

Bombay High Court

The Society For The Higher ... vs State Of Maharashtra And 2 Anr on 4 June, 2018

Bench: S.C. Dharmadhikari

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.395 OF 2014

1. The Society for the Higher Education of Women in India, a Society registered under the Societies Registration Act XXI of 1860 and a Public Trust registered under the Bombay Public Trust Act, 1950 having its office at Sophia Campus Bhulabhai Desai Road, Mumbai - 400 026.
2. Sophia College for Women through its Principal, Sophia Campus, Bhulabhai Desai Road, Mumbai - 400 026.

.... Petitioners

- Versus -

1. State of Maharashtra, Department of Higher Secondary Education, through the Govt. Pleader, PWD Building, Fort, Mumbai - 400 023.
2. Director of Vocational Education & Training, 3, Mahapalika Marg, Dhobi Talao, Mumbai - 400 001.
3. Joint Director Vocational Education & Training Regional Office, 49, Kherwadi, Bandra (E), Mumbai - 400 051.

.... Respondents

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Mr. S.C. Naidu i/by C.R. Naidu & Co. for the
Petitioners.

Ms Jyoti Chavan, Assistant Government Pleader,
for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : JUNE 04, 2018 ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.

):

1. By this writ petition under Article 226 of the Constitution of India, the petitioners have challenged orders passed by respondent No.3, Joint Director, Vocational Education and Training, Regional Office, Bandra (East), Mumbai, dated 13-11-2013, at Exhibits "Q" and "R" to the petition.

2. Since a short point is involved, we proceed to admit this petition and dispose it of finally by this order. Hence, rule. The respondents waive service. By consent of both sides, heard forthwith.

3. The petitioners before us are, firstly, a Society registered under the Societies Registration Act, 1860 as also a suresh 8-WPOJ-395.2014.doc Public Charitable Trust under the then Bombay Public Trust Act, 1950, now the Maharashtra Public Trust Act, 1950. The second petitioner is a College established by the first petitioner-Society. The State of Maharashtra enacted the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, "the MEPS Act") and also framed the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, "the MEPS Rules"). Since the appointments which are made by the petitioners fall within the purview of the Directorate of Vocational Education and Training, the Director and the Joint Director of this Department of the State have been made party respondents.

4. It is not necessary to refer to the history of establishment of Institutions by the petitioners for the simple reason that the petitioners desired to appoint a full-time teacher and a full-time instructor in the subject of Office Management. They made an application seeking permission to make these appointments. The petitioners relied upon Exhibit-K, page 86 of the paper-book, which is a communication dated 21-9-2012 suresh 8-WPOJ-395.2014.doc seeking permission. It is common ground that in this communication the petitioners referred to a No Objection Certificate which was already granted on 17-9-2010 but the appointments could not be made for the academic year 2011-12 as the proposals seeking approval to the appointments were rejected on 1-8-2012. Though the petitioners asserted that they are a minority institution, yet, it is common ground that they sought permission to fill the posts of teacher and instructor. Pursuant thereto, on 13-6-2013, page 87 of the paper-book, the petitioners were granted such a permission. That was subject to some conditions and Condition No.10 is relied upon by the respondents. That says that, in terms of the procedure prescribed by the State, if such an appointment has to be made, then an advertisement has to be inserted in newspapers with the largest circulation and thereafter clearances have to be obtained from the Office of the Employment Exchange, the State's authority, so as to promote the causes of Ex-Servicemen and Project Affected Persons. Pursuant to this conditional No Objection Certificate of 13-6-2013, the petitioners inserted an suresh 8-WPOJ-395.2014.doc advertisement in

the daily Indian Express and Loksatta, published in Mumbai. A duly constituted Selection Committee interviewed the eligible candidates and thereafter on 29-7-2013 appointment orders were issued to two persons, one of whom has resigned. On 30-7-2013, these two persons/appointees joined the services. A proposal dated 8-8-2013 was forwarded seeking approval to their appointments in which the petitioners mentioned all these details. On 8-8-2013 this proposal was forwarded pursuant to which on 13-9-2013 the concerned Directorate invited the petitioners for a personal hearing. At this personal hearing, certain issues and facets of the controversy were raised, particularly regarding compliance with the terms and conditions of a Government Resolution dated 6-2-2012. After inviting the attention of the Management/petitioners before us to this Government Resolution, it was held that there is no compliance made with this Government Resolution and therefore no appointment, and particularly of the two persons, can be approved. It is this order which is challenged in this writ petition on several grounds.

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5. It is further undisputed before us that this writ petition was placed before a Division Bench of this Court on the earlier occasion. That Division Bench, upon hearing both sides, passed the following order:-

"In spite of order dated 20 February 2014, Respondent Nos.1 to 3 not filed reply, though directed specifically with intent to dispose of the matter finally. Therefore, on the basis of uncontroverted averments, at this stage, we are inclined to direct the Respondents to consider the Application as prayed in terms of prayer clause (e), as early as possible, preferably within two weeks from the receipt of copy of this order.

2. Stand over to 1 October 2014, for further orders.

3. The parties to act on an authenticated copy of this order."

6. It is common ground that after this order was passed in the presence of both sides, on 29-9-2014 the appointments were approved by the Director but subject to the final orders in the writ petition. It is also not disputed before us that the order dated 10-9-2014 merely directs consideration of the applications made by the petitioners and that is how prayer clause (e) would read. That only seeks a direction to the first respondent to process the applications for approval on the basis of the suresh 8-WPOJ-395.2014.doc provisions of the MEPS Act and the Rules framed thereunder as applicable to minority institutions. Far from directing grant of approval, all that the order requires the Directorate and the State is to process the applications for approval in accordance with law. However, acting in furtherance of this order, the appointments have been now approved, as is clear from the order of 29-9-2014. It is also common ground that one of the persons whose appointment was approved has since resigned.

7. Ms Chavan, appearing for the respondents, would still maintain that we must peruse the affidavit in reply filed on behalf of the Joint Director, Vocational Education and Training, in which it is asserted that the appointments have been made in contravention of the condition of handing over

copies of the requisition seeking to appoint persons to the District Employment Exchange/University Employment and Self- Employment Guidance Centre/Project Officer, Integrated Tribal Development, etc.. If no list of eligible candidates from these authorities is received, then a certificate of non-availability of such list must be submitted. That is how this condition was suresh 8-WPOJ-395.2014.doc binding on the petitioners and that having not been complied with and this despite the order of 29-9-2014, the appointments cannot be approved.

8. We are unable to accept this contention in the facts and circumstances of the present case and for more than one reason. In the initial order refusing approval as also the present order of 29-9-2014, it is categorically observed by the Joint Director that both appointees fulfil the terms and conditions on which the appointments can be made and prescribed by the MEPS Act and the MEPS Rules. Thus, the substantive law does not frown upon their appointments nor does the said law prohibit the Management from appointing the two persons concerned. Particularly reliance is placed on another Government Resolution dated 12-9-2017 which is issued during the pendency of the writ petition. That is on the subject of all the minority institutions and appointments made by them of teaching and non-teaching staff. Whether these appointments have to be approved and with what terms and conditions is the subject-matter of this Government Resolution. There is an suresh 8-WPOJ-395.2014.doc additional affidavit filed on behalf of the said Director in which as well there is no denial of the fact that the appointments have been approved but during the pendency of the petition. It is stated that the appointments have been approved subject to final orders in the writ petition.

9. Once we have clarified that there was no direction to approve the appointments but to merely process the applications during the pendency of the writ petition, then, we do not see how any academic issue and that too of non-compliance of Condition No.11 of the Government Resolution/No Objection Certificate is now open for consideration. At best that was a forwarding of certain requisition of the Management to the Offices of the Employment Exchange, etc., referred above. That is to ensure that those deserving jobless persons, awaiting employment opportunities, should be accommodated as far as possible even in minority institutions against such posts. The Management, in the present case, has not flouted the law completely, as is now alleged. The Management has complied with the directions of issuing an advertisement, calling for suresh 8-WPOJ-395.2014.doc applications from deserving candidates, constituted a Selection Committee, holding interviews and ranking candidates as per their merits. After all this, the two persons chosen for appointments were issued appointment letters and approval was sought to their appointments so that financial assistance can be obtained to pay their salaries and other emoluments. At that stage, what was raised was an issue of non-forwarding of requisitions to the Employment Exchange, etc.. However, in the facts of this case when we found that the appointments do not contravene the provisions of the substantive law, namely, the MEPS Act and the MEPS Rules, then, whether any alleged contravention and that too after issuance of an advertisement in two leading newspapers would vitiate the appointments, does not merit any consideration. This is not a case where we should disturb the appointments now and after a period of nearly three- and-half years. More so, when one of the appointees, who duly worked, has since resigned. The other appointee has worked for nearly five years. In such circumstances and the facts peculiar to this case and by keeping the issue open for being decided in a suresh 8-WPOJ-395.2014.doc more appropriate case, we confirm

the order dated 29-9-2014, passed during the pendency of this petition. We clarify that we have not expressed any opinion on the applicability of Condition No.11 of the No Objection Certificate or its any alleged violation. That issue can be decided in a more appropriate and deserving case.

10. Needless to clarify that the appointments of the persons concerned stand approved from 30-7-2013.

11. Rule is made absolute in the above terms with no order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)