

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

WRIT PETITION NO. 10821 OF 2014

Shaikh Akhtar Ahmed S/o Md. Shafiuddin ..Petitioner

Versus

The State of Maharashtra and Others .. Respondents

Shri Amol N. Kakade, Advocate for the Petitioner

Shri D. R. Korde, A. G. P. for the Respondent No. 1

Shri U. B. Bondar, Advocate for the Respondent No. 2

Shri Manoj R. Khutwad, Advocate for Respondent Nos. 3 and 4

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

DATE : 13TH JULY, 2015.

PER COURT :

1. Mr. Kakade the learned counsel submits that, the petitioner is appointed on compassionate ground in place of his father initially in the year, 2007. However, at that time the petitioner did not possess the necessary qualification. The petitioner acquired D. Ed. qualification and thereafter was again appointed in the year, 2011. The proposal seeking approval to the appointment is forwarded to the Education Officer, however, the same is rejected on the ground that, there are surplus candidates required to be absorbed. The learned counsel further

submits that, on 31st July, 2015 one more post would become vacant with the Respondent No. 4 school. The Respondent Nos. 3 and 4 have applied for minority status. The same is pending. All students taking education in the said school are from minority community.

2. The learned counsel for the Respondent Nos. 3 and 4 submit that, the petitioner is appointed on vacant post on compassionate ground. On 31st July, 2015 one more post would become vacant and the management is ready to absorb surplus candidate. The learned counsel states that, he is making this statement on the basis of instructions received from Respondent Nos. 3 and 4. The Respondent No. 4 is present in the Court. The said statement is accepted.

3. Mr. Bondar, the learned counsel for the Respondent No. 2 submits that, there are large number of surplus candidates who are required to be absorbed. Such a back door entry may not be allowed. According to the learned counsel even there was ban on recruitment. No permission is sought of the Education Officer while appointing the petitioner.

4. We have considered the submissions canvassed by the learned counsel for the respective parties. It appears that,

Respondent Nos. 3 and 4 have not yet got the status of minority institution. It is submitted that, the proposal is pending seeking status of the minority institution.

5. Be that as it may, some posts are reserved for appointment on compassionate ground. It is submitted that, the petitioner is appointed on compassionate ground on the place of his father who was working in the said school for 20 years.

6. Considering the statement made by the Respondent Nos. 3 and 4 that, one post which would become vacant on 31st July, 2015 the same shall be filled in by absorption of the surplus candidates as would be directed by the Education Officer. We have considered the case put forth by the petitioner.

7. The impugned order rejecting the approval to the appointment of the petitioner is quashed and set aside. The Education Officer shall reconsider the proposal submitted to it seeking approval to the appointment of the petitioner and shall not reject it on the ground that there are surplus candidates to be absorbed.

8. The Respondent Nos. 3 and 4 shall not fill in the post which would become vacant on 31st July, 2015. The same shall be

filled in by way of absorption of any surplus candidates as would be directed by the Respondent No. 2 / Education Officer. The writ petition accordingly disposed of. No costs.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]

sam/July. 15