



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2888 OF 2023

1. Shaikh Rafe Moinuddin,
Age : 26 Years, Occu. : Service
Lab Assistant,
R/o House No. 1-1454, Opposite
to Jama Masjid, Buddhi Lane,
Aurangabad, Tq. & Dist. Aurangabad.
2. Furkhan Ahmed Khan,
Age : 32 Years, Occu. : Service
Lab Assistant,
R/o Shatabdi Nagar, New Rashidpura,
Aurangabad, Tq. & Dist. Aurangabad. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai.
2. The Director of Higher Education,
Central Building, 3, BJ Medical
Road, Agarkar Nagar,
Pune – 411 001.
3. The Joint Director of Higher Education,
Aurangabad Division, New Building,
Near to Deogiri College, Railway
Station Road, Aurangabad.
4. Rahber Educational Cultural and Welfare
Society, Afsar Manzil, Plot No. 9,
Rose Park Colony, Damdi Mahal,
Majnoo Hill Road, Aurangabad,
Through its President.

5. Sir Sayyad College of Arts,
Commerce and Science,
Roshan Gate, Aurangabad,
Through its Principal. .. Respondents

Shri S. S. Tope, Advocate for the Petitioners.
Mrs. P. J. Bharad, A.G.P. for the Respondent Nos. 1 to 3.
Shri Sayyed Tausef Yaseen, Advocate for the Respondent Nos. 4
and 5.

**CORAM : MANGESH S. PATIL AND
SHAILESH P. BRAHME, JJ.**

**CLOSED FOR JUDGMENT ON : 17.10.2024
JUDGMENT PRONOUNCED ON : 25.10.2024**

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard both the sides finally at the stage of admission.

2. The petitioners are challenging order dated 20.02.2023 passed by respondent No. 3/Joint Director of Education, Aurangabad Division, Aurangabad returning the proposals seeking approval to the appointments of the petitioners on the ground that no prior permission was secured before appointing them. The petitioners are also seeking direction to accord them approval and to disburse regular salary.

3. The petitioners were appointed as Laboratory Assistants on 20.12.2019 in respondent No. 5/college, which is an aided one. The proposals seeking approval to their appointments were forwarded by the management to respondent No. 3. Those were

turned down by the impugned communication.

4. The learned counsel Mr. Tope for the petitioners submits that respondent No. 4 is a minority institution which runs respondent No. 5/college. Considering the privilege available to it under Article 30 of the Constitution of India, it was not imperative to solicit either no objection or prior permission of the Education Department before proceeding with the recruitment. He further submits that considering staffing approval, sanctioned vacant posts were available. The ban for appointment of non teaching staff was lifted by Government Resolution dated 03rd November 2018. The interviews were conducted and the petitioners were selected. Their appointments were made after following due procedure of law and, therefore, their services ought to have been approved.

5. The learned counsel for the petitioners submits that impugned order is arbitrary and discriminatory. He tenders on record Government Resolution dated 17 May 1994 and Circular dated 30.01.2014 to contend that it is imperative for the Joint Director to grant approval, if due procedure is followed and there is no requirement to secure any no objection certificate. He relies on the **judgment dated 16 March 2023** of the coordinate bench in the matter of **Urdu Education Society Aurangabad, through its Member Abdul Muqet Abdul Waheed and another Vs. The State of Maharashtra and others in Writ Petition No. 2790 of 2023** and in the matter of Shital Kumar Patil Vs. State of Maharashtra reported in *2022 (1) Mh. L. J. 389*.

6. The learned Assistant Government Pleader Mrs. Bharad would repel the submissions of the petitioners. She relies on the affidavit in reply filed by respondent Nos. 1 to 3. She supports the impugned order and reiterates that no prior permission was secured while appointing the petitioners. She adverts our attention to Circular dated 26 August 2021 stipulating the modalities to be followed by the colleges affiliated to non agricultural universities while recruiting non teaching staff. As per Clause 2(c) of the Circular, it was mandatory for the respondent/management to secure prior permission. She would further submit that there is no statutory provision to grant exemption to the minority institutions/colleges from following due procedure of law in recruiting the staff. She would further point out the instructions issued by the respondent No. 3/Joint Director while granting staff approval vide letter dated 03.01.2019.

7. We have considered rival submissions of the parties.

8. Respondent No. 4/educational institution runs respondent No. 5/senior college. Respondent No. 4 is a minority institution, which is evident from order dated 24 May 2001, at Exhibit – B.

9. Only reason for rejecting the proposals of the petitioners is that no prior permission from the education department or no objection from it was solicited. The petitioners are claiming privilege for respondent Nos. 4 and 5 being minority institution.

Therefore a short question which is posed before us is as to whether there is any such privilege conferred on the respondent Nos. 4 and 5 under Article 30 of the Constitution of India and consequentially the condition of prior permission can be said to be dispensed with.

10. Respondent No. 3/Joint Director had granted staff approval vide letter dated 03.09.2019. While appointing the employees in respondent No. 5/college certain conditions were stipulated. Following are relevant conditions :

Sir Sayyed College of Arts, Commerce and Science, Aurangabad

Note – As per Government resolution dated 3/11/2018 while determining the permissibility of the posts, it is brought to your notice that the said sanctioned posts are not final as the review of the posts have not been finalized.

1. -----
2. -----

8. As per the prevailing policy of the Government for the sanctioned post, no recruitment shall be made without the prior permission of the Government. If any irregularity is found in the appointment to such sanctioned posts, the said matter will be invalidated in the determination of grant. The concerned management and college will be responsible for such irregular appointments.
9. The posts are sanctioned based on approve workload of eligible aid of the college. The separate proposal is necessary to be submitted for appointment on sanctioned posts as per the policy and procedure of Government and accordingly obtain 'No objection Certificate.'

11. The learned A. G. P. adverted our attention to circular dated 26 August 2021, which is in tune with conditions referred

to above. The relevant instruction is as follows :

STATE OF MAHARASHTRA
DEPARTMENT OF HIGHER AND TECHNICAL EDUCATION
GOVERNMENT CIRCULAR NO. MISC-2021/P.NO. 96/MAH.EDU.5
MADAM CAMA ROAD, HUTATMA RAJGURU CHOWK,
MATRALAYA EXTENSION BUILDING,
MUMBAI – 400 032
DATED 26 AUGUST, 2021

CIRCULAR

3. While carrying out the process of appointment to a granted post approved by the government, it is necessary to strictly consider the educational qualification, eligibility, experience, age condition and technical qualification etc. prescribed for that post.

b)

c) No objection certificate should be obtained from the concerned Divisional Joint Director, of the concerned department for the appointment as per the roster while carrying out the procedure of appointment to the aided post approved by the Government.

d) If there are existing several colleges of the same institution on aided/non -aided /permanent non-aided basis of the same subject and if a post is sanctioned on granted(aided) post as per fixed workload based on the number of students, no selection/recruitment process will be conducted by the college and aided/non aided/permanently non-aided employee should not be appointed/transferred on the aided post.

e) In case of such illegal appointment / transfer / if the concerned Divisional Joint Director distributes Government aid without checking the validity of that post in the same selection year, the concerned Divisional Joint Director will be held responsible and accordingly disciplinary action will be taken against him.

f) Even if the grant of salary of the employees has been distributed on the account of the college as per the salary sheet submitted by the college, the college should take the steps to deduct the salary from the grant of salary from the Government, only after obtaining the necessary approval from the

office of the Divisional Joint Director concerned.

g) However, in case of such irregularity, the appointed employees will not be entitled for the pay from the grant of salary of the Government under any circumstances. In such a situation, if the college pays the salary, the entire responsibility of the salary will remain with the college concerned.

12. From the condition No. 8 stipulated in the order of staff approval dated 03.01.2019 and condition in Clause No. 2(3) of circular dated 26 August 2021 referred to above, it is eloquent that prior permission of the Education Officer was mandatory. We do not find any condition in the order dated 03.01.2019 and circular dated 26.08.2021 granting any leeway to the management of the minority institution. Rather stringent conditions are imposed to follow the procedure laid down therein. It is rightly submitted by the learned A. G. P. that it was the duty of the respondent/management to secure prior permission so as to ensure that whether any suitable surplus candidate was available or not.

13. We have gone through the circular dated 30.01.2014. Following is the relevant portion :

**STATE OF MAHARASHTRA
DEPARTMENT OF HIGHER AND TECHNICAL EDUCATION
GOVERNMENT CIRCULAR NO. MISC-2021/P.NO.
96/MAH.EDU.5
MATRALAYA EXTENSION BUILDING,
MUMBAI – 400 032
DATED 30 JANUARY, 2014 CIRCULAR**

4. Considering the facts mentioned in the said preface, the Government is giving the following instructions.

(i) No objection certificate from Director, Higher Education or Divisional Joint Director, Higher Education is not required before filling vacancies in teaching cadre and non-teaching cadre approved by the government for non-agricultural universities and colleges run through them. However, after filling the said vacancies, before starting the Pay of the posts, if the respective university has done recruitment according to the prescribed rules, the report should be submitted to the Divisional Joint Director concerned and only after ensuring that the said post recruitment is done according to the prescribed rules, the grant of salary should be started/initiated to the Divisional Joint Director.

14. We have also considered Government Resolution dated 17 May 1994 and especially Clause 4 of Annexure A, which is as follows :

Accompanying letter/bract/Enclosure

**'A' Duties and Responsibilities of Divisional Education Joint Director
(Higher Education):**

1).....

2).....

4) For the approval of the permissibility of teaching and non-teaching posts ,the workload of the teachers and non-teaching staff in the non-government aided arts, commerce, science and education colleges should be examined.

15. The above circular dated 30.01.2014 and G. R. dated 17.05.1994 were issued prior to the staff approval dated 03.01.2019 issued by the Joint Director and Circular dated 26.08.2021. The circular dated 26.08.2021 being latest would prevail. The Government Resolution dated 17.05.1994 does not stipulate any instruction for granting approval to the appointment of members of teaching or non teaching staff of the

aided colleges. What is stipulated in clause 4 of Annexure A, is admissibility of the teaching and non teaching posts considering the work load. It is not an issue in the present matter. We are, therefore, unable to accept the submission of the learned counsel for the petitioners that it was obligatory for the Joint Director to grant approval to the appointments of the petitioners.

16. The minority institutions have privileges as per Article 29 and 30 of the Constitution of India, but those cannot be said to be absolute and unfettered. Those can be conferred by State or Central legislation. In the absence of any legislation, it is permissible to promulgate policy to confer the privilege. The petitioners are non teaching employees of the senior college, which is affiliated to non agricultural university. The service conditions are regulated by The Maharashtra Non-Agricultural Universities and affiliated Colleges Standard Code (Terms and Conditions of Service of non – teaching employees) Rules 1984. We do not find any provision in the standard code to confer any privilege to the minority institution in the matter of recruitment.

17. The legislature exercises its wisdom whenever it is required and possible for conferring privileges under Article 29 and 30 of the Constitution of India and for that purpose Sec. 3(2) of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Act, 1979 can be cited.

18. However, in the present matter, the learned counsel for the petitioners is unable to point out any statutory provision or the

policy conferring the privilege on the minority institution for dispensing with a procedure for recruitment or part thereof. It is not permissible to claim any exception from the procedure for the recruitment which is designed to ensure uniformity, transparency and equal opportunity. If the submissions of the petitioners are to be accepted, there would be possibility of misuse of conferment of minority status.

19. Reliance is placed on the judgment of the Division Bench of this Court in the matter of Shital Kumar Patil Vs. State of Maharashtra (supra) by the petitioners. In that matter recruitment of teacher in the school governed by provisions of the M. E. P. S. Act was under consideration. In that matter the Government had issued G. R. dated 13 July 2016 excluding the minority institutions from applicability of Sec. 5(1) of the M. E. P. S. Act. In the present matter, we are concerned with the recruitment of senior college. Neither M.E.P.S. Act, nor G. R. dated 13.07.2016 have any application. Facts in that case are different, hence the ratio is not applicable.

20. Further reference is made to the judgment of the coordinate bench in the matter of **Urdu Education Society Aurangabad, through its Member Abdul Muqeet Abdul Waheed and another Vs. The State of Maharashtra and others** (supra). In that matter the coordinate bench was dealing with recruitment of full time librarian. The management in that case had made repeated correspondence with the education department seeking prior permission for the recruitment of

librarian. The officers of the concerned department were sitting tight over the request of the management. Relying on the judgment of Nagpur bench in Writ Petition No. 1937 in the matter of *The Majilis-E-Madrassa-E-Safiya and another Vs. The State of Maharashtra and others*, the matter was decided in favour of the employee. The facts in the present case are totally different. In the present case the management has made no endeavour to solicit prior permission. The issue of the minority management privilege was not dealt with in that matter. The coordinate bench did not lay down any law. The petitioner cannot take benefit of the decision.

21. For the reasons stated above, we do not agree with the submissions advanced by the learned counsel for the petitioners. We find no merit in the petition.

22. The writ petition is dismissed. Rule is discharged.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb/Oct. 24