

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

WRIT PETITION NO.2528 OF 2016

ABID HUSSAIN ZAINODDIN ... PETITIONER.
VERSUS
THE STATE OF MAHARASHTRA
AND OTHERS ... RESPONDENTS.

...

Advocate for Petitioner : Mr.Brahme Shailesh
P.

AGP for Respondents: Mr.S.B. Pulkundwar.

Advocate for Respondents 3 & 4 : Mr.A.R.
Syed.

...

AND

WRIT PETITION NO. 2529 OF 2016

SHAIKH FARHA ATIQUE ... PETITIONER.
VERSUS
THE STATE OF MAHARASHTRA
AND OTHERS. ... RESPONDENTS.

...

Advocate for Petitioner : Mr.Brahme Shailesh
P.

AGP for Respondents:Mr.V.S. Badakh.

Advocate for Respondents 3 & 4 : Mr.A.R.
Syed.

...

AND

WRIT PETITION NO. 2530 OF 2016

ANSARI SWALEHA BATOOL
 SHABBIR AHMED. ... PETITIONER.
 VERSUS
 THE STATE OF MAHARASHTRA
 AND OTHERS ... RESPONDENTS.

...

Advocate for Petitioner : Mr.Brahme Shailesh
 P.

AGP for Respondents: Mrs.A.V. Gondhalekar.

Advocate for Respondents 3 & 4 : Mr.A.R.
 Syed.

...

AND

WRIT PETITION NO. 2531 OF 2016

ASHFAQ AHMED RAYEES AHMED ... PETITIONER
 VERSUS
 THE STATE OF MAHARASHTRA
 AND OTHERS ... RESPONDENTS.

...

Advocate for Petitioner : Mr.Brahme Shailesh
 P.

AGP for Respondents: Mr.S.B. Yawalkar.

Advocate for Respondents 3 & 4 : Mr.A.R.
 Syed.

...

AND

WRIT PETITION NO. 2532 OF 2016

ANSARI SADEQUA BANO
 SHAFIQUE AHMED ... PETITIONER.
 VERSUS
 THE STATE OF MAHARASHTRA
 AND OTHERS ... RESPONDENTS.

...

Advocate for Petitioner : Mr.Brahme Shailesh
P.

AGP for Respondents: Mr.V.S. Badakh.
Advocate for Respondents 3 & 4 : Mr.A.R.
Syed.

...

AND

WRIT PETITION NO. 2533 OF 2016

AFREEN BANO ABDUL QAYYUM ... PETITIONER.
VERSUS
THE STATE OF MAHARASHTRA
AND OTHERS. ... RESPONDENTS.

...

Advocate for Petitioner : Mr.Brahme Shailesh
P.

AGP for Respondents: Mr.V.S. Badakh.
Advocate for Respondents 3 & 4 : Mr.A.R.
Syed.

...

AND

WRIT PETITION NO. 2534 OF 2016

QUDSIYA NAHEED ATEEQR
REHMAN ... PETITIONER.
VERSUS
THE STATE OF MAHARASHTRA
AND OTHERS ... RESPONDENTS.

...

Advocate for Petitioner : Mr.Brahme Shailesh
P.

AGP for Respondents: Mr.S.B. Yawalkar.
Advocate for Respondents 3 & 4 : Mr.A.R.
Syed.

...

CORAM:S.S.SHINDE & SANGITRAO S. PATIL, JJ.

Dated: APRIL 20, 2016

PER COURT :-

1. Since common question / point is involved in all these petitions, the same are being heard and disposed of by common order.

2. Learned Counsel appearing for the petitioner submits that, the ban for recruitment on the post of Assistant Teacher / Shikshan Sevak, imposed by the Government Resolution dated 2nd May, 2012 and in particular, Clause 1.8 of the said resolution, cannot be made applicable in case of the minority institutions. In support of this contention, learned Counsel for the petitioners invited our attention to the unreported judgment dated 2nd September, 2013 delivered by this Court in case of **Parbhani Education Society Parbhani vs The State of Maharashtra and anr.** (Writ Petition No.3707 of 2013).

3. He further submitted that, so far the petitioners in Writ Petition Nos.2528/2016, 2530/2016, 2531/2016, 2532/2016 and 2533/2016 are concerned, they have been appointed prior to issuance of the Government Resolution dated 20th June, 2014 by the School Education and Sports Department, Government of Maharashtra, Mantralaya, Mumbai and therefore, the provisions of the said Government Resolution cannot be made applicable with retrospective effect in cases of the petitioners in the aforesaid writ petitions. Therefore, he further submits that yet, respondent No.2 has not taken decision on the proposals submitted by the respondents No.3 and 4 for approval to the appointment of petitioners, they may be directed to take decision within a stipulated period.

4. On the other hand, learned AGP appearing for the respondents / State, relying on the averments in the affidavit-in-reply filed by respondent No.2, submits that the procedure prescribed under the Government Resolution dated 20th June, 2014 is

applicable even for the appointment to be made by the minority institution. Therefore, the learned AGP submits that the petition may be rejected.

5. We have carefully considered the submissions of the learned Counsel for the parties. With their able assistance, perused the pleadings in the petitions, annexures thereto and reply filed by respondent No.2. In fact, respondent No.2 ought to have decided the proposals submitted by the respondent – institution for approval to the appointments of the petitioners. However, respondent No.2 has not taken any decision on the same. Since the decision is not taken by respondent No.2, we propose to give directions to respondent No.2 to take decision within a stipulated period on the proposals submitted by the respondent – management seeking approval to the appointment of the petitioners.

6. So far applicability of Clause 1.8 of the Government Resolution dated 2nd May, 2012 issued by the School Education & Sports Department is

concerned, the Division Bench of this Court in case of **Parbhani Education Society Parbhani** (supra), has considered applicability of the said clause to the appointments made by the minority institutions and ruled that the said clause cannot be made applicable for the appointments made by the minority institutions. To that effect, conclusion has been recorded in para 14 of the said judgment. Therefore, the said clause cannot be made applicable in cases of appointments of the petitioners since their appointments have been made by the minority institutions.

7. So far as applicability of Government Resolution dated 20th June, 2014 is concerned, as rightly contended by the Counsel for the petitioners that, the petitioners in Writ Petition Nos.2528/2016, 2530/2016, 2531/2016, 2532/2016 and 2533/2016 have been appointed prior to coming into force the said Government Resolution and, therefore, the provisions of the said Government Resolution cannot be made applicable with retrospective effect in case of

these petitioners.

8. In the light of discussion in the foregoing paragraphs, we direct respondent No.2 to consider the proposals submitted by the respondent – institution for approval to the appointments of the petitioners, keeping in view the discussion in the foregoing paragraphs and take a decision, as expeditiously as possible; however, on or before 30th May, 2016. Before taking such decision, respondent No.2 should afford an opportunity of hearing to respondents No.3 and 4. Respondents No.3 and 4 to appear before respondent No.2 on 27th April, 2016 and put forth their contention and also the documents in support of their contentions, if necessary. Respondent No.2 to allow respondents No.3 and 4 to place on record documents and after hearing respondents No.3 and 4, to take decision on the said proposals, as expeditiously as possible. However, on or before 30th May, 2016 and communicate the decision so taken to the respondents No.3 and 4.

All the petitions are disposed of on above terms. Parties to act upon authenticated copy of this order.

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

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