



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

WRIT PETITION NO.5596 OF 2024

1. Shri Saibaba Shikshan Sanstha, through its President, Datta Vihar Colony, Amravati, Tq. And dist. Amravati.
2. Shri Saibaba Vidyalaya, through its Head Master Anjansingi, Tq. Dhamangaon (Railway), Dist. Amravati.
3. Shri Sameer Ramdas Wade, Aged about 32 years, Occ. Service, r/o At post Anjansingi, Tq. Dhamangaon (Railway), Dist. Amravati.

... PETITIONERS

VERSUS

1. State of Maharashtra, through its Secretary, School Education and Sports Department, Mantralaya, Mumbai.
2. The Education Officer (Secondary), Zilla Parishad, Amravati.

... RESPONDENTS

Shri Saurav Rajurkar, Advocate for the petitioner.
Shri A.M. Joshi, Assistant Government Pleader for the State.

CORAM : SMT. M.S. JAWALKAR AND PRAVIN S. PATIL, JJ.
DATE : 16.07.2025.

ORAL JUDGMENT : (Per : Pravin S. Patil, J.)

Heard. **RULE.** Rule is made returnable forthwith.

2. The matter is taken up for final disposal by consent of the parties.

3. By this petition, the petitioners are challenging the order of the Education Officer (Secondary), Zilla Parishad, Amravati dated 29.07.2024 by which the proposal forwarded by the Management of petitioner no.3 was rejected on the ground that petitioner no.3 has secured less than 50% marks in the final year of degree course by referring the Government Resolution dated 25.02.2019 and Notification dated 26.11.2019.

4. In the present case, it is an admitted fact that in the year 2013, the Management by following due procedure of law appointed petitioner no. 3 as a Shikshan Sevak. After the appointment of the petitioner no.3, the proposal was forwarded to the respondent no. 2 Education Officer on 20.11.2023. However, the same was earlier rejected on the ground of not satisfying certain deficiencies and being aggrieved by the same, petitioner approached to this Court vide Writ Petition No. 4015 of 2024, in which, this Court by recording finding that petitioner nos. 1 and 2 complied with all shortfalls, directed respondent no.2 Education Officer to take a decision on the proposal in

accordance with law. As a consequence of the same, the impugned order came to be passed by the Education Officer dated 29.07.2024.

5. It is pointed out by the petitioner that the issue involved in the present petition is squarely covered by the judgment of this Court in Writ Petition No.4079 of 2019, wherein it is held that Government Resolution dated 25.02.2019 and Notification dated 26.1.2019 are not sustainable because they cannot override or amend the provisions of the Rules and schedule prescribed under the MEPS Act. The relevant paragraph 11 of the said judgment reads thus :

“11. The Government Resolution dated 7-2-2019 read with Corrigendum dated 25-2-2019 and Schedules ‘C’ and ‘D’ therewith prescribing obtaining of 50% marks at the graduate or post-graduate level denies the right of the petitioners for being considered for the posts of teachers in Private Schools to teach Standards IX to XII. The introduction of such criteria is not by issuing the notification in the Official Gazette by the Government in exercise of its power conferred by Section 16(1) of the MEPS Act read with Clause (a) of sub-section (2) therein. The Government Resolutions cannot have the effect of amending the provisions of the Rules and the Schedule prescribed thereunder. In fact, it is also not the stand of the Government that these statutory provisions stood amended by virtue of the said Government Resolution and the Corrigendum. Hence, such criteria cannot be made applicable to the recruitment to the posts of teachers in Private School governed by the MEPS Act and the Rules framed thereunder.”

6. It is further stated that services of petitioner no.3 are

governed by MEPS Act and Rules, 1981. The Rule 6 of MEPS Rules, prescribed qualification of Teachers. The said rule nowhere provide that in the final year of degree course the candidate should secure marks more than 50%. As such, introduction of such criteria is certainly overriding the Rule 6. Accordingly, we are agree to the view taken by Coordinate Bench and furthermore, there is no reason to take another view because in catena of judgments, it is consistently held that by Government Resolution and Notifications, Rules cannot be amended.

7. In view of the above settled legal position of law, we are of the considered opinion that the petitioner has made out a case and accordingly, the petition is deserves to be allowed. Hence, the following order :

- (a) The Writ petition is allowed.
- (b) Impugned order/Communication dated 29.07.2024 issued by the respondent no.2 Education Officer(Secondary), Zilla Parishad, Amravati is hereby quashed and set aside.
- (c) Respondent no. 2 is directed to reconsider the proposal for the approval of the petitioner and grant approval to the post of Shikshan Sevak from the date of the appointment i.e. from

01.09.2023 with all consequential benefits of service within a period of four weeks from the date of this order.

8. Rule is made absolute on aforesaid terms. No costs.

(PRAVIN S. PATIL, J.)

(SMT. M.S. JAWALKAR, J.)

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