



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

WRIT PETITION NO. 6977 OF 2024

Nishant S/o Fakirrao Ubarhande,
Aged about 28 years, Occ. Service
R/o Ekta Nagar, Behind postal Staff
Quarters, Tq. & Dist. Buldhana,
Pin Code – 443 001
Mobile :- 8378866771

...Petitioner

// VERSUS //

1. State of Maharashtra, through Secretary, Department of Skills, Employment, Entrepreneurship and Innovation, 4th Floor, Extension Building, Mantralaya, Madam Kama Marg, Hutatma Rajguru Chowk, Mumbai-400 032
2. Deputy Director (Administration), Office of Vocational Education and Training Directorate, Maharashtra State, 3 Mahapalika Marg, Tapalpeti No. 10036, Mumbai 400 001
3. The Assistant Director, Regional Office of Vocational Education and Training Regional Office, Morshi Road, Amravati 444 603
4. District Vocational Officer, Office of District Vocational Education and Training, Buldhana, Near Industrial Training Institute (ITI), Ganesh Nagar, Malkapur Road, Buldhana – 443 001

5. Shri Chhatrapati Shahu Maharaj
Shikshan Sanstha Motala through its
President/Secretary, Office at Motala
(Borakhadi), Tq. Motala, District
Buldhana Pin Code 443103

6. Head Mistress,
Priyadarshani Higher Secondary
Certification Vocational Course
(H.S.C.V.C), Borakhadi, Tq. Motala,
Dist. Buldhana Pin Code 443 103

... Respondents

Mrs. S.W.Deshpande, Advocate for the petitioner.
Mrs. S.V.Kolhe, AGP for the respondents/State.
Shri S.R.Sayare, Advocate for the respondent nos.

**CORAM : SMT. M.S.JAWALKAR &
PRAVIN S. PATIL, JJ.**

DATED : 15th JULY, 2025.

ORAL JUDGMENT : (PER : PRAVIN S. PATIL, J.)

Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent of the parties.

2. The grievance raised by the petitioner by way of present
petition is against the impugned orders dated 6th May, 2024 passed by the
respondent no.2, dated 13th May, 2024 passed by the respondent no.3
and dated 15th May, 2024 passed by the respondent no.4.

3. It is the submission of the petitioner that competent authority has conferred the status of minority institute to the petitioner-society on 15th June, 2009. Accordingly, they have a right to make appointment of their choice in their institute. It is further stated that on 31st March, 2021 one full time teacher namely Shri B.T.Kale, was superannuated and thereby post of one full time teacher became vacant in the school. Accordingly, on 1st June, 2022, the advertisement was issued in daily newspaper 'Lokmat' which is having wide circulation. Then by following due procedure of law, appointed petitioner against the post of full time teacher.

4. After the appointment of the petitioner, the proposal was forwarded to the respondent no.4 for grant of approval to his appointment. On receipt of the proposal, the respondent no.4 by his impugned communication dated 15th May, 2024 informed to the Head Mistress of the School that in view of Government Resolution dated 25th May, 2017 and circular dated 30th June, 2017 issued by the Finance Department, ban has been imposed for afresh appointment in the school. Accordingly, by relying upon the communication dated 27th March, 2024

issued by the respondent no.1 and communication issued by the respondent no.2 dated 13th May, 2024 reverted back the proposal to the Management. In the background of above said factual position, the petitioner approach to this Court to challenge the impugned orders dated 6th May, 2024 passed by the respondent no.2, dated 13th May, 2024 passed by the respondent no.3 and dated 15th May, 2024 passed by the respondent no.4.

5. Learned Assistant Government Pleader appearing on behalf of the respondent/State vehemently opposed the petition stating that as there was a ban imposed by the State Government for a fresh appointment and it is not permissible for the Management to publish the advertisement and fill up the post without seeking permission from the Education Department. She has further pointed out that ban imposed by the Government Resolution was not lifted up during that period and therefore decision taken by respondent nos. 2, 3 and 4 is in consonance of the policy of the Government. Therefore, there is no illegality or irregularity in the impugned order/communication passed by the respondent no.4. She has further relied upon the Government

Resolution issued by Higher Education Department dated 6th February, 2012 according to which the permission under Section 5 (1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 is required to be obtained before filling up in the post in the school.

6. We have considered the rival submissions of respective counsel and also perused the record.

7. From the submission of the parties, it is clear that only issue involved in the matter whether the ban imposed by the State Government on the recruitment is applicable to the minority institute and the recruitment exercised undertaken by the Management is legal or not.

8. In this respect, it is stated that by and now the legal position is very much clear that ban imposed by the State Government is not applicable to the minority institute. This Court considered this aspect in Writ Petition No. 2538 of 2021 (Ubhajo Shikshan Sanstha Vs. State of Maharashtra) decided on 16th November, 2021, held that for a minority institution to make recruitment, ban imposed by State Government is not

applicable. In the present case, respondent no.5 is admittedly a Minority Institute and hence ban imposed by State Government cannot be made applicable.

9. This Court in Writ Petition No. 5936 of 2022, while considering the issue of ban imposed by Finance Department has observed as under :

“3. The development which has occurred during the pendency of the petition is that the State Government has taken a decision to lift the ban on recruitment and to permit the minority educational institutions to fill in the vacant posts. The decision taken by the State Government as is reflected in the communication dated 02.02.2023 addressed by the Government to the Director of Education is taken on record and marked Exhibit “A”.

4. In view of the decision of the State Government of lifting the ban on the recruitment, we dispose of the petitions by quashing the rejection orders, and by remitting the issue to the concerned officer, i.e. the Education Officer or the Deputy Director of Education as the case may be, to hear the stakeholders and to pass an appropriate order in view of the decision taken by the State Government.

5. We direct that the fresh decision shall be taken within eight weeks from the date of appearance of the stakeholders. We may clarify that the concerned authority shall not be precluded from rejecting the approval if there is any impediment, other than the recruitment ban, in granting approval to the appointment/s.”

10. In respect of submission of respondents that prior permission is necessary from Education Department while filling up the vacant post, it is made clear that permission under Section 5(1) of of the Maharashtra

Employees of Private Schools (Conditions of Service) Regulation Act, 1977 is necessary only for the purpose to verify from the respondent no.2 office whether there are any excess Teachers are available and to give them preference in appointment. However, for minority institute there is no compulsion to absorb such surplus teachers. Hence, reliance of learned Assistant Government Pleader on Government Resolution dated 6th February, 2012 is misplaced and cannot be accepted.

11. In view of above said legal position, we find that impugned orders dated 6th May, 2024 passed by the respondent no.2, dated 13th May, 2024 passed by the respondent no.3 and dated 15th May, 2024 passed by the respondent no.4 do not stand in the scrutiny of law and liable to be quashed and set aside. Accordingly, we hereby quashed and set aside the impugned orders dated 6th May, 2024, 13th May, 2024 and 15th May, 2024.

12. It is hereby directed the respondent no.6 - Head Mistress, Priyadarshani Higher Secondary Certification Vocational Course (H.S.C.V.C) to forward the fresh proposal to the office of the respondent no.4 - District Vocational Officer, Office of District Vocational Education

and Training, Buldhana within a period of 15 days and respondent no.4 is directed to decide the said proposal within a period of one month from the date of receipt, without rejecting the same on the ground that due to ban imposed by the State Government, appointment of petitioner is not permissible.

13. Accordingly, the petition is disposed of.

[PRAVIN S. PATIL, J.]

[SMT. M.S.JAWALKAR, J.]