

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 11777 OF 2014
WP/11780/2014**

HINDUSTANI EDUCATION SOCIETY, LATUR AND
ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Dhage Vivek J.
AGP for Respondent/State : Mr. V.H. Dighe
Advocate for Respondent no.2 : Mr. Bondar U.B.

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CORAM : S.S. SHINDE & P.R. BORA, JJ.
Dated: May 07, 2015

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PER COURT :-

Heard the learned counsel appearing for the petitioners. He invited our attention to the impugned communication at page No. 32 and Page No.40 and submits that, the petitioners being minority institution can not be compelled/forced by the respondent – Education Officer to absorb the surplus teachers. It is submitted that, the petitioners are minority institutions is not in dispute. It is further submitted that, the Education Officer has abolished three posts, since as

per the direction of Respondent – Education Officer the petitioner has not absorbed the surplus teachers. The learned counsel appearing for the petitioners invited our attention to the unreported judgment of this Court in the case of **Syed Mateen Syed Yousuf and another V/s The State of Maharashtra and others** in Writ Petition No. 10832 of 2014, decided on 28th April, 2015 and submits that, the Division bench of this Court relying upon the judgment of the Hon'ble Supreme Court in the case of **Sindhi Education Society and another V/s Chief Secretary, Government of NCT of Delhi and others** reported in (2010) 8 SCC 49 in para 11 has taken a view that, in view of the law laid down by the Hon'ble Supreme Court in the case of **Sindhi Education Society**, it is not open for the State Authorities to direct the minority institution to absorb the surplus teachers, in as much as the minority institution has choice to appoint teacher and therefore, giving such directions to absorb surplus teachers would be contrary to spirit of Article 30(1) of the Constitution

of India. Therefore, the learned counsel appearing for the petitioner submits that, the Petitions deserve to be allowed.

2. On the other hand, the learned counsel appearing for the Education Officer tried to justify the order relying upon the contents of the said order.

3. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioners, the learned Additional Government Pleader for the Respondent/State and the learned counsel appearing for the Education Officer (Primary), Zilla Parishad, Latur and we are of the opinion that, the point raised in this Petition is no longer *res integra* and is covered by the authoritative pronouncement of the Supreme Court in the case of **Sindhi Education Society (supra)** and the judgment of the Division Bench of this Court in the case of **Syed Mateen (Supra)**. Therefore, for the same reasons,

which are assigned while disposing of the Writ Petition No. 10832/2014 and in particular paras 10 and 11 thereof, in our considered view, the impugned communication/order cannot be legally sustained. The same is quashed and set aside. The Petitions are allowed in terms of prayer clause 'B' and stand disposed of.

4. The learned counsel appearing for the petitioner submits that, already proposals for approval are submitted with the Education Officer (Primary), Zilla Parishad, Latur. The Education Officer (Primary), Zilla Parishad, Latur should consider the said proposals, as expeditiously as possible, preferably on or before 30th May, 2015.

5. We also make it clear that, since we have quashed and set aside the impugned communication/order of the Education Officer (Primary), Zilla Parishad, Latur, the question of

abolition of post of assistant teachers would not arise. Accordingly, interim order which is in force during pendency of the Petitions is continued till the decision is taken by the Education Officer. Needless to observe that, once the action of approval is complete, teachers would be entitled for salary for rendering services of the teachers.

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

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

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