

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1860 OF 2009

St. Xaviers Education Trust,
Registered Office at: 15-16,
Sneha Sadan Road, Nagar Road No.10,
Daulat Nagar, Borivali (W),
Mumbai-400 066
and another.

...PETITIONERS.

VERSUS

1) The Union of India,
Through Secretary,
Ministry of Human Resources
Development, Govt. of India,
New Delhi, and others.

...RESPONDENTS.

...

Shri.Nitin Pradhan, Sr. Counsel h/f. Shri. S.S.
Halkude Advocate for Petitioners.
Shri. Alok Sharma, Standing Counsel for
Respondent No.1.
Shri.V.B. Ghatge, A.G.P. for Respondent
Nos. 2 to 4.

...

WITH

WRIT PETITION NO.4000 OF 2008

Vilas s/o Kishanrao Wahule,
R/o-House No.5-17-33/P, Sansar Nagar,
Kranti chowk Police Station Road,
Aurangabad.

...PETITIONER.

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai 400 032
and others.

...RESPONDENTS.

WITH

WRIT PETITION NO.4001 OF 2008

Ravikant s/o Lawrance Arsud,
R/o-Deepak Niwas, Shantipura,
Chawni, Aurangabad.

...PETITIONER.

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai 400 032
and others.

...RESPONDENTS.

WITH

WRIT PETITION NO.4002 OF 2008

Umesh s/o Shriram Medhe,
R/o-15, Jaivishwabharti Colony,
Siddhivinayak Apartment,
Garkheda Parisar, Aurangabad.

...PETITIONER.

VERSUS

1) The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai 400 032
and others.

...RESPONDENTS.

WITH

WRIT PETITION NO.4003 OF 2008

Balwant s/o Uttamrao Thokre,
R/o-Plot No.15, C/o-Pinglikar,
Venkatesh Colony, Garkheda Parisar,
Aurangabad.

...PETITIONER.

VERSUS

1) The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai 400 032
and others.

...RESPONDENTS.

WITH

WRIT PETITION NO.4004 OF 2008

Sayed Zahir Abdul Khalique,
R/o: C/o-S.D. Shaikh (PSI),
Room No.100, Police Lane,
Kranti chowk, Aurangabad.

...PETITIONER.

VERSUS

1) The State of Maharashtra,
Through its Secretary,
School and Education Department,
Mantralaya, Mumbai 400 032 and others.

...RESPONDENTS.

...
Shri.Sanjay Kolhare Advocate for Petitioners
in Writ Petition Nos.4000/ 2008, 4001/2008,
4002/2008, 4003/2008, and 4004/2008
Shri. V.B. Ghatge, A.G.P. for Respondent
Nos. 1 and 2 in all these Petitions.

...

**CORAM: NARESH H. PATIL AND
K.K. TATED, JJ.**

DATE : 20TH JULY, 2010.

PER COURT :

1. Heard learned counsel for the parties.
2. Shri. Nitin Pradhan, learned counsel appearing for the Petitioner had referred to the relevant paragraphs in the following Judgments:

**(1) T.M.A. Pai Foundation and
others vs. State of Karnataka
and others, (2002) 8 Supreme
Court Cases, 481,**

**(2) Islamic Academy of Education
and another vs. State of**

**Karnataka and others, (2003) 6
Supreme Court Cases, 697,**

**(3) P.A. Inamdar and others. vs.
State of Maharashtra and others,
(2005) 6 Supreme Court Cases,
537.**

3. In the submissions of the learned counsel Shri Pradhan, the State Government by this time ought to have framed rules/regulations in respect of regulating conditions of service of employees including qualification, their appointment, disciplinary action, fee structure to be made applicable to the primary and secondary school. The State ought to have framed rules/regulations in this regard applicable to unaided private schools, minority schools and minority aided schools in the State of Maharashtra. The learned counsel highlighted his concern that though in view of the pronouncement of the Apex Court in the light of the Judgments cited supra, the State Authorities are regulating their control on the

unaided private schools by imposing conditions as stipulated under the provisions of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 and the rules made thereunder. The counsel submits that the action of the State to implement and impose the provisions of the Act of 1977 and the rules made thereunder, is violative of the mandate of the Judgments of the Apex Court cited supra. The counsel submits that the State though under the Judgments cited supra, would be entitled to frame rules/regulations having reasonable minimal regulatory control, the State's inaction in this regard is detrimental to the educational world, more particularly, primary and secondary education in the State.

4. By an Order dated 12th July, 2010, we directed the Under Secretary/Deputy Secretary, School Education Department, Mantralaya, Mumbai to remain present before this Court. Consequent to our Order, the A.G.P. submits that, Shri.

Rajshekhar Patil, Under Secretary, School Education Department, is present in the Court. Shri. Rajshekhar Patil has filed affidavit in reply too. In para 4 and 5 of the reply, the deponent contends that:

"(4) I say and submit that while T.M.A. Pai Judgment, the Hon'ble Supreme Court has ruled that the State Government is required to frame regulation with respect to the condition of the service for the teaching and non-teaching staff without interfering the overall administrative control of the management over the staff. Till date the said regulation have not been formulated by the State Government. I further say that contentions raised by the Petitioner in the present petition that the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 where rules are framed in the year

1981, which is much prior to the TMA Pai Foundation. Thus, in view of the law declared and the directions issued by the Hon'ble Supreme Court, the State Government is required to frame regulations relating to the employees of minority institution and framing the Tribunals.

(5) I say and submit that the aforesaid writ petition was listed for hearing before this Hon'ble High Court, this Hon'ble Court expressed that "as to what steps have been taken by the State Government after the judgment of TMA Pail Foundation as far as framing the regulations and rules for the employees of minority framing the Tribunals." In this respect, I say and submit that this department is ready and willing to frame rules and regulation relating to the employees of minority institutions, with consultation

of the various departments,
i.e. Minority Development
Department, General
Administration Department,
Finance Department, and Law and
Judiciary Department."

5. We have gone through, with the assistance of the learned counsel Shri. Pradhan, at this stage, some of the observations of the Apex Court in the Judgments cited supra. Prima facie we are of the view that the contentions raised by Shri. Pradhan bear substance and required to be looked into seriously by the State at the earliest.

6. In the light of the Judgments of the Apex Court, cited supra, we are of the prima facie view that the State Government ought to have framed rules/regulations long back in respect of the issues like conditions of service of the employees, fees to be charged from the students, qualification of the employees, their pay-scales etc. applicable to the unaided schools, unaided

minority schools and aided minority schools. Considering the vital importance of maintainance of high standards in primary and secondary education in the State, we direct the State Government to frame rules/regulations in the light of the scheme and observations made by the Apex Court in the Judgments cited supra, as expeditiously as possible. It is high time that the State takes effective steps in that regard.

7. We direct the State of Maharashtra, particularly, Ministry of School Education Department and the Principal Secretary, Law and Judiciary Department, to take effective steps in framing appropriate rules and regulations. The School Education Ministry is entitled to take whatever assistance required for the purposes of framing policy, from other Ministries too.

8. We grant Five Weeks time for the State to submit progress report in respect of compliance of this Order, by way of affidavit in reply. Stand

Over to 24th August, 2010 at 10.30 a.m.

9. Ad interim relief granted earlier, to continue till the next date.

. Authenticated copy of this order be provided to the requesting parties.

[K.K. TATED, J.]
asb/JULY10/wp1860.09

[NARESH H. PATIL, J.]