

HIGH COURT OF JUDICATURE AT BOMBAY

Bench: PRITHVIRAJ K. CHAVAN AND URMILA JOSHI-PHALKE, JJ.

Date of Decision: 26/10/2023

WRIT PETITION NO.7526/2022 WITH
WRIT PETITION NO.7551/2022

WRIT PETITION NO.7526/2022

1. Dr. Babasaheb Ambedkar Samaj Sudharak Mandal,
2. Jivan Vikash Vidyalaya and Kanistha Kala Maha Vidyalaya,
through its Headmaster Shri Vithobha Arjun Wanve
3. Ku. Maya Sheshrao Kharat,

.....Petitioners.

Versus

1. State of Maharashtra, Through its Secretary,
Department of School Education and Sports, Mantralaya,
Mumbai-32.
2. Education Officer (Secondary)
Zilla Parishad, Buldhana.

.....Respondents

WRIT PETITION NO.7551/2022

1. Dr. Babasaheb Ambedkar Samaj Sudharak Mandal,
Raheeri Bk., Taluka – Sindkhed Raja,
District - Buldana,
through its Shri President, Kundalik Kachru Gawai,
2. Jivan Vikash Vidyalaya and Kanistha Kala Maha Vidyalaya,
through its Headmaster Shri Vithobha Arjun Wanve
3. Sumedh Gulabrao Zote,

.....Petitioners.

Versus

1. State of Maharashtra, Through its Secretary,
Department of School Education and Sports, Mantralaya, Mumbai-32.
2. Education Officer (Secondary)Zilla Parishad, Buldhana.
.....Respondents

Sections, Acts, Rules, and Articles:

Article 30 of the Constitution of India

Maharashtra Public Trusts Act, 1950

Resolution dated 4.5.2022 (related to the ban on recruitment)

Subject: Educational Institutions, Minority Institution, Ban on Recruitment, Refusal of Approval for Teacher Appointment

Headnotes:

Educational Institutions - Minority Institution - Ban on recruitment imposed by the State Government due to financial constraints caused by the COVID-19 pandemic - Minority institution seeking approval for the appointment of a teacher - Refusal of approval by the Education Officer - Challenge to the rejection - Coordinated bench judgments holding that the ban on recruitment does not apply to minority institutions - Applicability of the judgments to the present case - Impugned orders quashed and set aside - Direction to Education Officer to consider the proposal in light of the coordinated bench judgments within four weeks - Communication of decision to the petitioners within one week - Writ petitions allowed. [Para 1-16]

Referred Cases:

- Writ Petition No.2538/2021 (Ubhajo Shikshan Sanstha and others Vs. State of Maharashtra and others) decision dated 16.11.2021.
- Writ Petition No.2517/2021 (Ramesh Shikshan Sanstha and others Vs. The State of Maharashtra and others) decision dated 7.3.2022.
- Writ Petition No.2322/2023 (Humera Samreen Abdul Majeed Vs. State of Maharashtra and others) decision dated 5.9.2023.
- Writ Petition No.2785/2023 (Ku. Megha d/o Pralhadrao Sadafale & ors VS. The State of Maharashtra and Anr.) decision dated 27.4.2023.
- Writ Petition No.5936/2022 (Ankuran Shikshan Sanstha and another Vs. State of Maharashtra and another)
- Writ Petition No.2037/2022 (Lokmanya Tilak Jankalyan Shikshan Sanstha and another Vs. State of Maharashtra and others) decision dated 1.3.2023.

Representing Advocates:

Mr. K.P. Mahalle, Advocate for petitioners.

Mr. N.S. Rao, AGP for respondent nos.1 and 2.

JUDGMENT (Per Prithviraj K. Chavan, J.)

1. Rule. Learned Assistant Government Pleader waives service. Rule is taken up for hearing forthwith by consent of learned counsel for the parties.
2. The issues involved in the present petitions are identical and, therefore, both petitions are being disposed of by this common judgment.

3. Briefly stated, facts of the petitions are summarised as follows
Petitioner no.1 is a registered Society. It is also registered as a Public Trust under the provisions of the Maharashtra Public Trusts Act, 1950. Petitioner no.1 is a Minority Institution and as such, entitled to protection guaranteed under Article 30 of the Constitution of India.

4. The Competent Authority namely, Minority Development Department, State of Maharashtra had issued a Certificate dated 23.7.2019 in favour of petitioner no.1, thereby granting status of a Minority Institution.

5. There are total eight sanctioned teaching posts in the petitioner no.2's school. The staffing pattern of petitioner no.2's school showing eight sanctioned teaching posts in the year 2019-2020 and 2020-21 and it can be seen in the document dated 14.7.2021.

6. It is the contention of petitioners that two teachers of Classes 9th and 10th standards namely, Parasram Kewat and Sudhakar Sadavarte stood superannuated on 30.4.2021 and 31.7.2021 respectively. Due to retirement of two teachers, out of the strength of three teachers for 9th and 10th standards, there was a need to immediately fill up those posts of two teachers for 9th and 10th standards.

7. The petitioners, though it was not necessary, applied to respondent no.2 seeking its permission to fill up those posts by making an advertisement. The communication was addressed by second petitioner seeking such permission on 16.3.2021. There was no reply/grant by respondent no.2. Petitioner no.1, therefore, being left with no option, issued an advertisement for filling up three posts in a newspaper "DESHONNOTI" on 12.7.2021.

8. Pursuant to the said advertisement, 14 candidates appeared, out of whom, petitioner no.3 secured highest marks and, therefore, appointed as Assistant Teacher/Shikshan Sewak. An appointment order was given on 2.8.2021 to

petitioner no.3 as Shikshan Sewak for Classes 9th and 10th standards. Petitioner no.3 joined on 2.8.2021. Ever since his joining, petitioner no.3 has been continuously working as Assistant Teacher without any salary. The petitioner no.3 possesses essential qualification as B.Sc. B.Ed.

9. A proposal for grant of approval to the appointment of petitioner no.3 was sent to respondent no.2 on 20.8.2021. Respondent no.2, however, ignoring the fact that petitioner no.1 is minority institution, rejected the proposal qua petitioner no.3 on the ground that there is a ban on recruitment. The said communication of respondent no.2 is dated 27.10.2021.
10. Respondent no.2, inter alia asked petitioner nos.1 and 2 to submit a fresh proposal for grant of approval of newly appointed teachers. Accordingly, petitioner nos.1 and 2 submitted a fresh proposal for approval of the petitioner no.3 on 5.7.2022 and 5.9.2022. However, to the dismay of petitioner nos.1 and 2, the same were rejected by respondent no.2, vide impugned orders dated 25.7.2022 and 22.9.2022. The petitioners have, therefore, approached this Court.
11. The sum and substance in an affidavit-in-reply on behalf of respondent no.2 is that, the State Government had issued a ban as per its Resolution dated 4.5.2022, which was applicable to all the Institutions. The ban was imposed in view of the financial constraints of the State Government on account of outbreak of COVID-19 and Global Pandemic was declared. Respondent no.2 contends that it has not yet received any direction from the Education Department of the State Government for granting approval to the recruitment, which were effected subsequently and as such, respondent no.2 had rejected the proposal of petitioner nos.1 and 2 on the aforesaid grounds.
12. We have heard Mr. Mahalle, learned counsel for the petitioners and Mr. Rao, learned AGP for the respondents.

13. At the outset, learned counsel for the petitioners, has placed reliance on a few judgments of the co-ordinate bench of this Court on identical facts. They are :

- (i) Writ Petition No.2538/2021 (Ubhajo Shikshan Sanstha and others Vs. State of Maharashtra and others) decision dated 16.11.2021.
- (ii) Writ Petition No.2517/2021 (Ramesh Shikshan Sanstha and others Vs. The State of Maharashtra and others) decision dated 7.3.2022.
- (iii) Writ Petition No.2322/2023 (Humera Samreen Abdul Majeed Vs. State of Maharashtra and others) decision dated 5.9.2023.
- (iv) Writ Petition No.2785/2023 (Ku. Megha d/o Pralhadrao Sadafale & ors VS. The State of Maharashtra and Anr.) decision dated 27.4.2023.

14. The learned AGP has placed reliance on the following judgment:

- (i) Writ Petition No.5936/2022 (Ankuran Shikshan Sanstha and another Vs. State of Maharashtra and another) with connected Writ Petition No.2037/2022 (Lokmanya Tilak Jankalyan Shikshan Sanstha and another Vs. State of Maharashtra and others) decision dated 1.3.2023.

15. It has been consistently held by the coordinate benches of this Court that a ban on recruitment was not applicable to the minority institutions and that the said ground could not be raised for refusing approval to the appointment/s as made. This Court in Writ Petition No.2538 of 2021 (Ubhajo Shikshan Sanstha and Ors. Vs. State of Maharashtra and ors) has referred an order dated 16.11.2021 passed by this Court earlier. An Identical issue has been raised in the present petitions. Facts of these petitions are squarely covered by the aforesaid decisions.

16. In view of the above, we pass the following order:-

ORDER

- (i) The impugned orders dated 27.10.2021 and 25.7.2022 are quashed and set aside.
- (ii) Respondent no.2 is directed to consider the proposal of the petitioners in the light of judgments of this Court, more particularly, in the case of Ubhajo Shikshan Sanstha (supra).
- (iii) The said decision shall be taken within four weeks from the date of receipt of this order.
- (iv) The decision shall be communicated to the petitioners within one week thereafter.

With these directions, the writ petitions are allowed and disposed of in the aforesaid terms. Rule is made absolute. No costs.

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