
(2021) 07 BOM CK 0035

Bombay High Court

Case No: Writ Petition No.4273, 4275 Of 2019

Shital Kumar Patil And
Others

APPELLANT

Vs

State Of Maharashtra
And Others

RESPONDENT

Date of Decision: July 16, 2021

Acts Referred:

- Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act, 1977 - Section 5(1)

Hon'ble Judges: R.D. Dhanuka, J; R.I. Chagla, J

Bench: Division Bench

Advocate: Chetan G. Patil, N.K.Rajpurohit

Judgement

R.D.Dhanuka, J

1. Rule. Learned AGP waives service for the respondent nos.1 & 2. No reliefs are claimed against the respondent nos.3 & 4. By consent of petitioner

and the respondent nos.1 & 2, both these petitions were heard together and are being disposed of finally by this common order.

2. Learned counsel appearing for the petitioner addressed this Court in Writ Petition No.4273 of 2019 and jointly state that the issue involved in both

these petitions are identical and thus the order that would be passed in Writ Petition No.4273 of 2019 would apply in Writ Petition No.4275 of 2019

also. Statement is accepted. The petitioner has impugned the order passed by the Education Officer, the respondent no.-2 herein rejecting the proposal

submitted by the respondent no.4 for seeking approval to the appointment of the petitioner to the post of a peon. Some of the relevant facts in both

these petitions are as under : -

FACTS IN WRIT PETITION NO.4273 of 2019

3. The respondent no.3 is a minority educational institution registered under the provisions of Maharashtra Public Trust Act, 1950. Some time in the

year 2017 a vacancy arose in the respondent no.4 school for the post of Peon. The respondent no.3 issued an advertisement inviting applications from

eligible persons for appointment to the said post of peon. Several candidates including the petitioner applied for the said post. After conducting

interview of all the candidates including petitioner, the petitioner was found to be most suitable candidate for the said post of the peon. He was

selected for the said job. The School Committee accordingly passed a Resolution in respect of the appointment of the petitioner to the post of peon in

the respondent no.4 school for a period from 1st July 2017 to 30th June 2020. On 30th June 2017, the respondent no.3 appointed the petitioner to the

said post of peon w.e.f. 1st July 2017.

4. On 4th August, 2017 the respondent no.4 submitted a proposal to the Educational Officer (Secondary) for granting approval to the appointment of

the petitioner to the post of peon in the respondent no.4 school. On 19th August, 2017, the respondent no.2 returned the said proposal to the

respondent no.4 school holding that the approval could not be granted to the appointment of the petitioner. Being aggrieved by the said order dated

19th August, 2017, the petitioner filed Writ Petition No.4273 of 2019.

FACTS IN WRIT PETITION NO. 4275 OF 2019

5. The petitioner has impugned the order dated 1st February, 2018 passed by the respondent no.2 rejecting the proposal submitted by the respondent

no.4 in respect of the appointment of the petitioner to the post of a peon in the respondent no.4 school and seeks an order and direction against the

respondent no.2 to grant approval to the appointment of the petitioner to the said post since the date of his initial appointment of 1st July, 2017.

6. Pursuant to the advertisement issued by the respondent no.3 in the year 2017 inviting applications for the post of peon in the respondent no.4 school,

the petitioner applied for the said post on 30th June, 2017. The respondent no.4 issued a letter of appointment to the petitioner to the said post of peon

in the said respondent no.4 school for the period from 1st July, 2017 to 30th June, 2020. The respondent no.4 submitted the proposal to the respondent

no.2 on 20th March, 2017 for seeking approval to the appointment of the petitioner to the post of peon in the respondent no.4 school. The respondent

no.4 school passed a resolution confirming the appointment of the petitioner to the said post. The respondent no.2 passed an order on 1st February,

2018 and returned the said proposal to the respondent no.4 holding that the approval could not be granted to the appointment of the petitioner. Being

aggrieved by the said order dated 1st February, 2018, the petitioner filed Writ Petition No.4275 of 2019 for various reliefs.

The submissions made by the petitioner in Writ Petition No.4272 of 2019:-

7. Mr.Chetan Patil, learned counsel for the petitioner invited our attention to the letter of appointment of the petitioner issued by the respondent no.4,

the advertisement issued by the respondent no.4, the proposal sent by the respondent no.4 to the respondent no.2 for seeking approval to the

appointment of the petitioner to the post of peon in the respondent no.4 school, order passed by the respondent no.2, copy of the Government

Resolution dated 12th February, 2015, Government Resolution dated 23rd October, 2013, Government Resolution dated 8th August, 2017 and also the

judgment of this Court in Aurangabad Bench of this Court delivered on 30th September, 2013 in Writ Petition No.5547 of 2013 in case of St.Francis

De Sales Education Society & Ors. vs. The State of Maharashtra & Anr. He also placed reliance on the judgment of this Court delivered on 7th

January, 2021 in Writ Petition No. 3407 of 2019 filed by Deepak Balaso Chougule vs. The State of Maharashtra & Ors.

8. It is submitted by the learned counsel that the respondent no.2 erroneously held that in view of the Government Resolutions dated 23rd October,

2013, 12th February, 2015 and 8th August, 2017, approval could not be granted to the appointment of the petitioner. He submits that the respondent

no.3 being a minority institution, resolution dated 12th February, 2015 relied upon by the respondent no.2 in the impugned order did not apply to the

appointment of the petitioner to the post of the peon.

9. Learned counsel placed reliance on the Government Resolution dated 13th July, 2016 and would submit that after adverting to the judgment of the

Hon'ble Supreme Court in case of T.M.A.Pai Foundation vs. State of Karnataka, 2002 (8) SCC 481, and in case of Secretary, Malankara Syrian

Catholic College vs. T.Jose & Ors., 2007(1) SCC 386 has stated that those minority institutions who have applied for permission for filling up of the

vacant posts, permission shall be granted to those institutions. The Government Resolution dated 13th July, 2016 clearly states that the minority

institutions have been excluded from the applicability of section 5(1) of the Maharashtra Employees of Private Schools (Conditions of Service)

Regulation Act, 1977 (for short MEPS Act). He submits that it is clarified by the State Government in the said resolution that if a minority institution

seeks permission before recruitment then permission should be given by following the procedure stated in the said Government Resolution, but if an

appointment is made by minority institutions without taking permission then in that case appropriate action shall be taken for granting individual

approval to such an appointment.

10. It is submitted that the said Government Resolution dated 12th February, 2015 relied upon by the respondent no.2 in the impugned order was not at

all applicable to the respondent nos. 3 and 4 and was thus wrongly pressed in service in the impugned order while rejecting the proposal sent by the

respondent no.4 for approval to the appointment of the petitioner to the post of the peon. He submits that even the said Government Resolution dated

8th August, 2017 would not apply to the appointment of the petitioner made by the respondent no.4 in view of the fact that the appointment of the

petitioner to the said post was already made by the respondent no.4 prior to the date of the issuance of the said Government Resolution. The order

thus passed by the Education Officer discloses non application of mind.

11. Learned counsel for the petitioner submits that when the respondent no.2 rejected the proposal sent by the respondent no.4, the respondent no.2

was fully aware of the Government Resolution dated 16th July, 2016 passed by the State Government. The respondent no.2 however totally ignored

the Government Resolution dated 16th July, 2016 and passed an order in violation of the principles of law laid down by the Hon'ble Supreme Court

in case of T.M.A.Pai Foundation vs. State of Karnataka (supra), Secretary, Malankara Syrian Catholic College (supra) and the said Government

Resolution dated 16th July, 2016.

12. Mr.Rajpurohit, learned A.G.P. for the respondents on the other hand invited our attention to the contentions raised by the respondent nos. 1 and 2

in the affidavit in reply dated 16th March, 2021 filed by the respondent nos. 1 and 2 and would submit that when the petitioner was appointed on 1st

July, 2017 as a peon, the Government Resolution dated 12th February, 2015 was in existence and thus respondent no.4 could not have appointed any

non teaching staff on newly created or vacant post. He submits that by the said Government Resolution dated 12th February, 2015, the State

Government had granted stay to the Government Resolution dated 23rd October, 2013 by which new staffing pattern for non-teaching staff was

introduced in the State of Maharashtra.

13. Mr.Patil, learned counsel for the petitioner in his rejoinder arguments would submit that the respondent nos. 1 and 2 have not denied that the

respondent no.4 is minority institution and thus section 5(1) of the MEPS Act is not applicable to the minority institution.

REASONS AND CONCLUSIONS :-

14. It is not in dispute that the respondent no.4 is fully aided school run by the respondent no.3 Trust. The respondent no.3 is a minority educational institution. On 30th June, 2017, the petitioner was appointed to the post of peon in the respondent no.4 school w.e.f. 1st July, 2017 after following the requisite procedure. The proposal of the respondent no.4 to the appointment of the petitioner to the post of peon has not been rejected on the ground that the petitioner has not complied with the requisite procedure for filling up of the said post of the peon.

15. A perusal of the order passed by the Education Officer indicates that the reliance is placed on the Government Resolutions dated 23rd October, 2013, 12th February, 2015 and 8th August, 2017 in the said order while rejecting the said proposal made by the respondent no.4 to the respondent no.2.

In our view, since the appointment of the petitioner was already made on 30th June, 2017 w.e.f. 1st July, 2017, Government Resolution dated 8th August, 2017 did not apply to the said appointment. The said Government Resolution dated 8th August, 2017 did not apply with retrospective effect.

16. The State Government by Resolution dated 12th February, 2015 had granted stay to the Government Resolution dated 23rd October, 2013 by which the new staffing pattern for non-teaching staff was introduced in the State of Maharashtra.

17. The respondent no.2 in the impugned order did not consider the crucial aspect that neither the said Government Resolution dated 23rd October, 2013 nor the Government Resolution dated 12th February, 2015 were applicable to the minority institutions. The Government of Maharashtra itself had

issued a subsequent Government Resolution dated 13th July, 2016 after adverting to the judgment of Hon'ble Supreme Court in case of

T.M.A.Pai Foundation vs. State of Karnataka (supra) and in case of Secretary, Malankara Syrian Catholic College (supra) and had clearly stated that

the minority institutions had to be excluded from the applicability to the section 5(1) of the MEPS Act. It was further stated that if the minority

institutions seek permission before recruitment, then permission should be given by following the procedure stated in the said Government Resolution.

But if an appointment is made by minority institutions without taking permission then in that case appropriate action shall be taken for granting

individual approval to such appointment.

18. The respondent no.2 in the impugned order has totally overlooked the Government Resolution dated 13th July, 2016 which was issued in

conformity with the principles of law laid down by the Hon'ble Supreme Court in case of T.M.A.Pai Foundation vs. State of Karnataka (supra)

and in case of Secretary, Malankara Syrian Catholic College (supra). In our view, the respondent no.2 thus could not have relied upon the Government

Resolutions dated 12th February, 2015, 8th August 2017 and the Government Resolution dated 23rd October, 2013 in the impugned order while

rejecting the proposal submitted by the respondent no.4 in respect of the appointment of the petitioner made to the post of peon. Section 5(1) of the

MEPS Act is excluded and is not applicable to the minority institutions including the respondent no.3 in this case. The respondent no.2 did not consider

all these crucial aspects in the impugned order and has mechanically rejected the proposal made by the respondent no.4 to the appointment of the

petitioner to the post of the peon.

19. The judgment of Aurangabad Bench of this Court in Writ Petition No.5547 of 2013 in case of St.Francis De Sales Education Society & Ors.

(supra) after adverting to various judgments of the Hon'ble Supreme Court and this Court has held that the minority institutions are entitled to

make appointment of teachers of its choice and such appointments cannot be vetoed until the time surplus teachers are accommodated/absorbed. The

principles of law laid down by the Aurangabad Bench of this Court in the said judgment would apply to the facts of this case.

20. The Division Bench of this Court in a judgment delivered on 19th January, 2021 in Writ Petition No.3525 of 2019 in case of Shrikrishna Bhikaji

Bondge vs. State of Maharashtra & Ors. has dealt with similar situation and held that the Government Resolutions which are issued subsequently to

the appointment of the petitioner are not applicable to the case of the petitioner. In that case also, the Government Resolution dated 12th February,

2015 was considered by this Court and also the fact that the petitioner was appointed prior to the issuance of the said Government Resolution. This

Court accordingly held that the said Government Resolution issued subsequent to the appointment of the petitioner was not applicable in the case of

that petitioner. The said judgment delivered by this Court in case of Shrikrishna Bhikaji Bondge (supra) applies to the facts of this case. The impugned

order passed by the respondent no.2 deserves to be quashed and set aside.

21. We, therefore, pass the following order :-

(i) Writ Petition No. 4273 of 2019 is made absolute in terms of prayer clause (A). The approval shall be granted by the respondent no.2 within four

weeks from the date of communication of this order by the petitioner without fail.

(ii) Writ Petition No. 4275 of 2019 is made absolute in terms of prayer clause (A). The approval shall be granted by the respondent no.2 within four

weeks from the date of communication of this order by the petitioner without fail.

(iii) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.