



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2512 OF 2026

Mallikarjun Basaningappa Madgyal (After Adoption ...Petitioners
Mallikarjun Gurappa Madgyal) And Ors.

Versus

The State Of Maharashtra Thr. Secretary School ...Respondents
Education And Sports Dept. And Ors.

WITH

WRIT PETITION NO. 2498 OF 2026

Shital Laxman Kamble (After Marriage Shital Vivek ...Petitioners
Dhanavade) And Ors.

Versus

The State Of Maharashtra Thr. Secretary School ...Respondents
Education And Sports Dept. And Ors.

Mr. Prashant Bhavake a/w Adv. Shivaa Navanne, for the Petitioner.
Ms. Tejas Kapre, AGP for the Respondent-State.

**Coram : SHARMILA U. DESHMUKH &
NEERAJ P. DHOTE, JJ.**

Date : SEPTEMBER 02, 2026

P. C. :

1. As common issues were raised, both the Petitions, with consent, were heard together and are being disposed of by this common judgment.
2. By this Petition, the challenge is to the order dated 1st September, 2025, by which the approval to the Petitioner's appointment in the minority institution came to be rejected. The case pleaded in the Petition is that due to transfer and promotion of an assistant teacher to

the post of headmaster from Petitioner No. 3-Secondary School to another school run by Petitioner No. 2-Educational Institution on 31st August, 2018, a vacancy was created for the post of Shikshan Sevak. The Petitioner No. 2 published an advertisement in the daily newspaper Satyadoot dated 15th June, 2019, inviting application for recruitment to the post of Shikshan Sevak, to which the Petitioner No. 1 applied and was selected by the management. The managing committee passed a resolution in the meeting held on 30th June, 2019, appointing the Petitioner No. 1 on the aided post of Shikshan Sevak, and appointment order of the same date was issued. After the appointment, the headmaster of Petitioner No. 3-school submitted a proposal on 7th November, 2023, which has been rejected by the impugned order. Hence, the present Petition.

3. Mr. Bhavake, learned counsel for the Petitioner would submit that the rejection has taken place on two grounds, firstly, that no permission for advertisement was taken, and secondly, that it was not verified whether there is any surplus teacher for absorption, before the Petitioner was appointed. He would further submit that as it is not disputed that Petitioner Nos. 2 and 3 are minority institutions, the settled position in law is that sending of surplus teacher for being accommodated in the minority institution and mandate requiring the management of minority institution to absorb such teacher has been

held to be violative of the rights guaranteed to the minority institutions under Article 30(1) of the Constitution of India. He submits that therefore, the ground of the non-absorption of the surplus teacher is unsustainable. As regards the absence of any permission before issuing advertisement is concerned, he would place reliance on the decision of Hon'ble Division Bench of this Court in the case of ***Parbhani Education Society vs State of Maharashtra And Another***¹, and would point out that identical submissions were raised as regards the permission not being obtained in respect of the minority institution, which has been considered by the Hon'ble Division Bench, and as the settled position was that the absorption of the surplus teacher in the minority institution is not applicable, the said submission was not considered. He submits that in the present case, for the purpose of appointing the Petitioner, the advertisement was duly issued and the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "**MEPS Act**") and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "**MEPS Rules**") do not prescribe that permission is required to be taken before issuance of the advertisement, and therefore, appointment is in accordance with law.

4. *Per contra*, learned AGP would submit that under Section 3 of the

¹ WP No. 3707 of 2013 decided on 02/09/2013 by Aurangabad High Court

MEPS Act, the provisions of the Act are not applicable only to headmaster of a minority school, and other persons not exceeding three who are employed in such schools, and whose names are notified. She would further submit that under Section 4 of the MEPS Act, the State Government is empowered to make rules providing for the minimum qualifications for recruitment, including its procedure, and in present case, by virtue of Government Resolution ("**GR**") dated 6th February, 2012, the procedure has been prescribed of taking prior approval before issuance of the advertisement. She would further submit that under the proviso to Section 5 of the MEPS Act, the minority institution is also required to ascertain whether any suitable person is available on the list of surplus persons for absorption, and in event of such person being available, the management shall appoint that person in such vacancy. She would further rely on Rule 9(2A) of MEPS Rules to support the submission that prior permission of the Education Officer is required before the vacancies are advertised.

5. We have considered the submissions and perused the record.

6. The rejection of the Petitioner's approval is premised on two grounds, firstly, non-compliance of the GR dated 6th February, 2012 for not taking prior permission for issuance of advertisement, and secondly on the ground of non-verification of availability of surplus teacher before appointing the Petitioner. Dealing firstly with the second

ground, which has been raised as regards the absorption of the surplus teacher, the said issue is no longer *res integra* and has been settled by various decisions of this Court. In the case of ***Momin Education Society And Another vs Education Officer (Primary), Zilla Parishad, Nanded And Others***², this Court held in paragraph 13 and 14 as under :

"13. Considering the law laid down by the Supreme Court in the judgments cited supra, it is clear that the law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution would be void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person, who is not selected by it as a teacher.

14. The directions issued by the Grievance Committee to the Educational Officer in respect of sending surplus teachers for being accommodated by the minority institution and mandate requiring the managements of minority institutions to absorb such teachers and prescription of consequences for breach of the directives issued by the Grievance Committee, is beyond the scope of interference in view of the rights guaranteed to the minority institutions under Article 30(1) of the Constitution."

7. The same view has been taken by the Hon'ble Division Bench in the case of ***Canossa Society, Canossa Convent Mahakali Caves Road And Another vs Commissioner, Social Welfare, Directorate,***

² 2012(6) Mh.L.J]

Government of Maharashtra And Others³. The position in law is settled that the mandate of sending surplus teacher for being accommodated by the minority institution, which is required to absorb such teacher is violative of rights guaranteed to the minority institution under Article 30(1) of the Constitution of India.

8. The Hon'ble Apex Court in various decisions have made it clear that the law interfering with the minority institutions choice of qualified teacher or its disciplinary control over teachers and other members of the staff of the institution would be void as being violative of Article 30(1). The rights which are conferred upon the minority institution by virtue of Article 30(1) of the Constitution of India have therefore been preserved by the judicial pronouncements of the Hon'ble Apex Court as well as by various decisions of this Court. In view of the settled position in law, the rejection of the Petitioner's appointment on the ground of non-absorption of the surplus teacher is clearly unsustainable.

9. Dealing with the first ground as regards the prior permission for advertisement not being taken, the provisions of Rule 9 of MEPS Rules provides for appointment of the staff and Sub-Rule 2A of Rule 9 provides that the management of the private school shall advertise the vacancies. The Rules do not provide that prior permission of the Education Officer is required to be taken before the advertisement is

3 2014 SCC OnLine Bom 536

issued. In the present case, there is no allegation that the advertisement has not been issued, and the rejection is on the ground that the prior permission of the Education Officer has not been taken. Though reliance is sought to be placed on Section 4 of the MEPS Act by learned AGP in order to contend that the State Government is empowered to frame Rules, the said submission overlooks Section 16 of the MEPS Act, which provides the procedure for framing of Rules in exercise of powers under the MEPS Act.

10. Section 16 provides that the State Government, may by notification in official gazette make Rules for carrying out the purposes of the Act, and sub-section 2 of Section 16 provides that in particular and without prejudice to the generality of the powers, the Rules may provide for minimum qualification of recruitment of employees of private school, including its procedure, which is the expression used in Section 4 of the MEPS Act. It is in exercise of powers conferred by Section 16 of the MEPS Act that the MEPS Rules have been framed and Rule 9 of the said Rule does not provide for prior permission of the Education Officer before issuance of advertisement.

The Government circular cannot take place of delegated legislation and cannot override the provisions of the Act. The whole purpose of obtaining prior permission before issuance of the advertisement from the Education Officer is in order to ensure that the management

absorbs surplus teacher before making appointment to a vacant post or carrying out fresh recruitment. In the present case, as the settled position in law is that absorption of surplus teacher is not a mandate applicable to the minority institutions in view of Article 30(1) of the Constitution of India, the requirement, even if imposed by the government circular, of seeking prior permission is clearly unsustainable. The government circular of 6th February, 2012 cannot override the provisions of the Act and Rules and the well settled judicial pronouncements of this Court.

11. In light of the above discussion, the impugned order dated 1st September, 2025 is clearly unsustainable and is hereby quashed and set aside. The Education Officer is directed to grant approval to the Petitioner's appointment within a period of two weeks from today. Respondent No. 4, Deputy Director of Education, to include the name of Petitioner in Shalarth Pranali and issue Shalarth ID within a period of two weeks thereafter. As the appointment is of the year 2019 and the proposal is submitted in the year 2023, the arrears of grant-in-aid salary, if any, shall be released from 2023 within a period of three weeks thereafter.

[NEERAJ P. DHOTE, J.]

[SHARMILA U. DESHMUKH, J.]