

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO.5131 OF 2016**

Mohd. Junied Mohd. Aarif  
Age 27 years, Occu: Service,  
R/o Nagziri Mohalla, Raver  
Tq. Raver, Dist. Jalgaon

Petitioner

Versus

- 1 The State of Maharashtra,  
Through Secretary,  
School Education Department,  
Mantralaya, Mumbai 32
- 2 The Education Officer (Secondary)  
Zilla Parishad, Jalgaon  
Tq. and Dist. Jalgaon
- 3 Raver Taluka Urdu Education Society  
Raver, Tq. Raver, Dist. Jalgaon  
(through Its Chairman)
- 4 Anglo Urdu High School  
Raver, Tq. Raver, dist. Jalgaon  
(through Its Headmaster)

Respondents

WITH  
**WRIT PETITION NO.5132 OF 2016**

Smeeruddin Shahabuddin  
Age: 25 years, Occu: Service  
R/o. Idgah Road, Near Hussaini Masjid  
Raver, Tq. Raver, Dist. Jalgaon

Petitioner

Versus

- 1 The State of Maharashtra,  
Through Secretary,  
School Education Department,  
Mantralaya, Mumbai 32
- 2 The Education Officer (Secondary)  
Zilla Parishad, Jalgaon  
Tq. and Dist. Jalgaon

3 Raver Taluka Urdu Education Society  
Raver, tq. Raver, Dist. Jalgaon  
(through Its Chairman)

4 Anglo Urdu High School  
Raver, Tq. Raver, Dist. Jalgaon  
(through Its Headmaster)

Respondents

WITH  
**WRIT PETITION NO.5160 OF 2016**

Mohd. Saleem Mohd. Iqbal  
Age: 31 years, Occu: Service,  
R/o Nagziri Mohalla, Raver  
Tq. Raver, Dist. Jalgaon

Petitioner

Versus

1 The State of Maharashtra,  
Through Secretary,  
School Education Department,  
Mantralaya, Mumbai 32

2 The Education Officer (Secondary)  
Zilla Parishad, Jalgaon  
Tq. and Dist. Jalgaon

3 Raver Taluka Urdu Education Society  
Raver, tq. Raver, Dist. Jalgaon  
(through Its Chairman)

4 Anglo Urdu High School  
Raver, Tq. Raver, Dist. Jalgaon  
(through Its Headmaster)

Respondents

Mr.Vivek Dhage advocate for the petitioners  
Mr. S.P. Deshmukh Assistant Govt. Pleader for Respondent No.1 & 2  
Mr. S.M. Najeer advocate for respondent Nos.3 and 4

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CORAM : **R.M. BORDE &  
V.K. JADHAV, JJ**

(Date : 4th October, 2016.)

**ORAL JUDGMENT**

(Per: R.M. Borde, J)

1      Heard.

2      Rule. With the consent of the parties, petitions are taken up for final decision at admission stage.

3      The petitioners are objecting to the order passed by the Education Officer, declining to grant approval to their appointments, primarily on the ground that, prior permission of the Education Officer for making appointments was not secured and secondly the institution failed to accommodate the surplus teachers enlisted in the list maintained by the Education Department.

4      The petitioners contend that, the petitioner society is a minority institution and cannot be compelled to accommodate surplus teachers. Any restriction imposed by the State Authority on the choice of minority institution to select teachers is violative of Article 13(1) of The Constitution of India. Reference is made to the Judgment in Writ Petition No.116 of 2012, delivered by single Judge of this Court (Coram: R.M.Borde, J) decided on 16.7.2012. The challenge in the said petition was in respect of denial by the

Education Officer to accord approval to the appointment on similar consideration, as in the instant matter. While dealing with the challenge, reliance was placed by the single Judge on the Judgment of Division Bench of this Court in Writ Petition No.2545 of 1999 in the matter of **Maharashtra Association of Minority Educational Institutions & another Vs. State of Maharashtra and others**. In the referred matter i.e. Writ Petition No.2545 of 1999, challenge was raised to the Circulars issued by the Director of Higher Education dated 1.4.1999 and 7.5.1999 directing all the Educational Institutions, including the minority institutions, which are receiving grant-in-aid from the Government to obtain a certificate from the Office of the Director of Education (Higher Education, Maharashtra State), before making appointment of any teacher to the effect that, any candidate in surplus cell is not available for appointment against the vacancy in the college and only after securing such certificate, the institution shall follow the procedure for appointment of teachers. The Division Bench while dealing with the issue placed reliance on the Judgment in the matter of **Ahmedabad St. Xavier's College Society & another Vs. State of Gujarat & another** reported in (1974) 1 SCC 717 as well as in the matter of **Sindhi Education Society & Another Vs. Chief Secretary,**

**Government of NCT of Delhi & others** reported in (2010) 8 SCC 49 in which the Apex Court, ruled that the circulars are not enforceable against the minority institutions.

5 In the matter of the **Ahmedabad St. Xavier's College Society & another Vs. State of Gujarat & another**, reported in (1974) 1 SCC 717, petitioners therein challenged various provisions of Gujarat Universities Act on the principal ground of violation of their fundamental right under Article 30 of the Constitution. While considering the scope and ambit of the rights of religious and linguistic minorities to establish and administer educational institutions of their choice, the Supreme Court has observed in paragraph 101 of the judgment that,

"In the light of above principles, it can be stated that the law which interferes with the minorities choice of a governing body or management council would be violative of the right guaranteed by Article 30(1)."

In paragraph 103, it is observed thus:

"103 Another conclusion which follows from what has been discussed above is that a law which interferes with a minority's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the

institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)."

6 In view of the principles laid down by the Supreme Court as well as in view of the Judgment of the Division Bench in Writ Petition No.2545 of 1999 referred to above, the Education Officer cannot impose restrictions of accommodating the surplus teachers on the roll of the Education Department. The minority institutions have freedom in the matter of making appointments, however, the only primary condition that needs to be observed is that, the teachers so appointed shall fulfill the requirement of qualification

laid down under the Statute or Rules.

7      Considering the aspects as referred to above, we are of the view that the Education Officer needs to be directed to reconsider his decision, rejecting the proposal for according approval to the appointment of the petitioners. The orders impugned in the instant petitions, rejecting the proposal for according approval to the appointment of the petitioners by the Education Officer are quashed and set aside and the Education Officer is directed to reconsider the proposals in the light of the observations made in the Judgment, as early as possible and preferably within a period of three months from today. It is desirable that the Education Officer, before taking decision, hear the representative of the Management.

8      Rule is accordingly made absolute

9      There shall be no order as to costs.

(V.K. JADHAV, J)

(R.M.BORDE, J)