

(2022) 08 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No.12216 Of 2017

Shaikh Aaquib Faraz

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 20-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 30(1)
Maharashtra Employees Of Private Schools (Conditions Of Services) Rules, 1981 —
Rule 9(7), 9(8), 9(9), 9(10)
Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act,
1977 — Section 3(2), 5, 5(1)

Citation : (2022) 08 BOM CK 0084

Hon'ble Judges : Mangesh S. Patil, J;Sandeep V. Marne, J

Bench : Division Bench

Advocate : Dr.Godbole R.J, K.N.Lokhande, P.M. Nagargoje, Tandale P.R.

Final Decision : Allowed

Judgement

Sandeep V. Marne, J

1. Rule. Rule, made returnable forthwith. With the consent of the learned Advocate for the parties, heard finally at the stage of admission.

2. Respondent No. 2 is a Minority Educational Institution, which has appointed the petitioner on the post of Assistant Teacher. A proposal for grant of his approval has been rejected by the Education Officer (Primary), vide the communication dated 23.05.2017 essentially on the ground that there was ban on recruitment after 02.05.2012 and that while filling up the post, no objection certificate of the Education Officer was not obtained.

3. Mr. Godbole, Ld. Counsel appearing for the petitioner relies upon the provisions of Section 3 (2) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, (hereinafter referred to as 'the Act of 1977'), which reads thus :

"3. Application of Act. - 2) Notwithstanding anything contained in sub-section (1), the provisions of this Act shall not apply to the recruitment [of the Head of a minority school and any other persons (not exceeding three) who are employed in such school and whose names are notified by the Management to [the Director or, as the case may be,] the Deputy Director for this purpose."

4. He further submits that in accordance with the provisions of Sub Section (2) Section 3, the Management had notified three posts to the Deputy Director by communication dated 09.05.2022, Petitioner being one of the three post holders. He submits that by doing so, the management had satisfied the mandatory requirement of Section 3 (2) and that therefore the post held by the Petitioner came out of purview of the provisions of the Act of 1977.

5. With a view to ensure that the teachers rendered surplus are accommodated against various vacancies arising in schools, a Proviso has been inserted in Sub-Section 1 of Section 5 of the Act of 1977, which reads thus:

5. Certain obligations of Management of private schools. - (1) The Management shall, as soon as possible fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy;

Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the event of such person being available, the Management shall appoint that person in such vacancy.

6. Mr. Godbole submits that since the post held by Petitioner has been brought out of the purview of provisions of the Act of 1977, the condition of obtaining No Objection Certificate under Proviso to Sub-Section 1 of Section 5 would not apply to his case. He further submits that since it is a prerogative of the minority educational institution to fill up one of the three notified posts, the ban on recruitment would also be inapplicable to his case. He relies on the decision of the Supreme Court in *Sindhi Education Society and Another Vs. Chief Secretary, Government of NCT of Delhi and Others* (2010) 8 SCC 49. Ld. Counsel appearing for the management supports the case of the Petitioner.

7. Mr. Tandale, appearing for respondent No. 4 submits that respondent No. 2 Management did not obtain prior permission of the Education Officer, which is mandatory under Section 5 of the MEPS Act, 1977. He further submits that at the relevant time there were as many as 67 surplus teachers of Urdu medium with the Education Officer and therefore, the rejection of Petitioner's proposal cannot be faulted. Ld. AGP appearing for State supports the submissions of Mr. Tandale.

8. After hearing the learned counsels for the parties, we find considerable force in the submissions of Mr. Godbole. The fundamental right of minority educational institutions to administer their schools has been recognized in various decisions of the Apex Court. Mr. Godbole has rightly placed reliance on *Sindhi Education Society* (supra) in which it is held in paragraph No. 63 as under :

"63. The Court considered the question whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioner's right to appointment is a reasonable restriction. After following the law stated in *T.M.A. Pai's case*, the Court held as under : (*Brahmo Samaj Education Society Case* SCC pp. 227 & 229, para 6-8)

"6. The question now before us is to decide whether the appointment of teachers in an aided institution by the College Service Commission by restricting the petitioners' right to appointment is a reasonable restriction in the interest of general public or not. The petitioners have a right to establish and administer educational institution. Merely because the petitioners are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a government-owned one. Of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration.....

7. But that control cannot extend to the day- to-day administration of the institution. It is categorically stated in *T.M.A. Pai* (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorised accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/ SLET- qualified candidates.

8. Argument on behalf of the State that the appointment through the College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise."

In the above case, the Court did not rest with laying down the above law but

even directed the State Government to take due notice of the declarations made in the T.M.A. Pai's case (supra) and to take appropriate steps in that regard."

(emphasis & underlining supplied)

9. In *St. Francis De Sales Education Society v. State of Maha-rashtra*, (2001) 3 Mah LJ 261 the Full Bench of this Court was considering the issue as to whether a minority educational institution can be forced to apply the principle of reservation. This Court held:

36. In our judgment, the petitioner, being a minority institution, cannot be directed to appoint teachers or other staff on the basis of the reservation policy followed by the State as evidenced in rules 9(7) to 9(10), of the Maha-rashtra Employees of Private Schools (Conditions of Services) Rules, 1981. We therefore hold that the said rules 9(7) to 9(10), if applied to the petitioner, would violate the fundamental right guaranteed to the petitioner as a minority institution under Article 30(1). Hence, we allow the writ petition

It is now trite that under the provisions of Section 3 (2) of the Act of 1977, a minority educational institution enjoys absolute autonomy for filling of 3 posts of teachers which are notified to the Director/Dy. Director. For filling up such 3 posts, it is not necessary to follow the provisions of the Act of 1977. Once the post held by the Petitioner is taken out from the clutches of the Act of 1977, the requirement of obtaining of no objection certificate of the Education Officer under Section 5 (1) becomes inapplicable. The Education Officer therefore cannot insist that the post cannot be filled as per choice of the Management and that one of the available surplus teacher must be appointed. The Government Resolution dated 02-05-2012 is again in relation to surplus teachers and imposed ban on fresh recruitment of Assistant Teachers till 100% absorption of surplus teachers. Therefore the reason of ban on recruitment is equally unsustainable.

10. Consequently we allow the petition by setting aside the communication dated 23.05.2017 and direct the Education Officer, Zilla Parishad to reconsider the proposal for grant of approval for the appointment of the petitioner afresh and the same shall not be rejected only on the grounds of imposition of ban and non-obtaining of No Objection Certificate of Education Officer prior to recruitment of the Petitioner. The Education Officer to take decision within 3 months.

11. Rule made absolute in above terms.

12. Parties to bear their own costs.