

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

WRIT PETITION NO.10832 of 2014

1. Syed Mateen s/o Syed Yousuf,
Age 27 years, Occu: Service,
r/o Balapur Road, Dharmabad,
Tq.Dharmabad, Dist. Nanded.
2. Shaikh Irshad Shaikh Musa,
Age 26 years, Occu: Service,
R/o. Balapur Road, Dharmabad,
Tq.Dharmabad, Dist. Nanded.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai - 32
2. Deputy Director of Education,
Latur Division, Latur,
Tq. and Dist. Latur.
3. The Education Officer (Primary),
Zilla Parishad, Nanded,
Tq. and Dist. Nanded.
4. Urdu Education Society,
Dharmabad, Tq. Dharmabad,
Dist. Nanded.
(through its Chairman)
5. Urdu Primary School, Dharmabad,
Tq. Dharmabad, Dist. Nanded.
(Through its Headmaster).

...RESPONDENTS

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Mr. Vivek J.Dhage, Advocate for the petitioners.
Mr.K.J.Ghute Patil, AGP for respondent State.

Mr.Y.P.Pawar, Advocate, for respondent nos. 4 and 5.
Mr.R.K.Ingole Patil, Advocate for respondent no.3.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.
Dated: April 28, 2015

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ORAL JUDGMENT (Per S.S.Shinde, J.) :-

1. Heard. Rule. Rule made returnable and heard forthwith with the consent of learned Counsel for the parties.

2. This writ petition takes exception to the order of the Education Officer, Primary, Zilla Parishad, Nanded dated 10.11.2014.

3. It is the case of the petitioners that, in respondent no.5 school, two posts of Assistant Teacher were vacant due to retirement of two Assistant Teachers on 31.5.2012. Therefore, Headmaster of respondent no.5 School wrote letter dated 11.6.2012 and sought permission to issue advertisement for filling in the said vacant posts. In pursuance to the advertisement, the petitioners applied for the post of Shikshan Sevak and they are selected by respondent Nos. 4 and 5 for the post of Shikshan Sevak and, accordingly, the petitioners are appointed to the posts of Shikshan Sevak as per order dated 13.8.2012. The petitioners joined the services on 16.8.2012 and they are in continuous service till date. The Education Officer vide order dated 18.9.2013 granted approval to the appointment of the petitioners as Shikshan Sevak w.e.f. 16.8.2012.

4. It is the further case of the petitioners that respondent no.5 received communication dated 25th August, 2014 from the Superintendent, Salary and Pay Unit, Nanded, by which it was directed to respondent no.5, not to include the names of the petitioners in salary bills. Respondent No.3 Education Officer (Primary), Zilla Parishad, Nanded, wrote letter dated 25th August, 2014, and called respondent no.5 Headmaster along with all the documents in respect of appointment of the petitioners for hearing and accordingly, after hearing expressed inability to grant approval to the services of the petitioners.

5. Counsel appearing for the petitioners submits that, so far as appointment of the petitioners is concerned, even the respondent authorities do not dispute that it is in accordance with the relevant Rules, and the procedure established. It is submitted that the reason assigned for refusal of approval is, unless surplus teachers are absorbed, the approval cannot be granted. According to the learned Counsel appearing for the petitioners, the institution in which the petitioners are serving is a minority institution and placing reliance on the ratio laid down in the cases of (i) **Sindhi Education Society & another Vs. Chief Secretary, Government of NCT of Delhi & others** ((2010) 8 SCC 49) and (ii) **T.M.A.Pai Foundation and others Vs. State of Karnataka and others**, decided by the Larger Bench of the Supreme Court, reported in 2002 (8) SCC 481 by the Supreme Court, submits that it is the choice of the management to whom management should appoint, and it being a minority institution, no surplus teachers can be imposed upon the institution.

6. It is submitted that the Bench presided over by learned Single Judge of this Court, in the case of **Momin Education Society Vs. Education Officer** (Writ Petition No.116/2012, Aurangabad Bench), decided on 16th of July, 2012, after taking into consideration the judgment of the Supreme Court and the relevant provisions, in paragraph no.13 of the said judgment, reached to the conclusion that the law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the institution, would be void, as being violative of Article 30(1) of the Constitution of India. 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. Therefore, according to the Counsel appearing for the petitioners, the Education Officer ought to have granted approval to the services of the petitioners.

7. Learned Counsel appearing for respondent no.3 vehemently opposed the prayers in the petition, and submits that the State, as a policy, has decided to direct all educational institutions in the State to absorb the surplus teachers from the list maintained by the respondent authorities. Therefore, he submits that the petition may be dismissed.

8. We have considered the submissions of the learned Counsel appearing for the petitioner, learned Counsel for respondent no.3 and 4, learned A.G.P. appearing for

respondent State, and also perused other documents placed on record and relevant judgments of this Court and the Supreme Court which have direct bearing on the subject matter involved in this petition. In column no.5, the Education Officer, after hearing the petitioners and after perusal of their reply, observed that the appointments are in accordance with the procedure; the approval is rightly granted, however, the Deputy Director of Education in Column No.6, observed that the appointment of Syed Mateen Syed Yousuf, petitioner no.1, is on 16th August, 2012 and the same is not in accordance with the Government Resolution dated 2.5.2012 and even then the Education Officer, Primary, Nanded, has granted approval to his services, though it was directed to the Education Officer to cancel the said approval. The said direction has not been complied with by the Education Officer; the same reason is assigned in respect of petitioner no.2 Shaikh Irshad Shaikh Musa.

9. In the affidavit in reply filed by the respondent No.3, in paragraph no.7, it is stated that the Education Officer has granted approval relying upon the judgments of this Court in Writ Petition No.116/2012 delivered on 16th July, 2012. In paragraph nos. 10 and 11, it is stated that unless the service teachers are absorbed, no new posts can be filled up by respondent no.5 school. The sum and substance of the affidavit in reply is that, unless surplus teachers are absorbed the petitioners should not have been appointed and, secondly, the appointments of the petitioners are not in accordance with the relevant Rules / procedure.

10. Upon perusal of the reasons assigned by the Education Officer in the enquiry report annexed with the charge-sheet, according to the Education Officer, the appointments of the petitioners are in accordance with the procedure established and, therefore, approval is granted, and in the affidavit in reply, it is tried to be suggested that their appointments are not in accordance with the relevant Rules. So far as absorption of surplus teachers, as contended in the affidavit in reply of the Education Officer is concerned, the respondent authorities have not considered the law laid down by the Supreme Court, so far as choice of the minority institutions in appointment of the staff is concerned. It appears that, respondent authorities unaware of the judgment of the Supreme Court in the case of (i) **Sindhi Education Society & another** (supra) and (ii) **T.M.A.Pai Foundation and others (supra)**, and also judgment of this Court in the case of **Momin Education Society** (supra), proceeded with the enquiry, and declined approval to the appointments of the petitioners.

11. Since we are of the opinion that, respondent authorities should de novo consider the cases of the petitioners for approval of their appointments, we are not elaborating further on the merits; suffice it to say that, while refusing approval to the cases of the petitioners, the respondent authorities have not kept in view judgment of the Supreme Court in the case of (i) **Sindhi Education Society & another** (supra) and (ii) **T.M.A.Pai Foundation and others (supra)** and this Court in the case of **Momin Education Society** (supra). In that view of the matter, on this ground alone, the impugned order dated 10.11.2014 is quashed and set aside. We direct respondent no.2 and 3 to reconsider the cases of the

petitioners for approval in the light of the exposition of the Supreme Court in the case of (i) **Sindhi Education Society & another** (supra) and (ii) **T.M.A.Pai Foundation and others (supra)** and by this Court in the case of **Momin Education Society** (supra) and take decision expeditiously. Till Such decision is taken, interim relief granted to the petitioners by order dated 2nd February, 2015, shall remain in force. It is needless to observe that till that time, the petitioners will be entitled to derive benefits as available to the Assistant Teachers.

We also make it clear that respondents authorities may, if necessary, hear the petitioners and also respondent no.5 institution and then pass the order.

Rule made absolute in above terms.

Petition stands disposed of.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

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