

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

WRIT PETITION NO. 4745 OF 2016

- 1) Smt. Dilshad Rehmani Begum Sk Moiuddin
Age : 40 yrs, Occu. Service as Shikshan
Sevak with Madarse Madinatul Uloom Higher
Secondary School Degloor Naka, Nanded.
- 2) Madarse Madinatul Uloom Education Society,
Nanded, Through it's Secretary
Shri. Mohd. Bahoddhin S/o Ahmedoddin
Age : 68 yrs, Occu. Legal Practice & Secretary
R/o. Nanded ...PETITIONER

versus

- 1) The State of Maharashtra
Through The Secretary, Higher Education
Department, Mantralaya, Mumbai.
- 2) The Education Officer, (Secondary)
Zilla Parishad, Nanded.

...RESPONDENTS

.....
Mr.R. R. Mantri & R. R. Sancheti , Advocate for Petitioner
Mr. S. B. Pulkundwar, AGP For Respondent No. 1 & 2
.....

**CORAM : R.M. BORDE AND
K.K. SONAWANE, JJ.**

DATED : 27th SEPTEMBER, 2016.

ORAL JUDGMENT : (Per: R.M. Borde, J.)

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final decision at admission stage.
2. The Education Officer (Secondary) has refused to accord approval to the appointment of Smt. Dilshad Rehmani Begum Sk. Moiuddin - petitioner No. 1-herein in view of Government Resolution

dated 20-06-2014 as well as on the ground of failure on the part of Institution to accommodate surplus teachers.

3. On perusal of resolution dated 20-06-2014, it transpires that same does not apply to the minority institutions, and admittedly petitioner No. 2 - Institution is a minority Institution. So far as absorption of surplus teachers is concerned, policy framed by the State in that behalf is not applicable to the minority institution. A reference can be made to the observations recorded by the Division Bench of this Court in paragraphs No. 5 to 7 of writ petition No. 5633 of 2013 decided on 07-10-2013, which read thus:-

“5. This Court has decided writ petition No. 3707 of 2013 on 02-09-2013, which had arisen under similar circumstances, wherein approvals were declined to be granted to the appointments of persons on the posts of Shikshan Sevak, making reference to the very same Government Resolution dated 02-05-2012 and particularly to clause 1.8 therein, directing that unless there is 100% absorption of surplus teachers, no new appointments can be made.

6. In said judgment it has been considered that the minority institutions have right and privilege to choice upon appointments of such persons as teachers who possess requisite qualifications and satisfy eligibility criteria, according to law and having regard to peculiar privileges available to the petitioner, pursuant to the provisions of Constitution, approval to the appointments made by the minority institution, would not be liable to be detained taking recourse to Government Resolution dated 02-05-2012.

7. *In the same reference was also made to various rulings governing the area, particularly to the ones which are reported in (1974) 1 SCC 717 (paragraphs No.112 and 114); (2002) 8 SCC 481 (Paragraphs No.123, 143 and 143) and the judgment of Delhi High Court in Writ Petition (C) No.2845 of 1992 with Writ Petition (C) No. 4291 of 1993 dated 21-11-2011 as well as judgment of Division Bench of this Court in Writ Petition No.116 of 2012 dated 16th July, 2012 to which one of us (R.M.Borde, J.) was a member and was authored by him, observing that -*

“13. Considering the law laid down by the Supreme Court in the judgments cited supra, it is clear that the 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 would be 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 right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear by the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to

appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person who is not selected by it as a teacher.

14. The directions issued by the Grievance Committee to the Education Officer in respect of sending surplus teachers for being accommodated by the minority institution and mandate requiring the managements of minority institutions to absorb such teachers and prescription of consequences for breach of the directives issued by the Grievance Committee, is beyond the scope of interference in view of the rights guaranteed to the minority institutions under Article 30 (1) of the Constitution.”

4. In view of the observations recorded in the judgment of aforesaid writ petition, the order issued by the Education Officer (Secondary) is not sustainable in law and deserves to be set aside. Order passed by the Education Officer (Secondary) dated 28-03-2016 is quashed and set aside. Respondent No. 2 is directed to reconsider the proposal in respect of granting approval to the appointment of the petitioner forwarded by petitioner No. 2 - Institution in accordance with law, as expeditiously as possible, preferably within a period of six weeks from today.

5. Writ petition is allowed in above terms. Rule is made absolutely accordingly. There shall be no order as to costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[R.M. BORDE, J.]