



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

WRIT PETITION NO.126 OF 2022

Magasvargiya Bahu-Uddeshiya Sanstha -Vs-State of Maharashtra and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. Rajurkar counsel h/f Mr. Anand Parchure, counsel for the petitioner.
Ms. S.S.Jachak, Addl. GP for respondent Nos.1 to 3.

**CORAM: NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.**

DATE : 12th MARCH, 2025.

1. Heard.
2. The petitioner, a Religious Minority Institution has questioned the Corrigendum dated 01/09/2016 at annexure-4 issued by respondent No.1-State Government, whereby the petitioner was directed to absorb the services of teaching/non-teaching staff of the other aided Educational Institution, whose recognition was cancelled, in the school run by the petitioner society, which was allotted to it pursuant to an advertisement.
3. Facts necessary for deciding the writ petition are as under:-

On 05/11/2012, the respondent-State Government

identified the petitioner having a right to administer religious minority, pursuant to the mandate provided under Article 30(1) of the Constitution of the India.

4. The petitioner having noticed that one Tarachand Khadse Magasvargiya Shikshan Prasarak Sanstha Tq. Salekasa, District Gondia, who was operating aided Ashram School, recognition of which was cancelled. As a sequel, the petitioner Society sought allotment of said School. Not from one religion to other. That vide Government Resolution dated 26/07/2016, said Ashram School came to be allotted to the petitioner under the certain terms and conditions. Vide impugned communication dated 01/09/2016, the petitioner was directed to absorb all the employees of Ashram School managed by Tarachand Khadse Sanstha.

5. Feeling aggrieved by the impugned communication dated 01/09/2016, issued by the respondent No.1-State Government, the present petition.

6. The learned counsel appearing for the petitioner would invite our attention to the mandate of Article 30(1) of the Constitution of India so as to claim that the petitioner

has every right to administer religious minority educational institution. Hence, it cannot be mandated vide Government Resolution to conduct the School as per the whims and fancies of the State Government. According to him, the State Government cannot, contrary to the mandate under Article 30, direct the absorption of the employees, as has been sought to be done under the corrigendum dated 01/09/2016.

7. In addition to above, the learned counsel appearing for the petitioner has invited our attention to the pleadings that similarly placed institutions whose details are narrated at page 22 of the petition, though are transferred to the aided Ashram Schools, are not mandated to absorb the services of the employees. In support of the aforesaid contentions, reliance is placed on the Government Resolution dated 13/07/2016 particularly, Clause-6, which rather provides for the discretion with the petitioner Management to absorb the services. In such an eventuality, it is urged that since the impugned corrigendum goes contrary to the mandate provided in Government Resolution dated 13/07/2016, so also Article 30(1) of the Constitution of India and judgment of the Division Bench of this Court in **Writ Petition No.102 of 2017**

(Acharya Vinoba Bhave Education Society and anr. Vs. The State of Maharashtra and ors.) dated 29/01/2018.

8. As against above, the learned Additional Government Pleader would invite our attention to the fact that pursuant to the corrigendum dated 01/09/2016, not only the employees of the erstwhile aided Ashram School managed by Tarachand Khadse, Magasvargiya Shikshan Prasarak Sanstha are absorbed and working but approval to such absorbed employees is also granted by the respondents. It is further claimed that the Government Resolution dated 13/07/2016 will not operate in the factual matrix of the case as the petitioner was never forced by the State Government to accept the transfer of the aided Ashram School. Even otherwise, it is claimed that the petitioner, even if a minority institution, cannot claim that while getting transfer, aided Ashram School can claim immunity from absorption of the staff. As such, the learned Additional Government Pleader prays for dismissal of the petition.

9. We have considered the rival claims.

10. It is not in dispute that vide Government Resolution

dated 26/07/2016, the aided Ashram School came to be transferred to the petitioner pursuant to an advertisement. The petitioner, in fact, applied to the State Government for transfer of such aided Ashram School in its favour. Neither earlier Sanstha i.e. Tarachand nor petitioner sought the transfer of closed aided School without absorption of approved staff. The approved staff who are paid salary from public exchequer are the responsibility of the State Government unless same are specifically directed not to be absorbed by the State.

11. If case of the societies like petitioners are accepted then in that eventuality, the approved staff without absorption will be required to pay the salary at public cost.

12. Apart from above, it is not the case of the petitioner that school in relation to which order of absorption is passed was transferred from one minority society to another.

13. Article 30(3) does not permit discrimination in the matter of providing aid to a minority institution. However, in the factual matrix it is apparent that not only aid is provided to petitioner society but also entire salary of

approved teachers is reimbursed from public exchequer.

14. After the school was transferred, the State Government having noticed that there is no clause about absorption of the existing staff of the aided Ashram School, it has issued corrigendum dated 01/09/2016 to that effect.

15. The petitioner, in fact, has already acted upon the corrigendum dated 01/09/2016, which lays down not only the absorption of the services of erstwhile aided Ashram School but also same are shown on the establishment of the petitioner and their approvals are granted and post approval, their salaries are being released regularly by the State Government.

16. The petitioner has questioned the corrigendum in 2021 after having acted on the corrigendum dated 01/09/2016 thereby not only absorbing the services of the employees of the erstwhile aided Ashram School but also sought approval and release the salary from public exchequer. The fact that the employees, who were absorbed, are already continued on the establishment of the petitioner, is a fact not in dispute and the Court needs to take a judicial note of the same.

17. Apart from above, it is required to be noted that the petition preferred by the petitioner questioning the corrigendum dated 01/09/2016 is hopelessly timebarred, as the same is preferred after a lapse of almost five years and for such delay, there is hardly any explanation coming forward from the petitioner.

18. In past, at no point of time, the petitioner was forced by the State Government to take over the aided Ashram School. Rather, it is the petitioner who have applied for allotment/transfer of the Ashram school in its favour and management of the affairs of the same at the cost of public exchequer.

19. The reliance placed by the petitioner on the order dated 29/01/2018 in Writ Petition 102 of 2017 will be hardly of any assistance in the factual matrix of the present case, particularly, when the petition is preferred belatedly and the employees are already absorbed and working on the establishment of the petitioner.

20. Apart from above, the Government Resolution dated 13/07/2016, will be hardly of any assistance to the petitioner, as the said Government Resolution deals with

the procedure to be adopted in the matter of the surplus teachers, who were earlier working in the Ashram Schools managed by the minority institutions. Clause-1 of the said Government Resolution specifically provides that the surplus teachers from the linguistic or religious minority institution shall be placed on an independent list and option be given to the minority institutions to absorb their services.

21. Same does not appear to be the case in hand. In the present case, the employees of the aided Ashram School were never treated as the employees of a minority institution and that being so, the exception provided in Government Resolution dated 13/07/2016 will not attract in the facts of the present case. Apart from above, the issue that is sought to be considered in the order 29/01/2018, has not looked into the aforesaid factual matrix.

22. That being so, the writ petition lacks merits. The same stands dismissed. No costs.

(MRS. VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)