2) Notwithstanding anything contained in sub-section (1), the provisions of this Act shall not apply to the recruitment¹ [of the Head of a minority school and] any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to² [the Director or, as the case may be,] the Deputy Director for this purpose.”

12. With reference to the contention of the Petitioner that the provisions of Sub-section of Section 3 of MEPS Act, we find that though the Minority Educational Institution would have absolute autonomy for filling up post, however, the same are capped at three posts and a Head Master.

13. Government Resolution dated 02.05.2012 referred to in the Impugned order is again be in relation to surplus teachers and the ban imposed on fresh recruitment of Assistant Teachers till 100% absorption of surplus teachers. For the reasons recorded herein above, the ban on recruitment would be unsustainable qua the Respondent No.4, a Minority Educational Institution.

14. The Respondent No.3 has not dealt and/or consider the status of the Respondent No.4 as a Minority Educational Institution while considering the proposal dated 17.05.2017. Similarly, the

Respondent No.3 has not considered the applicability of provisions of Section 3(2) of the MEPS Act.

15. In the facts and circumstances of the present case, we find that the reasons given by the Respondent No.3 for rejecting the proposal dated 17.05.2017 are erroneous and untenable in law and are required to be set aside.

16. Consequently, **we partly allow the Writ Petition** by setting aside the Impugned order dated 26.05.2017 passed by the Respondent No.3 and further direct the Respondent No.3 to reconsider the proposal dated 17.05.2017 for grant of approval to the appointment of the Petitioner, afresh and the same shall not be rejected on the ground of imposition of ban and absorption of surplus teachers. Such exercise be undertaken within a period of four weeks from today.

17. The **Writ Petition is partly allowed** in above said terms.

18. Rule is made partly absolute, accordingly. There shall be no orders as to cost.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)