

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

WRIT PETITION NO. 6265 OF 2015

WITH

WRIT PETITION NO.5919/2015

1. Sardar Shikshan Sanstha
Deopur Dhule, Taluka & Dist. Dhule,
through President.

2. L.M. Sardar Urdu Primary School
Deopur Dhule, Taluka & Dist. Dhule
through Head Master.

..PETITIONERS.

VERSUS

1. The State of Maharashtra
through Secretary,
School Education Department,
Mantralaya,
Mumbai -32.

2. Deputy Director of Education,
Nashik Region, Nashik.

3. Education Officer (Primary),
Zilla Parishad, Dhule,
Tal. & Dist. Dhule.

..RESPONDENTS.

...

Advocate for Petitioners : Mr.Brahme Shailesh P.

AGP for Respondents/State: Mr.S.K. Kadam.

Advocate for Respondent 3 : Mr.R.S. Pawar.

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WITH

WRIT PETITION NO.5919/2015

1. Anjuman Faroge-E-Taleem,

Azad Nagar, Dhule,
Tal. & Dist. Dhule,
through Secretary.

2. National Urdu Primary School,
Dhule, Taluka & Dist. Dhule
through Head Master.

..PETITIONERS.

VERSUS

1. The State of Maharashtra
through Secretary,
School Education Department,
Mantralaya,
Mumbai -32.

2. Deputy Director of Education,
Nashik Region, Nashik.

3. Education Officer (Primary),
Zilla Parishad, Dhule,
Tal. & Dist. Dhule.

..RESPONDENTS.

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Advocate for Petitioners : Mr.Brahme Shailesh P.
AGP for Respondents/State: Mr.S.K. Kadam.
Advocate for Respondent 3 : Mr.R.S. Pawar.
...

CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: OCTOBER 21, 2015

ORAL JUDGMENT : (PER SHINDE, J)

1. Rule. Rule is made returnable forthwith. By consent
of the parties, taken up for final hearing.

2. These petitions take exception to the direction of the respondent – 3 Education Officer (Primary), Zilla Parishad, Dhule to absorb the surplus teachers in the petitioners – institutions. It is submission of the learned Counsel for the petitioners that since the petitioner No.1 is a minority institution, and in view of the judgment of the Division Bench of this Court in case of **Canossa Society & anr vs. Commissioner & ors.**¹, the respondent – Education Officer should not have asked the petitioner No.1 to absorb the surplus teachers.

3. On the other hand, learned Counsel for the respondent No.3 submits that the surplus teachers are also from minority institutions and keeping in view the said fact, respondent No.3 – Education Officer directed the petitioner No.1 to absorb those surplus teachers in the schools run by the petitioners.

4. We have heard learned Counsel for the petitioners and learned Counsel for respondent No.3. The issue / point raised in these petitions is no longer *res integra*. In similar

1 2014(3) Bom.C.R. 556;

fact situation, the Division Bench of this Court in case of ***Canossa Society & anr*** (supra), in paragraphs 19 to 22 observed, thus:

“19. In a judgment of the Full Bench of this Court in the case of St. Francis De Sales Education Society, Nagpur & another vs State of Maharashtra & another 2001 (3) Mh.L.J. 261 in dealing with an issue falling under the Maharashtra Employees of Private Schools (Conditions of Service) Act and rules framed thereunder, it has been held that a minority institution cannot be directed to appoint teachers of other staff on the basis of reservation policy followed by the State as evidenced in rule 9 (7) to Rule 9 (10) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. It has been held that the fundamental right guaranteed under Article 30 of the Constitution of India are absolute and not subject to reasonable restrictions as under Article 19. It was held that a minority institution cannot be directed to appoint teachers or other staff on the basis of reservation policy followed by the State.

20. The similar issue as raised in the present petition also fell for consideration of the Division Bench of the Gujarat High Court in the case of Hajinural Hasan Master Charitable Trust vs State of Gujarat in Letters Patent Appeal No.1225 of 2003. Considering the law laid down by the Supreme Court

in regard to the rights of a minority institution. The Division Bench of the Gujarat High Court in its judgment dated 15.1.2013 held that only because aid has been granted to a minority educational institution it would not take away the its minority character of a minority institution and its rights to make appointment of the teaching and non- teaching staff. A similar view has been taken by the Division bench of this Court of Aurangabad bench in Writ Petition No.3707 of 2013.

21. Adverting to the settled legal position as discussed herein above it becomes clear that a minority educational institution has a fundamental right to establish and administer an educational institution of its choice. This right encompasses several facets one of them being a right to appoint teaching and non-teaching staff. It is held that the right to appoint teaching and non-teaching staff is an integral part of a right conferred under Article 30 of the Constitution of India namely to administer a minority educational institution. Merely because aid has been granted to a minority institution it would not loose its character as a minority institution and cease to enjoy constitutional guarantee conferred on it by virtue of the provisions of Article 30 of the Constitution of India. The grant of aid would not convert a minority institution into a departmentally conducted school or a department of the Government

so that its autonomy of administration of an educational institution of its choice conferred under Article 30 of the Constitution of India would stand restricted. The State would be within its right to impose only such restrictions so as to maintain standards of education and to check any kind of maladministration. However, the autonomy in regard to day to day administration of the minority institution cannot be taken away by imposing any condition or restrictions which would take away the minority character of a minority institution and infringe the Constitutional guarantee conferred by Article 30 of the Constitution of India.

22. There is merit in the submissions of the learned counsel for the petitioners. In the present case by the impugned directive dated 17.6.2011 the respondent nos. 1 to 3 have foisted upon the petitioners the appointment of the respondent no.4 who is rendered a surplus employee in view of the closure of a school situate in Nanded District. Admittedly, there is no consultation with petitioner no.2-school before such appointment is thrust upon the petitioner no.2-school. The respondent-authorities have also failed to take into consideration the fact that there is no vacancy as urged by the petitioners before the authorities, in view of the appointment of Mrs.Jyotsna Thorat who came to be appointed on 30.9.2006 and whose appointment was approved on 18.8.2007.

Consequence of the impugned order issued by the respondent no.1 is that the approved appointment of Mrs.Jyotsna Thorat as validly done by the petitioner No.2-institution in exercise of its right to administer a minority educational institution is being interfered, coupled with a consequence that such valid appointment would be required to be cancelled. In our considered opinion it is impermissible for respondent nos. 1 to 3 to resort to such an action of foisting appointment of respondent no.4 on the petitioner no.1-institution as it directly infringes the fundamental right guaranteed under Article 30(1) of the Constitution of India conferred on the petitioner no.2 institution to administer and establish petitioner no.2 school. 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 25 A of the Maharashtra Employees of Private Schools (Conditions of Services) 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.”

5. In that view of the matter, since the issue raised in this petition is clearly answered by the authoritative pronouncement of the Division Bench of this Court in case of **Canossa Society & anr** (supra), the directions of the respondent No.3 – Education Officer (Primary), Zilla Parishad, Dhule deserve to be set aside.

6. Accordingly, the letter 2nd May, 2015 issued by the respondent No.3 – Education Officer (Primary), Zilla Parishad, Dhule stands quashed and set aside. As a consequence of quashing and setting aside the impugned communication dated 2nd May, 2015, it is needless to observe that, the subsequent order of the respondent No.3 canceling one sanctioned post of the Assistant Teacher in the petitioner No.1 Institution also stands quashed and set

aside. It is needless to observe further that, the proposals of the petitioners for approval of the appointments to the post of Assistant Teacher pending with the respondents shall be decided expeditiously.

Both the petitions are allowed to above extent. Rule is made absolute accordingly, with no order as to costs.

(A.M. BADAR, J.)

(S.S. SHINDE, J.)

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