

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9085 OF 2014

CRESCENT EDUCATION SOCIETY, AURANGABAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Mr. S. W. Munde, Advocate for petitioner
Mr. K.G. Patil, AGP for respondent No. 1 & 2
Mr. Dilip Bankar Patil, Advocate for respondent Nos. 3 & 4
Mr. S. S. Kazi, Advocate for respondent No. 5

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

DATED : 22nd JUNE, 2015

PER COURT :

1. The order dated 15.05.2014 directing the petitioner to absorb respondent no. 5 is assailed.
2. The contention of the petitioner is that respondent no. 5 was appointed on non-grant post. The approval was also granted on non-grant post. Even this Court, in the year 2008, had directed absorption of respondent no. 5 on non-grant post. In Civil Application No. 3244/2013 filed in writ petition no. 5105 of 2009, this Court, vide dated 29.04.2014, had directed respondent No. 4 therein to consider the case of the said petitioner for the vacancy as per the relevant Rules. Pursuant thereto, the impugned order dated 15.05.2014 is

passed. According to the petitioner, there are two surplus Assistant Teachers even today and respondent no. 5 cannot be accommodated.

3. Mr. Kazi, the learned counsel submits that another teacher, who was appointed alongwith respondent no. 5 on non-grant post is absorbed and is being paid full salary. The learned counsel submits that earlier, on non-grant division, a teacher is appointed and subsequently it gets grant. The learned counsel submits that even one of the Assistant Teachers Smt. Humera Yasmeen had given a letter dated 22.09.2014 saying that she may be absorbed in any other institution where vacancy exists. That is why the Education Officer has passed order directing the petitioner to absorb respondent no. 5. The learned counsel submits that the management is deliberately denying the right of the present respondent No. 5.

4. In fact, this Court had directed the Education Officer to place on record the seniority list of the surplus teachers.

5. Mr. Bankar Patil, the learned counsel appears for the Education Officer. The Education Officer is also present. Instead of resolving the situation, the affidavit of the respondent Education

Officer is precipitating the chaos that is created. The impugned order states that respondent no. 5 shall be absorbed by the petitioner. Whereas, if the affidavit dated 30.03.2015 filed by the Education Officer is perused, it states that in the academic year 2012-2013 one assistant teacher was surplus and in the academic year 2013-14 two assistant teachers were surplus. If the affidavit in reply of the Education Officer is to be believed, then one fails to understand on what basis the impugned order has been passed. The Education officer is not in a position to clarify the exact situation. It is submitted that a person namely Smt. Khan Tanvir Anjum, appointed along with the present respondent no. 5, now is being paid salary by the Education Officer. Said Smt. Khan Tanvir Anjum was also appointed on non-grant post as was respondent no. 5.

6. As none of the parties is in a position to place on record the exact state of affairs, it would be appropriate to direct the higher authority of the Education Department i.e. the Deputy Director of Education, to look into the affairs of the petitioner as per the record maintained by the Education Officer and arrive at an appropriate conclusion with regard to the case of respondent no. 5 for being absorbed in the petitioner institution.

7. In light of the above, we pass the following order:

ORDER

- I. The Deputy Director of Education shall examine the record of the petitioner, so also the record maintained by the Education Officer of the petitioner institution and the order dated 15.05.2014 passed by the Education Officer and thereafter pass appropriate orders about the case of the present respondent no. 5 for absorption with the petitioner institution or otherwise. The Deputy Director of Education can also pass such further orders as it would deem fit in the interest of justice.
- II. Needless to state that the said order shall be passed by the Deputy Director of Education after hearing the parties concerned. The parties shall appear before the Deputy Director of Education on 06.07.2015.
- III. Till the Deputy Director of Education passes orders as directed above, the petitioner institution shall not appoint any assistant teacher.
- IV. The writ petition accordingly stands disposed of. All contentions of the respective parties are kept open. There shall be no order as to costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)