

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

WRIT PETITION NO. 4638 OF 2015

1. Vidyamurt Shikshan Prasarak Mandal,
Satara, Tq. & Dist. Aurangabad,
Through its Secretary,
Shakil Khan Patel,
Age -43 Years, Occu. : Business,
R/o Shahanagar, Satara,
Aurangabad.
 2. Shaikh Wasim Mansoor,
Age-25 Years, Occu. : Service,
R/o Waluj, Tq. Gangapur,
District-Aurangabad. .. Petitioners
- Versus**
1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Government of Maharashtra,
Mantralaya, Mumbai-32.
 2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad. .. Respondents

Shri C. K. Shinde, Advocate for Petitioners.

Shri K. G. Patil, Addl.G.P. for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATE : 25TH JUNE, 2015.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. Rule. Rule made returnable forthwith. With the consent of

parties, taken up for final hearing.

2. Mr. Shinde, the learned counsel for petitioners submits that, the proposal seeking approval to the appointment of the petitioner No. 2 is rejected only on the ground that, no permission was taken prior to appointment and there are surplus teachers available, who are required to be absorbed. The learned counsel submits that, the Government Resolution dated 02nd May, 2012 is not applicable to the minority institute. For the said purpose the learned counsel relies on the judgment of the Division Bench of this Court in Writ Petition No. 5632 of 2013 dated 07th October, 2013. The learned counsel submits that, even as per the M. E. P. S. Act and Rules minority institution is entitled to appoint three teachers and the petitioner No. 2 is one of those three teachers and on that count the approval could not have been rejected.

3. Mr. Patil, the learned Additional Government Pleader submits that, there are large number of surplus teachers who are required to be accommodated. In the light of that, the petitioner No. 1 could not have appointed new teachers. Even permission was not sought before appointment of the petitioner No. 2. The Education Officer has rightly passed the order.

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. It is not disputed that, the respondents at no material point of time had directed the petitioner No. 1 to absorb any surplus teacher. The judgment dated 07th October, 2013 delivered in Writ Petition No. 5632 of 2013 would be applicable in the present case, wherein it is stated that, the Government Resolution dated 02nd May, 2012 would not squarely apply to the petitioners.

6. Three teachers are notified by the petitioner No. 1, the petitioner No. 2 is one of them. The minority institution is entitled to appoint three teachers of its choice. Considering the above, the impugned order cannot be sustained.

7. The impugned order is quashed and set aside. The respondent No. 02/Education Officer (Secondary) shall consider the proposal seeking approval to the appointment of the petitioner No. 2 afresh and shall not reject it on the ground that surplus teachers were available. So also shall not reject it on the ground that prior permission was not obtained.

Rule accordingly is made partly absolute in above terms.
No costs.

Sd/-
[V. K. JADHAV, J.]

Sd/-
[S. V. GANGAPURWALA, J.]