

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5937 of 2016

Smt. Seema Lahu Kolhe,
Age : 33 years, Occu. Service,
St. Mary's High School,
Wahegaon, Tq. Gangapur,
District Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
School Education Department,
Government of Maharashtra,
Mantralaya, Mumbai – 32
2. The Education Officer
(Secondary),
Zilla Parishad, Aurangabad
3. St. Mary's High School,
Wahegaon, Tq. Gangapur,
District Aurangabad,
through its Head Mistress

RESPONDENTS

Mr. C.K. Shinde, Advocate for the petitioner
Mr. A.S. Shinde, A.G.P. for respondent nos.1 to 2

**CORAM : R.M. BORDE AND
SANGITRAO S. PATIL, JJ.**

DATE : 18th November, 2016

ORAL JUDGMENT (PER : R.M. BORDE, J.) :

Rule. Rule made returnable forthwith. With
the consent of the parties, the petition is heard

finally at the admission stage.

2. The petitioner is objecting to the order dated 3rd May, 2016, passed by respondent No. 2 – Education Officer (Secondary), Zilla Parishad, Aurangabad, refusing to grant approval to the appointment of the petitioner as Librarian in respondent No. 3 – School.

3. The petitioner came to be appointed as Librarian in respondent No. 3 – Minority Institute in the year 2014. A proposal was sent for grant of approval to the appointment of the petitioner. However, the same has been turned down on the ground referable to Government Resolution dated 2nd May, 2012 and Government Circular dated 12th February, 2015 as well as on the ground that the approval cannot be accorded unless the surplus employees from the cadre are absorbed. The petitioner contends that the Government Resolution referred in the impugned order does not apply to the Minority Institution and further that the Minority Institution cannot be compelled to accommodate the surplus employees. The reliance is placed on the judgment dated 16th July, 2012 delivered in Writ Petition No. 116 of 2012, to which one of us (R.M. Borde, J.) is

a member, in which it has been observed in paragraph Nos. 13 and 14 as follows :

"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 the instant petition, the undisputed fact is that the institution of which the petitioner is an employee, is a Minority Institution and as has been held by this Court in its judgment in Writ Petition No.3707 of 2013, relying on the decision in Writ Petition No. 116 of 2012, decided on 16th July, 2012 that the appointments by Minority Institution are not liable to be withheld resorting to Government Resolution dated 2nd

May, 2012, detention of proposal of the petitioner seeking approval to his appointment, is incompatible with the legal position, particularly having regard to the decision of the Supreme Court and the High Court. In this view of the matter, the order dated 3rd May, 2016, impugned in this petition, is not maintainable and deserves to be quashed and set aside and it is accordingly quashed and set aside.

5. Respondent no. 2 — Education Officer (Secondary), Zilla Parishad, Aurangabad is directed to reconsider the proposal for according approval to the appointment of the petitioner on the post of Librarian in accordance with law and without being detained by Government Resolution dated 2nd May, 2012. The decision on the said proposal shall be taken within a period of eight weeks from today.

6. Rule is made absolute in the above terms with no order as to costs.

[SANGITRAO S. PATIL]
JUDGE

[R.M. BORDE]
JUDGE