

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

WRIT PETITION NO. 125 OF 2015

SYED FAHEEMUDDIN QUADRI SYED KALIMUDDIN
QUADRI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Nagargoje Ankush N.
AGP for Respondent/State : Mr. G.R. Ingole
Advocate for Respondent nos. 5 and 6 : Mr. A.D. Kasliwal

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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: April 16, 2015

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PER COURT :-

This Petition takes exception to the communication dated 5th August, 2014 addressed by the Education Officer (Secondary), Zilla Parishad, Aurangabad to Headmistress of Moin-Ul-Uloom High School, Aurangabad. The learned counsel appearing for the petitioner invited our attention to the impugned communication and submits that, approval to the services of the petitioner has not been granted on two grounds, firstly no prior permission to appoint the petitioner was taken, and secondly, the certificate in respect of there is no surplus teacher to be absorbed by Respondent No.5 institution was not obtained from the office of the Education Officer (Secondary), Zilla Parishad, Aurangabad. The learned counsel appearing for the petitioner invited our attention to the letter written by Headmistress to the Education Officer

on 26th June, 2012 (Exhibit `C' to the compilation of the Petition at page no.30) and submits that, in fact the permission was obtained from the office of the Education Officer (Secondary), Zilla Parishad, Aurangabad and thereafter by publishing the advertisement and following procedure, the petitioner is recruited/selected. It is submitted that, so far obtaining the certificate from the office of the Education Officer (Secondary) that, there is no surplus teacher to be absorbed by Respondent No.5 is concerned, the learned counsel appearing for the petitioner placed reliance on the unreported judgment of Division Bench of this Court in the case of **Parbhani Education Society V/s The State of Maharashtra and another** in Writ Petition No. 3707/2013 dated 2nd September, 2013 and in particular paras 13 and 14 of the said judgment and submits that, the impugned communication deserves to be set aside by giving further directions to Respondent No.4 to accord the approval to the services of the petitioner.

2. On the other hand, the learned Additional Government Pleader relying upon the contents of the letter impugned in this Petition submits that, there is no certificate obtained, as required to be taken from the Education Officer and in absence of it, recruitment/section of the candidate including the present petitioner was not permissible. Therefore, he submits that, the Petition may be dismissed.

3. We have given careful consideration to the

submissions advanced by the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the Respondent/State and the learned counsel appearing for Respondent Nos. 5 and 6.

4. Upon perusal of the letter written by the Headmistress Moin-Ul-Uloom High School, Aurangabad to the Education Officer (Secondary), Zilla Parishad, Aurangabad (Exhibit `C' at page 30) of which reference is already made in foregoing paragraph, it is abundantly clear that, the post is advertised after seeking necessary permission from the Education Officer (Secondary), Zilla Parishad, Aurangabad, and therefore, the stand taken by the Education Officer that, no prior permission was taken would not sustain. The another ground stated in the impugned communication is that, no certificate that there is no surplus teacher to be absorbed in the school is concerned, the Division Bench of this Court in the case of **Parbhani Education Society** (supra) in para 14 held thus :-

“14. Position clearly emerges that petitioner institution is indisputably a minority institution and, in various rulings cited on behalf of the petitioner, it is held that the appointments by minority institutions would not be able to be withheld till the time surplus teachers are accommodated/absorbed. In view of the aforesaid prevailing position, as exemplified under the decisions of the Apex Court and the High Courts, particularly of this Court as

depicted in judgment dated 16th July, 2012, which could not be effectively countered by the respondents, save that impugned order being tried to be supported by Government Resolution dated 02.05.2012, the impugned order is incompatible with emerging legal position and as such is unsustainable.”

5. In the light of discussion in foregoing paragraph, inevitable conclusion is that, two reasons assigned by the Education Officer (Secondary), Zilla Parishad, Aurangabad in the communication dated 05.08.2014 cannot sustain.

6. In the result, the impugned communication dated 05.08.2014 is quashed and set aside. The Education Officer is directed to accord the approval to the services of the petitioner as per the proposal sent by Respondent Nos. 5 and 6 to the Education Officer subject to other conditions, if any, as expeditiously as possible, preferably within four weeks from today.

7. The Petition stands disposed of in the above terms.

(**P.R. BORA, J.**)

(**S.S. SHINDE, J.**)

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