

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 1855 OF 2016**

PARBHANI EDUCATION SOCIETY PARBHANI THROUGH
ITS PRESIDENT MOHAMMAD ABDUL RASHEED
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Tele Ashok B.
AGP for Respondent/State : Mr. S.K. Kadam
Advocate for Respondent No.2 : Mr. B.A.
Shinde

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CORAM : S.S. SHINDE & SANGITRAO S. PATIL, JJ.
Dated: May 04, 2016

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PER COURT :-

Rule. Rule made returnable forthwith
and heard finally by consent of the parties.

2. By filing this Petition under Article 226 of the Constitution of India, the exception is taken to the *inter se* communications between the Education Officer (Primary), Zilla Parishad, Parbhani and the Headmaster, Dr. Zakir Hussain Primary School at Exhibit 'G' Collectively. Upon careful perusal of the impugned communications, it clearly emerges that the approval to the regular appointments of the teachers in the

petitioner Society, which is minority institution has been refused, relying upon the Government Resolution dated 2nd May, 2012. The learned counsel appearing for the petitioner submits that the said Government Resolution cannot be made applicable in case of the petitioner, which is undisputedly minority institution.

3. The learned counsel appearing for Respondent vehemently opposed the prayer of the petitioner, and submits that the Petition may be rejected.

4. The petitioner has placed on record the copy of the judgment dated 2nd September, 2013 in Writ Petition No. 3707 of 2013 (Parbhani Education Society, Parbhani V/s The State of Maharashtra and another). In the said Petition, the same issue was involved. The Division Bench of this Court, in the facts of that case, in para 12 recorded the submissions of the learned counsel appearing for the petitioner therein, that the impugned communication issued making reference to Government Resolution dated 2nd May, 2012, which purportedly injuncts private managements/ local authorities from filling

up posts in their schools unless there is 100% absorption of surplus teachers, is not applicable in the case of petitioner, which indisputably is a minority institution. After appreciating the said contention, this Court in para 14 of the said judgment held that the 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. Therefore in the facts of that case, this Court allowed the Petition and impugned communication therein was quashed and set aside.

5. In the present case also the petitioner is minority institution. Therefore, the impugned communications at Exhibit-G Colly, relying upon the Government Resolution dated 2nd May, 2012 deserve to be quashed and set aside and accordingly the same are quashed and set aside.

The Education Officer is directed to consider the proposal for approval, without raising the same ground, which is raised in

the impugned communications and take decision on the said proposal, as expeditiously as possible, and preferably on or before 15th June, 2016.

6. The Petition is allowed to the above extent.

7. The parties shall act on an authenticated copy of this order.

(SANGITRAO S. PATIL, J.) (S.S. SHINDE, J.)

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