

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

Writ Petition No. 3771 of 2016

District : Aurangabad

1. Burhani National Education Society,
Through its Secretary,
Farazdaq Shakir,
Age : 69 years,
Occupation : Service,
R/o. C/o. Burhani School Campus,
Burhani Street, Devadi Bazar,
City Chowk, Aurangabad.
 2. Shaikh Nisar s/o. Shaikh Sattar,
Age : 30 years,
Occupation : Service,
R/o. Chikalthana, Pushpak Garden,
Aurangabad.
- .. Petitioners.

versus

1. The State of Maharashtra,
Through Secretary,
School Education Department,
Mantralaya, Mumbai - 100 032.
 2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
- .. Respondents.

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*Mr. Shamim R. Shaikh, advocate, holding for
Mr. S.S. Kazi, Advocate, for the petitioners.*

*Mr. S.B. Yawalkar, Addl. Government Pleader,
for respondent nos.1 and 2.*

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

DATE : 3RD MAY 2016

ORAL JUDGMENT (*Per S.S. Shinde, J.*) :

The learned Counsel for the petitioners undertake to deposit the deficit court-fees within a period of two weeks from today.

2. Heard the learned Counsel appearing for the petitioner and the learned Addl. Government Pleader appearing for the respondents.

3. Rule. Rule made returnable forthwith. By consent of the learned Counsel for the parties, heard finally.

4. It appears that by the impugned communication dated 3rd March 2016, respondent no.2 informed the petitioner - Institution that approval to the appointment of petitioner no.2 as a Shikshan Sevak cannot be granted for two reasons, firstly, no prior permission to the said post was taken and secondly, in view of the Government Resolution dated 2nd May 2012, there was ban for recruitment.

5. The learned Counsel appearing for the petitioners invited our attention to the

communication dated 7th September 30.08.1990 (Exhibit "B", page 15 of the compilation with the petition) and submits that the petitioner has placed on record the said communication showing that the petitioner is a minority institution. He further invited our attention to the letter dated 1st October 2015, written by the Head Master of the petitioner - Management, to respondent no.3 and submits that by the said letter, permission from the said authority was sought for advertising the post of Shikshan Sevak and thereafter by advertisement dated 2nd November 2015, published in 'Aurangabad Bhaskar', 'Aurangabad Times Urdu Daily' and 'Dainik Asia Express', the post was advertised and after adhering to the procedure for selection, appointment of petitioner no.2 has been made.

6. The learned Counsel appearing for the petitioners also invited our attention to the unreported judgment of Division Bench of this Court, in the case of **Anjuman Ishaat-E-Taleem Trust, Aurangabad Vs. The State of Maharashtra & another** (Writ Petition No. 5633 of 2013), decided on 7th October 2013, and submits that in the said judgment, view is taken by this Court, that the appointments by minority institutions are not liable to be withheld resorting to the Government Resolution dated 2nd May 2012. Therefore, the learned Counsel for the petitioners urged that the petition may be allowed.

7. On the other hand, the learned Addl. Government Pleader appearing for the respondents, submit that the petitioner has not placed on record the certificate showing that the petitioner is a minority institution. He further submits that the reasons assigned in the impugned communication need no interference and, therefore, the petition may be rejected.

8. We have considered the submissions of the learned Counsel for the petitioners and the learned Addl. Government Pleader. With their able assistance, perused the pleadings in the petition, grounds taken therein and annexures thereto.

9. So far first ground to reject the approval is that prior permission of the Education Officer to advertise the post has not been taken by the petitioner. In that respect, the petitioner has placed on record, copy of letter dated 1st October 2015, addressed to respondent no.3 by the petitioner seeking permission to appoint Teacher for teaching Marathi and History subjects. However, it appears that the petitioner waited for more than four weeks and then proceeded to advertise the post. Therefore, upon perusal of the copy of the said letter at Exhibit "C" (page 16 of the compilation with the petition), it prima facie appears that the petitioner

- Management applied for permission to advertise the post of Teacher. As no reply was received by the petitioner - Management for a considerable period, the petitioner - Management issued the advertisement in the newspaper and after advertising the post, appointments is made.

10. The second ground to deny the approval cannot be sustained in view of the judgment of Division Bench of this court in the case of **Anjuman Ishaat-E-Taleem Trust, Aurangabad** (supra) and in particular, para 9 thereof. Therefore, the impugned order cannot be sustained.

11. In the result, the Writ Petition is partly allowed.

(a) The impugned communication dated 3rd March 2016 (Exhibit "F", page 28 of the compilation with the petition) is quashed and set aside.

(b) Respondent no.2 i.e. Education Officer (Secondary) is directed to consider the proposal for approval to the appointment of petitioner no.2 afresh. Respondent no.2 shall be entitled to verify the minority status of petitioner no.1. However, respondent no.2 shall not raise the same grounds which are raised in the impugned communication while considering the case of petitioner no.2 for approval

of his appointment. Respondent no.2 shall take decision on the aforesaid proposal as expeditiously as possible, however, on before 15th June 2016 and communicate the decision so taken to the petitioners.

12. Rule is made absolute in the above terms. There shall be no order as to costs.

13. Parties to act upon an authenticated / certified copy of this judgment.

(SANGITRAO S. PATIL)
JUDGE

(S.S. SHINDE)
JUDGE

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