IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.8681 OF 2016

01 Shri Vardhaman Sthanakwasi Jain
Shrawak Sangh, Jalna,
through its Secretary.

02 The Head Mistress,
Mahavir Sthanakwasi Jain Vidyalaya
(Primary), Ganesh Nagar,
Jalna, District Jalna.

03 Varsha d/o Ramesh Khaire,
age: 21 years, Occ: service as
Shikshan Sevak, R/o Phule Nagar,
Badnapur, Tq. Badnapur,
District Jalna.

04 Kaleshwar s/o Jagannath Dawne,
age: 26 years, Occ: service as
Shikshan Sevak, R/o Jalna,
Tq. & District Jalna.

05 Ashwini d/o Anilrao Joshi,
age: 35 years, Occ: service as
Shikshan Sevak, R/o Jalna,
Tq. & District Jalna.

06 Arati d/o Subhash Kankariya,
age: 29 years, Occ: service as
Shikshan Sevak, R/o C/o S.L.
Bhalerao, Mamadevi Nagar,
Ambad Road, Jalna,
Tq. & District Jalna.

07 Ayodhya d/o Dharmaraj Jagdale,
age: 23 years, Occ: service as
Shikshan Sevak, R/o Panewadi,
Tq. Ghansavangi, District Jalna. Petitioners

Versus

01 The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai-32.

02 The Education Officer (Primary),
Zilla Parishad, Jalna. Respondents

Mr.V.S.Panpatte, advocate for petitioners.
Mr.K.N.Lokhande, A.G.P. for Respondent No.1.
Mr.S.S.Tope, advocate for Respondent No.2.

CORAM : R.M.BORDE &
K.K.SONAWANE, JJ.
DATE : 24th October, 2016

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

1 Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 The petitioners are praying to quash the order passed by Respondent No.2, refusing to accord approval to the appointments of petitioners nos.3 to 7 as Shikshan Sevak in petitioner no.2 school. The impugned orders have been issued by Respondent No.2 on 28.06.2016.

3 The petitioners contend that petitioners no.3 to 7 possess requisite qualification for being appointed as Shikshan Sevak and were in fact appointed by the Management, in observance of the procedure prescribed for making appointment, on 19.06.2016. Proposals were forwarded for granting approval to their appointments to the Education Officer. However, the Education Officer turned down the proposals by order dated

28.06.2016, mainly on the ground that the institution, before making appointments, has not secured approval from the Zilla Parishad and has failed to absorb surplus teachers. Since the Management has failed to abide by the directives in respect of absorption of surplus teachers, the Education Officer deemed it proper to refuse to grant approval to the appointments.

5 Learned Counsel appearing for petitioners, relying upon the judgment delivered by the Supreme Court in the matter of **Pramati Educational & Cultural Trust & others Vs. Union of India and others**, reported in 2014 AIR SCW 2859, contends that, the provisions of Right to Education Act *vis-a-vis* a minority institutions have been held to be *ultra virus* the provisions of Article 30(1) of the Constitution of India. In nutshell, it is contended that the minority institutions are not governed by the provisions of Right to Education Act, since the provisions of the said Act are held to be *ultra virus* the provisions of Article 30(1) of the Constitution of India by the Supreme Court, in the aforesaid matter. It is not permissible for the said authority to impose any restriction by taking recourse to provisions of Right to Education Act.

6 The Division Bench of this Court, in Writ Petition No.116 of 2012, adopted the said analogy, relying upon the judgment of the Supreme Court. So far as the second ground raised by Zilla Parishad is concerned, reliance can be placed on the judgment delivered by the Single Judge of this Court (**R.M.Borde, J.**) in **Writ Petition No.116 of 2012, decided on 16.07.2012**, wherein it has been held that 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. The Single Judge has relied upon the judgment of the Supreme Court in the matter of **T.M.A. Pai Foundation & others Vs. State of Karnataka & others**, reported in 2002 (8) SCC 481.

7 In view of the decision by this Court, on the basis of the judgment delivered by the Supreme Court, it is not open for the Zilla Parishad to compel the minority institution to accept the surplus teachers for making appointment to the vacant posts. The order passed by the Education Officer dated 28.06.2016 to accord approval is devoid of substance and as such it is quashed and set aside. The Education Officer is directed to consider the proposal tendered by the Management for granting approval to the appointment of the teachers in accordance with law, as expeditiously as possible and preferably within a period of four weeks from today.

8 Rule is accordingly made absolute. There shall be no order as to costs.

K.K.SONAWANE
JUDGE

R.M.BORDE
JUDGE