

(2026) 08 BOM CK 1433

In the Bombay High Court, Kolhapur Bench

Case No : WRIT PETITION NO. 9463 OF 2014

Mrs. Smita Shashank Jade

APPELLANT

Vs

Avishkar' Institution For Mentally & Ors.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Handicap Code 1997 — Rule 49(five)
Special School Code of 1997

Citation : (2026) 08 BOM CK 1433

Hon'ble Judges : Sandesh D. Patil, J;Vrushali V. Joshi, J

Bench : Division Bench

Advocate : Mr. Rameshwar Navanath Gite, Mr. R. P. Kadam, Mr. Sachindra Bhaskar Shetye a/w Mr. Pruthvi Bendke & Mr. Saket Shetye, Mr. Rahul Nerlekar, Mr. A. I. Patel, Mr. Atul P. Vanarase

Final Decision : Dismissed

Judgement

(PER: SANDESH D. PATIL, J).

1. By the present writ petition, the petitioner is seeking quashing of the appointment of respondent No. 4 made pursuant to the appointment letter dated 18.09.2014, and also to appoint petitioner in the institution as an instructor. The circumstances giving rise to filing of the present petition are as under :

2. The petitioner has completed her education in MA English with certain other courses mentioned in para two of the petition. It is the case of the petitioner that respondent No. 1 wanted to engage services of Teacher and therefore, they publish advertisement in newspaper (Ratnagiri Times) on 20.02.2014 by calling for applications for the post of instructor. There were two post of instructor which were to be filled. One out of which was reserved for SC category and the other was for open, category. The respondent No.1 is an association for education of specially abled children. The petitioner contended that she fulfilled the eligibility requirement and therefore the petitioner applied for the said post. The candidates, who have applied for the post of instructor were called for interview.

The petitioner's case is that her educational career was excellent in SSC and HSC. In BA, she had secured second class, and in MA, she had secured pass class. She had secured first class with distinction in vocational training and employment for mentally challenged adults related workshop. She therefore stated that her educational qualification was more superior than to that of the appointed candidate. She has given a table indicating the marks obtained by the her as well as the successful candidate i.e. respondent No.4 in paragraph No. 8 of the petition. In nutshell, her contention is that in spite of the better experience and better educational qualification, the respondent No.1 had appointed the respondent No.4. It is contention of the Petitioner that both the petitioner as well as the respondent No.4 had secured equal marks in the written examination, however, in-spice of this, the petitioner was not considered and the respondent No. 4 was given preference over the petitioner. In these circumstances, the present petition has been filed to set aside the appointment letter issued to respondent No. 4 and to direct the respondent No. 1 to appoint the petitioner to the said post.

3. The respondent No.4 has filed an affidavit and objected the petition. The respondent No. 4 contended that the other qualifications of SSC and HSC are not important and that what was important was only the marks as well as the experience. She stated that she is working in the same post since last more than 12 years and hence, she prayed for dismissal of the petition.

4. The respondent No.1 Education Institution has filed an affidavit. The respondent No.1 stated in the reply that the institution was established in the year 1986. The appointment committee consist of six numbers of persons, who conducted the interview of all the eight candidates. The petitioner as well as the respondent No.4 got equal marks. However, the respondent No.4 was working in the respondent No.1 institution as a special educator for more than 14 years without any break. Respondent No. 4 has rendered services to approximately 400 children with disabilities in the age group of 3 to 18 years over the course of her 14-year career as a Special Educator. The children were more comfortable with the respondent No.4. All these factors were considered by the management and that the respondent No.4 was appointed. It was specifically stated by the respondent No.1 that the marks obtained in SSC, HSC, graduation and diploma are not required qualification for the purpose of appointment on the post of instructor. The Management has gone to the extent of alleging that respondent No. 3 was biased and intended to secure the appointment of the petitioner. It is contended that, for this reason, the conditions imposed in the approval order dated 20.07.2015 were arbitrary and were intended only to obstruct the process of appointment of respondent No. 4.

5. Respondent No. 1 - Management has placed reliance upon the Government Resolution dated 18.08.2004. It is the contention of respondent No. 1 that respondent No. 3 has erroneously interpreted the said Government Resolution. It is further the specific contention of respondent No. 1 that respondent No. 3 had

received a communication from the Commissioner; however, the said communication was erroneously suppressed. On these premises, respondent No. 1 has prayed for dismissal of the petition.

6. The learned AGP relied upon the communication dated 04.08.2014 issued by the Commissioner, Handicap Welfare, Maharashtra, and submitted that Respondent No. 3 was the competent authority to take the decision. It was further submitted that, in terms of the Government Resolution dated 18.08.2004, it was necessary to consider the educational qualifications of the parties while taking the decision.

7. Heard learned counsel appearing for the parties.

8. The contention of the petitioner is that the petitioner was having more qualification than the respondent No. 4. The petitioner wants this court to take into consideration the marks obtained by the petitioner in SSC, HSC, BA, MA and also wants this court to take into consideration the diploma in vocational training and employment for mentally challenged specially for adult related workshop where she had scored first class with distinction.

9. The question before this court is whether the respondent No. 3 management was entitled to appoint the petitioner as a teacher in the respondent No. 1 special school and whether the marks which were obtained by the petitioner in SSC and HSC class and also in BA and MA were required to be taken into consideration while assessing the competence of the petitioner over the respondent No.4. In this connection it is necessary to consider the document i.e. the letter dated 04.08.2014 issued by the Commissioner, Handicap Welfare, Maharashtra State Pune, where the Commissioner was pleased to reply to the District Social Welfare Officer, ZP, Ratnagiri pursuant to the query raised by the said officer as to how the appointment of the two candidates namely petitioner and respondent No. 4 should be made. To this enquiry the Commissioner, Handicap Welfare Department, Pune has stated that as per the Special School Code of 1997, the right to appoint the employees of the said school rests with the management of the said school and it would be the duty of the respondent No.3 to consider whether the appointment is made as per the prevailing rule.

10. The respondent No.3 on the basis of this letter dated 04.08.2014 has written to the respondent No.1 on 26.08.2014 that although the respondent No.1 has got rights to make appointment of the employees, however it is the prerogative of the respondent No.3 to see that all the rules are followed while making the appointment. In the said letter dated 26.08.2014 the respondent No.3 has quoted the contents of the letter dated 04.08.2014 issued by the Commissioner, Handicap Welfare, Maharashtra State, however he has added certain other requirements such as the marks in SCC, HSC, graduation and post-graduation should be considered for and the candidate who has got more marks should be considered to be selected.

11. This is the bone of contention between the parties. The respondent No.1 and

the respondent No.4 both state that the respondent No.3 who was always trying to favor the petitioner has added this word on his own without there being corresponding provision in the statute.

12. We have asked the petitioner as to where is the provision to consider the marks obtained by the petitioner in SSC, HSC and graduation. The petitioner for that purpose relied upon provisions of Rule 49(five) of the Handicap Code 1997 (viax lafgrk 1997). We have perused the said code. However we are unable to satisfy ourselves as to whether there was any provision for taking into consideration the marks obtained in SSC and HSC standard in order to ascertain the comparative merits of the petitioner.

13. As far as both petitioner and respondent No.4 are concerned, both have obtained equal marks, that is 41 marks in the interviews. This being the position it was the prerogative of the management to make the appointment. The respondent No.3 could not have substituted his opinion. The respondent No.4 otherwise was qualified for the post which is in question. Both the petitioner and respondent No.4 has stated above that they had got equal marks in the interview. Both the petitioner as well as the respondent No.4 were qualified and therefore, there was nothing wrong in the management taking the call.

14. In order to consider the appointment of the respondent No.4 over the appointment of the petitioner, the management has considered the fact that the said respondent No.4 was working with the institution for more than 14 years prior to making of the appointment in question. The management found that the respondent No.4 had trained about 400 number of special children from age group of 3 to 18 in those 14 years of her service. They took into consideration that the special children were more comfortable with the respondent No.4 and they had got very good rapport with her. The management also took into consideration that the respondent No.4 had the qualification which are required for the appointment to the post of instructor and for these reasons on 18.09.2014 the respondent No.4 was considered to be more suitable candidate for the post of instructor than that of the petitioner.

15. The respondent No.1 had categorically stated that the marks obtained in SSC, HSC, graduation and diploma are not required qualification for the purpose of appointment to the post of instructor and therefore, only because the petitioner had got more marks in SSC and HSC would not be a factor weighing in favor of the petitioner.

16. The respondent No.1 has considered the suitability of respondent No.4 over that of the petitioner. The reasons given by the respondent No.1 cannot be said to be perverse. There was no flaw in the decision-making process. There is no scope for judicial review of the appointments made by the respondent No.1. That apart the appointment was made on 18.09.2014. The respondent No.4 has been working in the institution 14 years prior from 18.09.2014 and now it has been nearly 12 years from the date of appointment. We find no fault in the decision

taken by the respondent No.1.

17. The Apex court in the matter of Maharashtra Public Service Commission vs. Sandeep Shriram Warade, [(2019) 6 SCC 362] has observed as under :

"9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being on a par with the essential eligibility by an interpretive re-writing of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."

18. The Supreme Court in the matter of Union of India vs. Uzair Imran, [(2024) 20 SCC 345] while emphasizing the prerogative of an employer to decide the eligibility of a candidate has observed as under:

"22. Normally, it is not the function of the court to determine equivalence of two qualifications and/or to scrutinise a particular certificate and say, on the basis of its appreciation thereof, that the holder thereof satisfies the eligibility criteria and, thus, is qualified for appointment. It is entirely the prerogative of the employer, after applications are received from interested candidates or names of registered candidates are sponsored by the Employment Exchanges for public employment, to decide whether any such candidate intending to participate in the selection process is eligible in terms of the statutorily prescribed rules for appointment and also as to whether he ought to be allowed to enter the zone of consideration i.e. to participate in the selection process. It is only when evidence of a sterling quality is produced before the court which, without much argument or deep scrutiny, tilts the balance in favour of one party that the court could decide either way based on acceptance of such evidence."

19. In the event, the candidate was appointed without due qualification as required for the post of appointment of instructor, then in that event the respondent No.3 could have set aside that appointment. The insistence of the respondent No.3 to appoint the petitioner as a instructor in the respondent No. 1 school on the basis of higher marks obtained by the petitioner in the SSC, HSC and graduation as compared to the respondent is not at all the qualification and ground prescribed in the Handicap Code 1997 (viax lafgrk 1997). For this reason we find no reasons to interfere with the appointment of the respondent No.4 as an instructor in the respondent No.1's school. Hence the petition is dismissed. There shall be no order as to costs.