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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5910/2015

1] Anjumane Ishate Taleem,
through President
Galli No.1, Near Congress Bhavan,
Dhule Tq. & Dist.Dhule.

2] A.I.T. Urdu Primary School,
Dhule, Tq. & Dist.Dhule.
Through Head Master.

...Petitioners...

Versus

1] The State of Maharashtra,
through Secretary,
School Education Department,
Mantralaya, Mumbai-32.

2] Deputy Director of Education,
Nashik Region, Nashik.

3] Education Officer (Primary),
Zilla Parishad, Dhule.
Tq. & Dist.Dhule.

...Respondents...

.....

Shri S.P. Brahme, Advocate for petitioners.

Shri V.S. Badak, AGP for respondent nos.1 & 2.

Shri R.S. Pawar, Advocate for respondent no.3.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 24.08.2016

ORAL JUDGMENT (Per Gangapurwala, J.):

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1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken for final disposal at this stage.

2] The petitioner no.1 - institution is running an aided primary school i.e. the petitioner no.2. According to the petitioners, due to the retirement of one Assistant Teacher on 31.1.2013, one post became vacant. On 12.3.2013, the petitioner no.2 submitted an application to send the surplus teacher and sought guidance. According to the petitioners, the said application was never replied. Thereafter, the advertisement was issued and on 1.6.2014, one teacher namely Miss.Syed Afrin was appointed on the said post. On or about 22.12.2014, the Education Officer referred one surplus candidate for absorption in the petitioner no.2 - school. The same was not absorbed. As such, vide order dated 2.5.2015, one post of the petitioner no.2 - school was abolished. The said order is assailed in the present petition.

3] Learned counsel for the petitioners states that the petitioner no.1 is a minority institution. Though at

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the relevant time, the petitioner no.1 was not possessing the certificate of minority institution, the said certificate is granted to it on 5.8.2016. The learned counsel submits that as soon as the post of Assistant Teacher having become vacant, promptly the petitioners intimated the respondent no.3 – Education Officer to send the surplus candidate and also sought guidance. The respondent no.3 – Education Officer did not communicate to the petitioners for a long period and after lapse of one year, advertised the said post and on 1.6.2014 appointed one Miss.Syed Afrin as an Assistant Teacher. The learned counsel submits that even proposal seeking approval to the said appointment was forwarded to the respondent no.3 – Education Officer. The learned counsel further states that on 22.12.2014, for the first time, the Education Officer directed the petitioners to absorb the surplus candidate. The petitioners had already appointed the Assistant Teacher to the said post and as such could not have accommodated the said surplus teacher and the Education Officer thereafter on 2.5.2015 abolished one post of Assistant Teacher solely on the ground that the surplus candidate was not absorbed. The

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learned counsel submits that the petitioners had approached the Education Officer well in advance, but as the Education Officer did not respond to the application of the petitioners, the petitioners could not have kept the said post vacant for a long period. Even otherwise, the petitioner no.1 being minority institution, the respondents could not have directed the petitioners to absorb a surplus candidate.

4] Learned counsel for the respondent no.3 – Education Officer states that at the relevant time, when directions were issued to the petitioners to absorb the surplus candidate, the petitioner no.1 was not a minority institution. Even there was a ban for recruitment of new teachers. The petitioners flouted the Government resolution and the ban, and appointed a fresh teacher. The same was impermissible. There were many surplus teachers, who are required to be accommodated. For the said default on the part of the petitioners, the respondent no.3 has taken appropriate stand by abolishing one post.

5] Learned counsel for the petitioners submits that the said surplus candidate, who was directed to be

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absorbed in the petitioner no.2 – school has now been absorbed in the school run by the Municipal Corporation.

6] The facts, as narrated above, are not controverted i.e. [i] the post of Assistant Teacher becoming vacant with the petitioner no.2 – school in January, 2013; [ii] the petitioners applying with the respondent no.3 – Education Officer in March, 2013, seeking directions with regard to the surplus teacher; and [iii] no reply was given to the said letter and after lapse of one year, the petitioner no.2 appointed an Assistant Teacher on the post, which had become vacant. It is also now a matter of record that the petitioner no.1 has been accorded the status of a minority institution. A certificate to that effect appears to have been issued on 5.8.2016.

7] It would appear that the petitioner no.2 had not recklessly appointed an Assistant Teacher on the post that had become vacant, but had approached the Education Officer and only after a lapse of one year, as no instructions were received by the petitioners from the Education Officer, the petitioners proceeded to appoint an Assistant Teacher after following due procedure and by

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an advertisement. The act of the petitioners appears to be *bona-fide* one. The petitioners certainly could not have kept that post vacant for a long time as it was vacant for almost one and half year.

8] Considering the *bona-fide* act of the petitioner no.2 and also the fact that now the petitioner no.2 is accorded the status of a minority institution, the impugned order is quashed and set aside.

9] In case the said post is admissible even today as per the staffing pattern, then the proposal seeking approval for the appointment of the Assistant Teacher on the said post shall be considered and shall not be rejected only on the ground that the petitioners have failed to absorb the surplus candidate.

10] The writ petition accordingly stands disposed of. Rule is made absolute accordingly. There shall be no order as to costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)