
(2018) 01 BOM CK 0067
In the Bombay High Court
Case No : 11251 of 2016

Nivruti s/o. Ramkrushna Sahane

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

Constitution of India, Article 30(1) -
Right of minorities to establish and administer educational in-stitutions

Citation : (2018) 01 BOM CK 0067

Hon'ble Judges : S.S. Shinde, S.M.Gavhane

Bench : Single Bench

Advocate : A.N.Kakade, ?S.B.Yawalkar, ?M.P.Shrivastava

Judgement

1. Heard. Rule. Rule made returnable forthwith with the consent of the parties.
2. The petitioner is aggrieved by impugned communication dated 17.03.2016, issued by respondent no.3 i.e. The Regional Deputy Commissioner, Social Welfare Office, Aurangabad Division, Aurangabad, thereby refusing proposal dated 24.07.2015, seeking approval to appointment of the petitioner as Shikshan Sevak on the ground that the petitioner has not passed TET Examination.
3. The learned Counsel appearing for the petitioner submits that respondent no.5

institution is a `minority institution". He further submits that respondent no.3 turned down the proposal mainly on the ground that the petitioner has not cleared the Teachers Eligibility Test. The aforesaid condition in respect of passing Teachers Eligibility Test is pursuant to the directives issued under the provisions of the Right to Education Act. It is submitted that the Hon''ble Supreme court in the matter of Pramati Educational and Cultural Trust (R)and Ors. Vs. Union of India and Ors. 2014 AIR SCW 2859, after considering the provisions of Article 30(1) of the Constitution of India vis-a-vis provisions under the Right of Children to free and Compulsory Education Act, 2009 [for short "Act of 2009"], has taken a view that that, Act of 2009, in so far as it applies to `minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution of India is, ultra vires the Constitution. The learned Counsel appearing for the petitioner, therefore, submits that the impugned communication deserves to be quashed and set aside and directions may be issued to Respondent No.3, to consider the case of the petitioner, for grant of approval afresh.

4. The learned Counsel appearing for the respondents fairly accepts the position, that in view of the authoritative pronouncement of the Supreme Court in the case of Pramati Educational and Cultural Trust (cited supra), the provisions

of the Act of 2009 are not applicable to the case of the petitioner.

5. We have given careful consideration to the submissions of the learned Counsel for the parties. With their able assistance, perused the grounds taken in the petition, the contents of the impugned communication and all other material placed on record. The issue raised in this Petition is no longer *res integra*. The Division Bench of this Court (CORAM: S.S. SHINDE & P.R. BORA, JJ.) in Writ Petition No.1164 of 2015 (Anjuman Ishaat E Taleem Trust, Aurangabad and another vs. The State of Maharashtra and others), in the similar fact situation where the Petitioner No.2 therein has not passed TET examination, by the Judgment and order dated 8th May, 2015, has directed Respondent No.3 to reconsider the case of the Petitioner No.2 therein, working as Assistant Teacher for approval to his appointment. In the light of the Judgment of the Supreme Court in *Pramati's* case (cited *supra*), it is not necessary for us to elaborate any further on facts, suffice it to say, the impugned communication issued by Respondent No.3 is not legally sustainable in view of the authoritative pronouncement of the Supreme Court in the case of *Pramati Educational and Cultural Trust* (cited *supra*). In the said Judgment, in concluding paragraph, the Supreme Court held that, "the 2009 Act insofar it is made applicable to minority

schools referred in clause (1) of Article 30 of the constitution is ultra vires the Constitution."

6. In that view of the matter the Petition succeeds. Accordingly, the impugned communication dated 17.03.2016 issued by respondent No.3 is quashed and set aside. Respondent No.3 is directed to reconsider the case of the petitioner, who is working as Shikshan Sevak with the respondent management for approval to his appointment, as expeditiously as possible and preferably within six weeks from today.

7. We make it clear that the Regional Deputy Commissioner, Social Welfare Office, Aurangabad Division, Aurangabad shall not again raise an objection that the petitioner has not passed T.E.T. Examination.

8. Rule is made absolute in the aforesaid terms with no order as to costs.