

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 5766/2014

(URDU EDUCATION ASSOCIATION, AMRAVATI & ANR **VERSUS** STATE OF MAHARASHTRA & ANR)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri S.M. Vaishnav h/f Shri M.A. Vaishnav, counsel for the petitioners.
 Shri N.R. Patil, A.G.P. for the R-1.
 Shri D.M. Kale, counsel for the R-2.
 Shri T.U. Tathod, counsel for the Interveners.

CORAM : SMT. VASANTI A. NAIK AND
PRASANNA B. VARALE, JJ.

DATE : JULY 15, 2015.

By this petition, the petitioners challenge the order of the Education Officer, Zilla Parishad, Amravati dated 29.09.2014 rejecting the proposal of the petitioner no.1-Society for permission to appoint the Assistant Teachers. The petitioners also challenge the action of the Zilla Parishad in directing the petitioners to absorb the surplus teachers from other minority schools in the school run by the petitioner-Society.

Admittedly, the petitioner no.1-Society is a minority institution and a certificate to that effect was granted in favour of the petitioner by the State Government on 09.07.2003. Being a minority institution, the petitioner no.1-Society wanted to employ the teaching and non-teaching staff in the school run by the minority institution, as per its choice. However, the proposal submitted by the petitioner no.1-Society for permission to employ the Assistant Teachers in the minority institution was rejected by the Education Officer, Zilla Parishad (Primary), Amravati by the impugned communication dated 29.09.2014. In stead, the petitioner no.1-Institution was asked to absorb certain surplus teachers from other institutions in the school run by the petitioner no.1-Institution. The petitioners have challenged the action of the respondents in the instant petition.

Shri Vaishnav, the learned counsel for the petitioners, submitted that the issue involved in this case stands answered in favour of the petitioners by the judgment of this Court reported in **2014(4) ABR 521** (*Canossa Society, Mumbai Versus Commissioner, Social Welfare, Pune*). It is submitted that it is held by this Court in the aforesaid judgment that the autonomy in regard to the day-to-day administration of the minority institution cannot be taken away by imposing any condition or restriction which would take away the minority character of a minority institution. It is stated that it is held by this Court in the aforesaid judgment that the State cannot direct the minority institution to absorb surplus employees from other schools unless the minority institution concurs for such appointments. It is submitted that even the surplus teachers from other minority institutions cannot be thrust upon the petitioner no.1-Institution. It is stated that this issue was also considered by the Hon'ble Supreme Court in the case of *Secretary Malankara Syrian Catholic College Versus T. Jose & Others*, reported in **2007(1) SCC 386** and it has been held by the Hon'ble Supreme Court that the career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions. The learned counsel has relied on paragraph 28 of the aforesaid judgment to substantiate his submission.

Shri Kale, the learned counsel for the respondent no.2, does not dispute the position of law, as laid down by the Hon'ble Supreme Court and this Court in the judgments reported in **2007(1) SCC 386** (*Secretary Malankara Syrian Catholic College Versus T. Jose & Others*) and **2014(4) ABR 521** (*Canossa Society, Mumbai Versus Commissioner, Social Welfare, Pune*) respectively. It is, however, stated that in view of the directions issued by the High Court in some other petitions for absorption of the excess surplus teachers, the Zilla Parishad

has directed the petitioner no.1-Institution to absorb the surplus teachers from other Urdu Medium schools in the minority institution of the petitioner no.1.

On hearing the learned counsel for the parties and on a perusal of the judgments referred hereinabove, it is clear that neither the State Government nor the Zilla Parishad can direct the minority institution to absorb surplus employees from other schools unless the minority institution concurs for the appointments / absorption. It is held by the Hon'ble Supreme Court in paragraph 28 of the judgment reported in **2007(1) SCC 386** (*Secretary Malankara Syrian Catholic College Versus T. Jose & Others*) that it cannot be said that the protection extended by Article 30(1) cannot be used against a member of the teaching staff, who belongs to the same minority community. The Hon'ble Supreme Court has observed that if it is not held so, the right of the minority institution to select the staff of its choice would be ignored. As the issue involved in this case stands answered in favour of the petitioners and against the respondent no.2-Education Officer (Primary), Zilla Parishad, in view of the judgments referred hereinabove, it would be necessary to allow the writ petition by quashing and setting aside the impugned order.

Hence, the writ petition is allowed. The impugned order is quashed and set aside. The respondent no.2-Education Officer (Primary), Zilla Parishad is directed to consider the proposal of the petitioners for permission to appoint the Assistant Teachers in the minority institution in accordance with law, within a period of one month,. The respondent no.2-Education Officer (Primary), Zilla Parishad should immediately release the unpaid salary of the teachers within a period of two weeks. In the circumstances of the case, there would be no order as to costs.

With the disposal of the writ petition, the civil applications stand disposed of.

JUDGE

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