

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO.5677 OF 2014**

Momin Matin Ahmad Mobin Ahmad
Age 50 Years, Occu. Service,
R/o. Ter, Tq. & Dist. Osmanabad.

PETITIONER**VERSUS**

1. State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary),
Zilla Parishad,
Osmanabad
3. Sayyad Abdulshah Urdu High School,
Naldurg, Tq. Tuljapur,
District Osmanabad
Through its Head Master.

RESPONDENTS

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Mr. E.P.Sawant, Advocate holding for Mr. Pramod B. Gapat,
Advocate for the Petitioner
Mr. A.V.Deshmukh, AGP for the Respondent / State

...

WITH**WRIT PETITION NO.11339 OF 2014**

1. Syed Abdulla Hazrat Sarkar Nanima
Social Association, Naldurg,
Tq. Tuljapur, Dist. Osmanabad
Through its Secretary
Kazi Javed Waliullah Nusratmiyan

2. The Head Master,
Syed Abdulla Shah Memorial Urdu
High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.
3. Pathan Ibrahim Yakub
Age : 28 years, Occ : Service
as Shikshan Sevak,
Syed Abdulla Shah Memorial Urdu
High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.
4. Shaikh Fazloo Raheman Abdul Raheman
Age : 44 years, Occ : Service
as Head Master,
Syed Abdulla Shah Memorial Urdu
High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.
5. Perampalli Ayesha Sultana Liakat Ali,
Age : 42 years, Occ : Service
as Assistant Teacher,
Syed Abdulla Shah Memorial Urdu
High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.
6. Khairaddi Salima Mohiyoddin
Age : 46 years, Occ : Service
as Assistant Teacher,
Syed Abdulla Shah Memorial Urdu
High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.
7. Amera Mohammad Ali
Age : 49 years, Occ : Service
as Assistant Teacher,
Syed Abdulla Shah Memorial Urdu
High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.
8. Syed Laik Pasha
Age : 48 years, Occ : Clerk,
Syed Abdulla Shah Memorial Urdu

High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.

9. Khan Ayyub Rustum Khan
Age : 47 years, Occ : Peon,
Syed Abdulla Shah Memorial Urdu
High School, Naldurg,
Tq. Tuljapur, Dist. Osmanabad.

..PETITIONERS

VERSUS

1. State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Osmanabad
3. Momin Matin Ahmed Mobin Ahmed
Age : 40 years, Surplus Teacher,
R/o Ter, Tq. & Dist. Osmanabad.

..RESPONDENTS

...
Mr. N.B. Khandare, Advocate for the Petitioners
Mr. A.V.Deshmukh, AGP for the Respondent nos. 1 and 2
Mr. E.P.Sawant, Advocate holding for Mr. Pramod B. Gapat,
Advocate for Respondent No.3.

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**CORAM : S.S. SHINDE &
P.R. BORA, JJ.**

**RESERVED ON : 29th January, 2016
PRONOUNCED ON : 24th February, 2016**

JUDGMENT :-

Rule. Rule made returnable forthwith and heard
finally, by the consent of the learned counsel appearing for

the parties.

2. It is the case of the petitioner in Writ Petition No. 5677/2014 that, the petitioner was working as Physical Education Teacher in Urdu Medium Girl's High School at Ter. The services of the petitioner have been terminated due to derecognition of the school. Thereafter, the petitioner did approach before the School Tribunal by way of filing Appeal. The School Tribunal at Solapur is pleased to allow the appeal of the petitioner, and directed the respondents to enter the name of the petitioner in the waiting list of the teachers, who are due for absorption. The service record of the petitioner is in the custody of the respondent no.2.

3. It is the case of the petitioner that, the respondents have issued an advertisement for filling in the posts of teachers including Physical Education Teacher, without considering the claim of the petitioner for absorption. Therefore, the petitioner approached the High Court, and filed Writ Petition No.1807/2008 (Momin Matin Ahmad Mobin Ahmad Vs. The State of Maharashtra and others). In the said Writ Petition, the petitioner prayed for

his absorption. The respondents caused appearance in the said Writ Petition and filed their reply. The respondent no. 3, stated in its reply that, all teachers, who were declared as surplus employees of Urdu Medium Girls High School, Ter, are being absorbed, and also the petitioner would be absorbed in private recognised Urdu Medium, as and when vacancies would arise. On the basis of said statement, the High Court dismissed the aforesaid Writ Petition, by order dated 18.06.2008. The petitioner was waiting for his absorption, but there was no action on the part of the respondents to absorb the petitioner. It is the case of the petitioner that, as the petitioner possesses qualification of B.P.Ed., he could have been absorbed in any other recognised school. Therefore, the petitioner filed Review Application bearing No.25/2013, before the High Court, and sought review of order dated 18.06.2008 passed in Writ Petition No. 1807/2008, by the High Court. The High Court by order dated 03.07.2013, disposed of the review application and passed the order, which reads as under:

“It would be suffice to clarify that the absorption of the review applicant need not be restricted to

Urdu medium school. If post is available in any other school, he can be accommodated on such post as per his qualification.”

4. It is the case of the petitioner that, after receiving the copy of the order dated 03.07.2013, the petitioner approached the respondents by way of filing application dated 15.07.2013. In the said application, the petitioner has specifically stated that, there are two posts of Physical Education teachers vacant, and the petitioner has requested the respondents to absorb him as per the directions of the High Court, issued vide order dated 03.07.2013. But, the respondents have not acted upon said direction. It is further the case of the petitioner that, the petitioner did file the Contempt Petition before the High Court. Thereafter, the respondent no. 2 has taken steps for absorption of the petitioner. The respondent no. 2 directed the respondent no. 3, to absorb the petitioner in the school. Accordingly, the petitioner has been absorbed in respondent no. 3 school on 16.11.2013.

5. It is the case of the petitioner that, the petitioner is doing his duties with utmost satisfaction of the respondent no. 3. The petitioner was expecting that, the

respondent no. 3 will submit the pay bills of the petitioner, but the respondent no. 3 had not submitted the same, and therefore, the petitioner could not get his salary. Therefore, the petitioner made a representation to the respondent no.2 on 04.12.2013. In the said representation, the petitioner requested the respondent no. 2 for payment of salary. It is further the case of the petitioner that, the petitioner time and again requested the respondent for payment of salary but the respondent no. 2 has not considered the requests made by the petitioner. As the petitioner is suffering from starvation, the petitioner has made representations on 06.01.2014, 27.01.2014, 01.02.2014 and requested for payment of salary, but, the respondent no.2 has not taken steps for payment of salary of the petitioner till this date. It is further the case of the petitioner that, the respondent no. 2 has directed the respondent no. 3 to pay the salary to the petitioner by its order dated 03.03.2014, but the respondent no. 3 has not responded the same. Therefore, again the petitioner has made representations to the respondent no. 2 on 25.03.2014 and 05.04.2014 and requested for payment of salary.

6. It is further the case of the petitioner that, the petitioner was out of service since 1998. After fighting legal battle, the petitioner has been absorbed in service. The plight of the petitioner did not stop even though he is absorbed in service. The respondent no. 3 is not submitting the pay bills of the petitioner. The respondent no.2 is not taking any action against the respondent no. 3 though the petitioner has made several representations to the respondent no.2. The salary from November, 2013, till this date is not paid.

7. The learned counsel appearing for the petitioner invited our attention to the Judgment of Bombay High Court at Principal Seat in the case of *Sindhudurg Zilla Shikshan Sanstha Vs. The Union of India & others* in Writ Petition No.9026/2014 along with connected Writ Petitions, decided on 15th December, 2015. The paras 21 and 22 of the said judgment reads thus:

“21 Even so far as the minority management/schools are concerned, the mandate of Section 12 of the RTE Act, in view of

Pramati (supra), though not extended, still for all other purposes starting from recognition of school, appointment of teachers, teaching and non-teaching staff, their service conditions and respective duties and obligations of such schools along with the local bodies are governed by these Circulars/GRs, so far as the staffing pattern of teaching and/or non-teaching staff, including related service conditions.

22 The provisions of MEPS Act are applicable to all private schools in the State of Maharashtra receiving any grant-in-aid from the State Government or not. It deals with the employees of teaching, as well as, non-teaching. All are regulated by the provisions of the Act, Rules and Circulars/GRs so issued from time to time. The minority educational institutions are also therefore, governed by the same, except the exception so carved out by Article 29 and 30 and related laws including recruitment of head of minority schools and other persons as notified. The present impugned Circulars/GRs can in no way said to be disadvantageous to such minority institutions, neither it disturb the affairs of the management/school and/or selection of the school head.”

8. Therefore, it is the submission of the learned counsel appearing for the petitioner that, since the petitioner is already absorbed in the services of the Respondent No.3 – School and he has rendered the services, the petitioner's prayer in the Petition deserves acceptance.

9. The Respondent No.3 has filed Civil Application seeking intervention in the Writ Petition stating therein that, the applicant being the minority institution, it is its prerogative to appoint the employee in their institution of their choice. The Education Officer cannot compel them to absorb the original petitioner. Respondent No.3 along with others have filed Writ Petition No. 11339/2014, stating therein that, the petitioner no. 1 is the registered trust and recognized as minority institution and necessary certificate to that effect is issued by the competent authority. The petitioner no. 1 is running the petitioner no. 2 Urdu Medium School. Petitioner nos. 3 to 9 are the employees of the school appointed by the petitioner nos. 1 and 2. It is further the case of the petitioners that, on attaining the age of superannuation of one teacher, namely, Abdul Hameed, the petitioner no. 3 came to be appointed as an Assistant

Teacher in petitioner no. 2 school. The proposal is also forwarded to the Deputy Director of Education, Latur. It is further the case of the petitioners in said Writ Petition that, meanwhile, the respondent no.2, by issuing communication, directed the petitioner no. 2 to absorb the respondent no. 3, who was declared surplus teacher from New Urdu Girls High School, Ter, Tq. & Dist. Osmanabad. The respondent no. 2 by adopting coercive method and pressure tactics compelled the petitioner no. 2 to implement the order dated 6.11.2012, thereby allowing to join the respondent no.3.

10. It is further the case of the petitioners that, the petitioners have made comprehensive representation to the Education Officer and informed that, the Education Officer is not empowered to compel the educational minority institution to absorb the surplus teachers. Being annoyed by the said representation, on 19.02.2013, the Education Officer has issued show cause notice and directed to submit the joining report. Again petitioner no. 2 made detailed representation and pointed out that, the petitioners are being compelled to act in violation of rights guaranteed under Article 30 (1) of the Constitution of India. In the

month of August, 2014, the respondent no. 2 issued communication and thereby directed the petitioner to submit pay bills of respondent no. 3. On 12.11.2014, the respondents have withheld the salary of the petitioner nos.3 to 9 and also not granted approval to the services of petitioner no. 3 and further directed to submit the pay bills of respondent no.3, which is contrary to the law as well as the ratio laid down by the High Court.

11. The Respondent No.2 has filed the affidavit in reply. It is stated in the said affidavit in reply that, the petitioner is absorbed in the Respondent No.3 – School and he joined the duties in the Respondent No.3 – School on 16th November, 2013. However his name is not included in the salary bills of the teachers, submitted by the respondent no. 3 school. It is stated that, in pursuance of representations dated 4.12.2013 and 1.2.2014, the respondent no. 2 vide communications dated 7.7.2014, 2.8.2014 and 13.11.2014 called upon the respondent no. 3 school to submit pay bills of the petitioner.

12. It is stated that, the petitioner having joined

duties in respondent no. 3 school on 16.11.2013 is eligible for the salary from that date onwards, provided the respondent no. 3 school submits pay bills for the same. It is stated that, after receipt of pay bills from respondent no.3 school, further steps for ensuring payment, as admissible, shall be taken expeditiously.

13. The learned counsel appearing for the Respondent No.3-School submits that, the Respondent No.2 is acting contrary to the mandate of Article 30(1) of the Constitution of India and enforced his liability of absorption of Respondent No.3 on the petitioners illegally. It is further submitted that, the Respondent No.2 has issued communication in August, 2014 for submission of pay bills of Respondent No.3. The petitioners have again made representation and informed that, the action of absorption of respondent no.3 is contrary to the constitutional mandate. The Education Officer is bent upon to implement the order of absorption. The respondent No.2 has adopted coercive method and withheld salary bills of the entire staff of the school under threat that, the petitioner no.2 school is also be derecognized. The action of respondent No.2,

directing absorption, compelling the petitioners to allow to join the respondent no.3, issuing show-cause notices, the directions for submission of pay bill of respondent No.3, are in violation of Article 30(1) of the Constitution of India and contrary to the ratio laid down by the Supreme Court.

14. It is further submitted that, the petitioner no.1 is the minority institute and is having rights protected under Article 30(1) of the Constitution of India. The school run by the petitioner no.1 is Urdu medium school. The certificate dated 1.12.2008 issued by the competent authority indicates that, the petitioner no.2 school is recognized as linguistic minority school. Therefore, the order of absorption of surplus employee issued by the respondent No.2 is not enforceable against the petitioners. However, the action dated 6.11.2012 is taken contrary to the constitutional mandate. The Hon'ble Supreme Court in the case of **Ahmadabad Saint Zeviers College Society and another vs. State of Gujrat and another**¹ has held that, the law which interferes with the minority choice of a governing body or management council would be violative of

¹(1974) 1 SCC 717

the rights guaranteed by Article 30(1). In another judgment, in case of **Sindhi Education Society and another Vs. Chief Secretary of N.C.T., New Delhi and others**² the same principle is laid down. The High Court in Writ Petition No. 116/2012 (Momin Education Society, Mohalla Sayadan, Nanded and another V/s Education Officer (Primary), Zilla Parishad, Nanded and others), decided on 16.7.2012, laid down the same principle, in a case filed by the Education Society, challenging the judgment and order passed by the Grievance Committee, Aurangabad. The petitioners therein approached Grievance Committee for entertaining complaint of Shikshan Sevak, seeking quashment of the order passed by the Education Officer dated 14.3.2011, rejecting proposal submitted by the Institution. The appeals filed by the respondent Nos. 2 and 3 in Writ Petition were rejected and directions were issued by the Grievance Committee to the Education Officer to send surplus teachers to the concerned institutions for being accommodated in the employment. It is further directed that, if the management fails to absorb surplus teachers, within specified period, i.e. two months, the Education Officer shall have liberty to take appropriate

²(2010) 8 SCC 49

steps against the management. The directions further contained that, in the event the Education Officer fails to send surplus teachers within stipulated period, he shall grant approval to the appointment of the appellants therein, including respondent Nos. 2 and 3 in the writ petition.

15. The High Court, vide order dated 16.7.2012, has held that, considering the law laid down by the Hon'ble Supreme Court, it is clear that, the law which interferes with a minority choice of qualified teacher 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) of the Constitution. It is further held that, it is of course, permissible for the State and its Education Authorities to prescribe qualification of teachers, but once, the teacher possessing the requisite qualifications are selected by the minority for their educational institution, the State would have no right to veto the selection of these teachers. The High Court pleased to hold that, the directions issued by the Grievance Committee to the Education Officer, sending surplus teachers for being accommodated by the minority institution and the mandate requiring the managements of

the minority institution to absorb such teacher 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. The High Court therefore, pleased to quash and set-aside the directions issued by the Grievance Committee, touching the management of petitioner-institution.

16. It is submitted that, the appointment of the petitioner no.2 in place of vacancy created by virtue of retirement of a teacher, is according to norms laid down. The respondent No.2 ought to have granted approval to the services of petitioner no.3. The absorption of respondent Shri. Momin Matin Ahmed Mobin Ahmed has caused injustice with the petitioner no.3. The Respondent No.2 – Education Officer is not empowered to refuse proposal for approval of the petitioner no.3. Therefore, relying upon the pleadings in the Petition and aforementioned judgments of the Supreme Court and the High Court, the learned counsel appearing for the petitioner in Writ Petition No. 11339/2014 submits that, the action of Respondent No.2 directing

absorption of Respondent No.3 be quashed and set aside and Respondent Nos. 1 and 2 may be directed to grant approval to the services of the petitioner no.3 in view of his appointment order and release his payment towards salary since August, 2014.

17. Since the subject matter of both the Petitions is interconnected, same are being disposed of by the common judgment and order. We have heard the learned counsel appearing for the parties in both the Petitions. With their able assistance, we have perused the pleadings in the Petitions, grounds taken therein and affidavit in reply and the additional affidavits in replies filed by the Respondent No.3.

18. The fact that, the petitioner in Writ Petition No. 5677/2014, is absorbed in the services of the Respondent No.3, who is the petitioner in Writ Petition No.11339/2014, is not in dispute. He is absorbed in the said school on 16th November, 2013. Though time to time he has filed representations for releasing his salary, however, Respondent No.3 – institution is not submitting

salary bills of the petitioner. Therefore, in Writ Petition No.5677/2014, on 30th April, 2015, the Division Bench of this Court directed the Respondent No.2, to take steps to expedite the payment of salary of the petitioner, and report the compliance. However, it appears that, the Management of the Respondent No.3 – school has not submitted the salary bills of the petitioner. Since the petitioner Shri. Momin Matin Ahmed Mobin Ahmed is already absorbed in the services of respondent no.3, it was incumbent upon the respondent no.3 – school to submit his salary bills in adherence to the directions issued by the Education Officer. Upon perusal of the order passed by the Division Bench in Review Application No. 25/2013 (Momin Matin Ahmad Mobin Ahmad V/s The State of Maharashtra) in Writ Petition No. 1807/2008, it is clearly observed in said order that, the absorption of the petitioner i.e. Shri. Momin Matin Ahmed Mobin Ahmed, need not be restricted to Urdu medium school. If post is available in any other school, he can be accommodated on such post as per his qualification. Therefore, in adherence to said directions/observations, the Education Officer asked Respondent No.3 – school to absorb the petitioner and accordingly, he is absorbed in the

services of Respondent No.3 - school. The petitioner has worked for considerable period. We do not see any reason to upset the order of absorption passed by the respondent No.2, more so when the petitioner has rendered services for more than two years. It is true that, the Respondent No.3 is minority institution, however, in the peculiar facts of this case, the petitioner Shri. Momin Matin Ahmed Mobin Ahmed is entitled for equitable relief, in as much as, he has rendered the satisfactory services for more than two years in the respondent no.3 – school.

19. The Respondent No.3 Shri. Momin Matin Ahmed Mobin Ahmed in Writ Petition No. 11339/2014 has placed on record along with his additional affidavit in reply the order dated 13th January, 2014 passed by the Education Officer (Primary), Zilla Parishad, Osmanabad, wherein the additional teacher Smt. Shaikh Shamim M. Hanif is asked to be absorbed in Sayyed Abdulla Memorial Urdu Primary School, Naldurg, Tq. Tuljapur i.e. the same institution, wherein the respondent no.3 is rendering the services. Upon perusal of the contents of the said order, it appears that,

due to reduction of strength of students of Dr. Jakir Hussain Urdu Primary School, Murum, Tq. Omerga, the division of 2nd and 3rd standards with teachers had been transferred to Sayyed Abdulla Memorial Urdu Primary School, Naldurg, Tq. Tuljapur run by the petitioner in Writ Petition No. 11339/2014, and also it appears that, the second division of 7th standard is also given to the said school. It appears that, the absorption of Smt. Shaikh Shamim M. Hanif is subsequent to petitioner Shri. Momin Matin Ahmed Mobin Ahmed and that too with the consent of the said institution. Therefore, on equity also, the petitioner Momin Matin Ahmed Mobin Ahmed is entitled for reliefs claimed by him.

Therefore, it appears that, even respondent no.3 – school, subsequent to the absorption of the petitioner Shri. Momin Matin Ahmed Mobin Ahmed has absorbed one more teacher, and therefore, in the peculiar facts of the present case, the petitioner in Writ Petition No.5677/2014 is entitled to the reliefs prayed in terms of prayer clause. `B'. The prayer clause `B' reads thus :-

“(B) By issuing appropriate writ, order or directions the respondent no.3 may kindly be directed to submit salary bill of the petitioner forthwith to the respondent no.2 and respondent no.2 may kindly be directed to forthwith release the salary of the petitioner from the month of November, 2013.”

20. Accordingly, the Writ Petition No. 5677 of 2014 is allowed in terms of prayer clause `B'. Rule made absolute in the above terms.

21. In view of the discussion in foregoing paragraphs, in our considered view, since Shri. Momin Matin Ahmed Mobin Ahmed is already absorbed in the services of the petitioner school, we are not inclined to entertain Writ Petition No. 11339 of 2014.

It is also relevant to mention that, the concerned school has not placed any documents on record

showing that, the said school obtained prior permission from the Education Officer before appointment of the petitioner no.3. The Supreme Court in the case of **Kolawana Gram Vikas Kendra Vs. State of Gujarat & others**³, while considering the issue whether the requirement of prior approval of the Government Authority is necessitated before the selection process for the appointment is initiated by the minority institution to select the candidates, has taken a view that, the requirement of prior permission is necessitated because it is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly; whether the candidate, who were sought to be appointed, were having the requisite qualification in terms of the rules and regulations of the Education Department. Para 6 of the said judgment reads thus :-

“6. In our considered view, we do not view this to be the interference in the selection process. It would be perfectly all right for a minority institution to select the candidates without any

3 2010(1)SCC 133

interference from the Government. However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly; whether the candidate, who were sought to be appointed, were having the requisite qualification in terms of the rules and regulations of the Education Department.”

22. In the light of discussion hereinabove, we are not inclined to entertain Writ Petition no. 11339/2014, and quash the order passed by Respondent No.2 directing the Management of the said school to absorb the petitioner in Writ Petition No. 5677/2014, and more particularly having regard to the fact that, already he has been absorbed in the month of November, 2013, and continuous to be in the services of the said school. Alleged appointment of the petitioner no.3 by the petitioner no.1 in Writ Petition No. 11339/2014 is without following requirement of prior approval of the Respondent No.2. Therefore, we are not

inclined to issue any directions to Respondent Nos. 1 and 2 to grant approval to the services of the petitioner no.3 in the said Writ Petition.

23. In the light of discussion in foregoing paragraphs Writ Petition No. 11339 of 2014 stands rejected.

(P.R. BORA, J.)

(S.S. SHINDE, J.)

At this stage, the learned counsel appearing for the petitioner in Writ Petition No. 11339/2014 prays for continuation of order of status-quo and stay to the implementation of the judgment, pronounced by us today, for a period of eight weeks. The said prayer is vehemently opposed by the learned counsel appearing for the respondents.

2. Though we have passed the interim order directing the petitioner in Writ Petition No. 11339/2014 to process the salary bills of the petitioner - Momin Matin Ahmad Mobin Ahmad in Writ Petition No. 5677/2014, in total disregard to the interim order, the salary bills were not

forwarded by the petitioner in Writ Petition No. 11339/2014 to the Education Officer. In that view of the matter, the petitioner in Writ Petition No. 5677/2014, is rendering services for considerable period without receiving any salary. Therefore, we are not inclined to entertain the prayer to continue an order of status-quo or stay, hence the said prayer is rejected.

(P.R. BORA, J.)

(S.S. SHINDE, J.)