

MANU/MH/3094/2015

Equivalent Citation: 2016(3)ESC1271, 2015(6)MhLj399

IN THE HIGH COURT OF BOMBAY

W.P. No. 1030 of 2015

Decided On: 07.08.2015

Appellants: **Antonio DA Silva Technical High School and Junior College and Ors.**
Vs.

Respondent: **State of Maharashtra and Ors.**

Hon'ble Judges/Coram:

Anoop V. Mohta and V.L. Achliya, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: S.C. Naidu, T.R. Yadav, Rahul Tanwani and Aniketh Poojari instructed by C.R. Naidu and Co.

For Respondents/Defendant: I.C. Calcuttawala, A.G.P.

JUDGMENT

V.L. Achliya, J.

1. Rule. Rule made returnable forthwith. By consent of the parties, taken up for final disposal at the stage of admission itself. By this Petition, the Petitioners have challenged the order dated 21 February, 2015 passed by the Director of Vocational Education and Training i.e. Respondent No. 3 to refuse to, grant approval for appointment of Respondent Nos. 6 and 7. The order is mainly challenged on the ground that the authority concerned i.e. Respondent No. 3 has erroneously considered that Rule 9(7) to 9(10) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981' (for short, MEPS Rules), are also applicable in the matter of institution 'established, run and administered by non-aided, minority institutions/trusts, as that of the Petitioners: The order is also assailed on the ground that no proper opportunity of hearings was given to Petitioners so as to explain and convince the authority concerned that the said provisions of law are not applicable in the matter of appointments to be made to the Petitioner's institution. In support of the submissions advanced, the learned counsel appearing for the Petitioners has placed reliance on the decision of Full Bench of this Court in the case of St. Francis de Sales Education Society and Anr. vs. State of Maharashtra and Anr., MANU/MH/0815/2001 : 2002 (1) Bom. C.R. 650 wherein, this Court has ruled that the Sub-Rules (7) to (10) of Rule of MEPS Rules 1981 are not applicable in the matter of unaided minority institutions.

2. In this context, the learned counsel appearing for the Petitioners invited our attention to paragraph 36 of said judgment, wherein, the Full Bench of this Court in the case based on identical facts ruled as under:

"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

Maharashtra Employees of Private Schools (Conditions of Service) 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."

3. The learned counsel appearing for the Petitioners, has further invited our attention to the decision rendered by Division Bench of this Court in the case of Canossa Society, Mumbai vs. Commissioner, Social Welfare, Pune, MANU/MH/0572/2014 : 2014 (4) ABR 521 wherein, this Court has again reiterated that the provisions of reservation is not applicable in the matter of aided minority institutions. In this context, the learned counsel has referred the observations of this Court as recorded in paragraph No. 22, which reads thus:--

22..... "The State authorities cannot indirectly do an act which cannot directly be done. In other words, when the State has no authority to make appointment of teaching and non-teaching staff in respect of a minority institution, even if aid has been granted, such action of making an appointment cannot be taken by directing absorption of a surplus employee. This is nothing but, making appointment of a staff member in a minority institution. The law confers no such authority and power with the State Government to thrust an employee rendered surplus in other schools to be absorbed by a minority institution. Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules cannot be made applicable to appoint surplus staff in a minority institution unless the minority institution is consulted and concurs for such an appointment. We, therefore have no hesitation to conclude that the impugned order dated 17-6-2011 issued by respondent No. 1 is wholly arbitrary and illegal as the same infringes on the petitioner's right guaranteed under Article 30(1) of the Constitution of India."

On due consideration of the submissions advanced by the learned counsel appearing for the Petitioners in the light of aforesaid two decisions rendered by this Court, we are of the view that the impugned order is not sustainable in law and liable to be set aside. Since the legal position appears to be not brought to the notice of concerned authority, it is desirable to direct the Petitioner to appear before the concerned authority and submit the detailed representation supported by the precedents of law, so as to enable the authority concerned to consider the case in the light of settled position in law and take the decision afresh in respect of the proposal submitted by the Petitioners' institution, seeking approval in respect of the appointment of Respondent Nos. 6 and 7.

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

ORDER

- a) Impugned order dated 21 February, 2015, is quashed and set aside.
- b) The Petitioner is directed to appear before Respondent No. 3 on 24 August, 2015 and submit the representation in detail, in addition to representation, if any already submitted before the authority.
- c) The Petitioner is further permitted to submit the documents in support of the contentions that the provisions of Rules 9(7) to 9(10) of MEPS Rules, 1981 are not applicable in the matter of Petitioner's institution.

- d) Respondent No. 3 is directed to consider afresh the proposal already submitted in respect of grant of approval to appointment of Respondent Nos. 6 and 7 submitted by Petitioners in the light of observations recorded in foregoing paragraphs of this Judgment/order as well as, the documents, if any, to be filed by the Petitioners.
- e) The final decision in the matter be taken on or before 5 September, 2015.
- f) Writ Petition is disposed of with the aforesaid directions.
- g) Rule made absolute in above terms, with no order as to costs.

© Manupatra Information Solutions Pvt. Ltd.