



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

WRIT PETITION NO. 2054 OF 2023

Sayyed Nuzhat Sultana Bahoyoddin
Age : 35 years, Occ : Service,
R/o Tanpurewadi Road, Rahuri,
Tq. Rahuri, Dist. Ahmednagar.

..PETITIONER

-VERSUS-

1. The State of Maharashtra,
Through Principal Secretary,
School Education and Sports
Department, Mantralaya, Mumbai-32.
2. The District Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. Bagwan Education and Social Trust,
Through its Secretary
Yasmeen Abdussalm Bagwan
Age : 62 years, Occ : Business,
R/o Bagwan Building Rahuri,
Tq. Rahuri, Dist. Ahmednagar.
4. The Headmaster
Pandit Jawaharlal Nehru Urdu
High School, Tq. Rahuri,
Dist. Ahmednagar.

..RESPONDENTS

...
Advocate for the Petitioner : Mr. Hemant U. Dhage
AGP for Respondent/State : Mr. A.V. Lavte
Advocate for Respondent no.3 : Mr. Umakant U. Wagh

...
**CORAM : NITIN B. SURYAWANSHI AND
VAISHALI PATIL-JADHAV, JJ.**

RESERVED ON : 6th APRIL, 2026.

PRONOUNCED ON : 27th APRIL, 2026



JUDGMENT (PER VAISHALI PATIL-JADHAV, J.)

. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By way of present petition, the petitioner is assailing the order dated 09.01.2023 issued by respondent no.2 - Education Officer, whereby the proposal submitted by respondent no.3 - Management seeking approval to the appointment of the petitioner to the post of Shikshan Sevak is rejected.

3. **Factual matrix, in brief, is as under :-**

Undisputed facts are that, the Respondent No.3 is a minority institution, it runs Pandit Jawaharlal Nehru Urdu High School at Rahuri (Respondent No.4), which is a aided school.

Respondent No.3 - Management, by letter dated 09.02.2022 made an application to the Education Officer seeking permission to fill up the vacant post of assistant teacher. As there was no response from the Education Officer, the advertisement was issued in "Dainik Janpravas" newspaper on 11.03.2022, inviting candidates for interview. The petitioner having requisite qualification applied for the post and appeared for the interview, conducted on 17.03.2022. By resolution dated 20.03.2022, the petitioner was selected for the post of Shikshan Sevak and accordingly, the appointment order was issued by letter dated 26.03.2022 by Respondent No.3. The petitioner joined service on the same day and is in continuous service till date.

Respondent No.3 forwarded the proposal dated 22.12.2022 to the Education Officer seeking approval for the petitioner's appointment as a Shikshan Sevak.



By the impugned order dated 09.08.2023, the proposal was rejected as prior permission was not obtained before issuing the advertisement, the advertisement was not published in a widely circulated newspaper, procedure as contemplated in Government Resolution dated 06.02.2012 is not followed and also that there was a stay on direct appointment by Government Resolution dated 04.05.2020 due to Covid-19 pandemic.

4. Aggrieved by the order rejecting the proposal for approval, the petitioner has filed the present petition.

5. Learned Advocate Mr Hemant Dhage, appearing for the petitioner submits that the Management had applied for permission. Since the Education Officer did not respond, the Management proceeded with the selection process and appointed the petitioner as a Shikshan Sevak. He submits that rejection on the ground of Government Resolutions dated 06.02.2012 and 04.05.2020 is wholly misplaced.

He submits that the impugned communication dated 09.01.2023 issued by respondent no.2 rejecting the proposal for approval to the appointment of petitioner as a Shikshan Sevak is illegal, arbitrary and contrary to the settled legal position governing the Minority Educational Institution. He submits that respondent no.3, being Minority Institution has the right to appoint teaching and non-teaching staff, subject to qualification norms and the State has no authority to interfere with such selection once duly qualified candidate is appointed.

He lastly submits that the impugned order dated



09.01.2023 deserves to be quashed and set aside and prays for directing respondent no.2 to grant approval to the appointment of the petitioner as a Shikshan Sevak with all consequential benefits.

Learned Advocate for the petitioner in support of his contentions has placed reliance on (i) ***Ekta Education Society and Others Vs. State of Maharashtra and Others*** (Writ Petition No. 3755/2023 dated 12.03.2024; reported in 2024 LJSoft (BOM) 529), (ii) ***Mohammadiya Education Society's Maulana Azad Urdu Girls High School & Anr. Vs. The State of Maharashtra & Anr.*** (Writ Petition No. 9943/2023 dated 05.02.2024; reported in 2024 (6) ALL MR 533), (iii) ***Shaikh Aaqib Faraz s/o Shaikh Arif Vs. State of Maharashtra and Others*** (Writ Petition No. 12216/2017 dated 20.08.2022), (iv) ***Anjuman Ishaat E Taleem Trust, Aurangabad and Another Vs. The State of Maharashtra and Others*** (Writ Petition No. 1164/2015 dated 08.05.2015) and (v) ***Sadaf Imamoddin Masood Vs. State of Maharashtra & Ors.*** (Writ Petition No. 6894/2023 dated 02.11.2023 with connected matter).

6. Learned A.G.P. Mr. A.V. Lavte appearing for respondent - State supports the grounds for rejection mentioned in the impugned order. Apart from that he pointed out that in the advertisement dated 11.03.2022, the qualification was prescribed as B.Sc. B.Ed. The petitioner possesses qualification of B.A. B.Ed., whereas the candidates who have appeared for the interview apart from the petitioner, were possessing the higher qualification than the petitioner. However, the petitioner was selected by ignoring the advertised criteria.

He further contends that the petitioner has not passed the



Teachers Eligibility Test (TET), which is a mandatory qualification prescribed under the Right of Children to Free and Compulsory Education Act, 2009 and the Government Resolution of the year 2013. Learned A.G.P. therefore submits that the present Petition is devoid of merits and deserves to be dismissed as the impugned order dated 09.01.2023 has been passed strictly in accordance with law and upon due consideration of the proposal forwarded by the Management.

7. Learned Advocate Mr. Umakant Wagh appearing for respondent no.3 supports the case of the petitioner. He submits that the error in respect of qualification mentioned in the advertisement dated 11.03.2022 was communicated to the newspaper agency on 12.03.2022 and, corrected advertisement was issued on 13.03.2022, wherein required qualification is mentioned as B.A. B.Ed. He therefore prays for quashing and setting aside the impugned order dated 09.01.2023.

8. Heard learned Advocate Mr. Hemant Dhage for the petitioner, learned Advocate Mr. Umakant Wagh for respondent no.3 and learned A.G.P. Mr. A.V. Lavte for respondent/State, at length. Perused the petition memo, annexures thereto and affidavit in reply filed by the respondents.

9. Respondent No.2 by the impugned order has rejected the proposal for approval on the following grounds :-

- (i) prior permission is not obtained before issuing the advertisement;
- (ii) the advertisement is not published in widely circulated newspaper;



- (iii) the procedure prescribed in clause 3(A) of the Government Resolution dated 06.02.2012 is not followed; and
- (iv) the appointment issued to the petitioner is in contravention of the temporary stay on direct appointments imposed vide Government Resolution dated 04.05.2020 due to Covid-19 pandemic.

10. The first two grounds can be answered together as those are regarding advertisement. It is a matter of record that on 09.02.2022, respondent no.3 sought permission of respondent no.2 stating that as per the staff fixation for the year 2021-2022, there were four sanctioned posts of Assistant teachers but only three were filled as on 01.01.2022 and one post was lying vacant, therefore, requested to grant permission to issue advertisement and to fill up the vacant post. Since there was no response from the Education Officer, an advertisement dated 11.03.2022 (Exhibit-D) is published for filling up one post of assistant teacher mentioning the requisite qualification as "B.Sc.B.Ed." Again on 13.03.2022 corrected advertisement was published mentioning the requisite qualification as "B.A.B.Ed." It appears that the petitioner succeeded in the interview process and appointment order dated 26.03.2022 was issued to the petitioner, thereby appointing her on the post of Shikshan Sevak for the period from 26.03.2022 to 26.03.2025.

11. From the record, it is evident that permission was sought from the Education Officer to fill up the vacant post of assistant teacher. However, the Education Officer did not respond and hence, the further process was carried out. The advertisement was issued in the news paper "Dainik Janpravas". The requirement of law is to issue advertisement in a widely circulated newspaper. There is nothing on record to show that the said newspaper did not have wide circulation.



Therefore, both these grounds of not taking prior permission and not publishing an advertisement in a widely circulated newspaper cannot be sustained.

12. The third ground for rejection is that the procedure in clause 3(A) of the Government Resolution dated 06.02.2020 is not followed, which reads thus :-

"A(३) संबंधित कार्यालयाकडे अतिरिक्त कर्मचारी उपलब्ध नसल्यास संस्थेस सादर पद सरळसेवा भरतीने भरण्यासाठी जाहिरात देण्याची परवानगी दिली जाईल. त्यासाठी संस्थेने विवक्षित पद कोणत्या प्रवर्गासाठी राखीव आहे, पदासाठी आवश्यक शैक्षणिक पात्रता (माध्यम व विषयासह) काय आहे, वयोमर्यादेची अट काय आहे, पद पूर्णवेळ/अर्धवेळ/घड्याळी तास/रजा कालावधी यापैकी निश्चित कोणते आहे, पद अनुदानित/अंशतः अनुदानित/विना अनुदानित/कायम विनाअनुदानित, संचमान्यतेनुसार पद मान्य, प्रस्तावित वाढीव पद, पदाचे मानधन/वेतनश्रेणी, पदासाठी उपलब्ध कार्यभार इत्यादी सर्व अटी व शर्ती नमूद करून जाहिरातीस परवानगी मिळण्याबाबतचा प्रस्ताव सक्षम प्राधिका-याकडे सादर करावा.)"

13. In the case of ***Momin Education Society and another Vs. Education Officer (Primary) and others, in Writ Petition No.116 of 2012***, in paragraph 13, it is observed as under :-

"13..... It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an



educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person, who is not selected by it as a teacher."

14. This Court has consistently held that reservation policy is not applicable to, as well as not binding on the minority institutions to absorb surplus teachers and it is permissible for the State Government to prescribe the qualification of teachers but once teachers possessing the requisite qualification are selected by the minority institution, the State would have no right to veto the selection of those teachers. The appointment of the petitioner is a part of regular administration and Management of Minority Institution, and therefore, being a minority institution it has every right to appoint the teachers selected and chosen by the institution, and therefore, the ground that the procedure in clause 3(A) of the Government Resolution dated 06.02.2012 is not followed cannot be sustained.

15. Similarly, the order is also not sustainable on the fourth ground as being a minority institution, the stay on direct appointment imposed vide Government Resolution dated 04.05.2020 is not applicable. Otherwise also this Court (Coram : R.G. Avachat & Abasaheb D. Shinde, JJ.) in Writ Petition No.14931 of 2019 in the case of ***Meghamalhar Vikas Sanstha through President Vs. The State of Maharashtra and others*** in order dated 01.12.2025 has held that "It



has specifically been observed in the Government Resolution dated 25.05.2021 that, the restrictions imposed by the Finance Department on 04.05.2020 were lifted/withdrawn."

16. Though in the impugned order above, four grounds are mentioned for rejection of approval, by way of affidavit-in-reply the learned A.G.P has raised an additional ground that the petitioner does not possess TET qualification, which is mandatory for appointment as an assistant teacher. Respondent cannot be permitted to supplant reasons by way of an affidavit to support the impugned order in view of the settled law as propounded in the case of *Mohinder Singh Gill and another Vs. Chief Election Commissioner, New Delhi and others [1978(1) SCC 405]*.

17. In many matters, this Court has considered the said fact and has observed that as regards TET examination, in view of *Pramati Educational & Cultural Trust and others Vs. Union of India and others [AIR 2014 SC 2114]*, it is not open to the Education Officer to foist any condition of TET on the teachers employed in minority institutions. In short, TET qualification, for the time being, is not compulsory for the teachers appointed in minority institutions.

18. For the afore stated reasons, we hold that the grounds on which the approval is rejected are unsustainable in view of the settled position of law. The petition therefore deserves to be allowed. Hence the following order :-

ORDER

- (i) Writ Petition is allowed.
- (ii) Respondent No.2 - Education Officer is directed to accord



approval to the appointment of the petitioner as Shikshan Sevak as per proposal dated 22.12.2022 with consequential benefits, arrears of salary, within a period of four weeks from the date of uploading of this order.

19. Rule is made absolute in the above terms.

(VAISHALI PATIL-JADHAV,J.)

(NITIN B. SURYAWANSHI,J.)

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