

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

WRIT PETITION NO. 9609 OF 2015

Satish S/o Uttamrao Mhaske,
Age : 35 Years, Occu. : Service,
As a Jr. Clerk, S. A. William
Booth Memorial High School,
Farya Bag, Ahmednagar,
Taluka and District Ahmednagar. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Ahmednagar.
3. The President/Secretary,
The Salvation Army, Indian
Western Territory,
S.A. William Booth Memorial
High School Farya Bag,
Ahmednagar.
4. The Head Master,
S. A. William Booth Memorial
High School, Farya Bag,
Ahmednagar,
Taluka and District Ahmednagar. .. Respondents

Shri Amol N. Kakade, Advocate for the Petitioner.
Shri B. V. Virdhe, A.G.P. for Respondent Nos. 1 and 2.
Shri Mahesh S. Taur, Advocate for Respondent Nos. 3 and 4.

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

DATE : 26TH AUGUST, 2016.

ORAL JUDGMENT (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. Mr. Kakade, the learned counsel for the petitioner submits that, the petitioner is appointed as a clerk with the respondent Nos. 3 and 4 vide appointment order dated 06.03.2010. The proposal seeking approval to the appointment of the petitioner as a clerk is rejected by the Education Officer only on the ground that prior permission of the Education Department was not taken. The learned counsel submits that, in January 2010 one post of clerk became vacant because the person occupying said post retired on account of attaining age of superannuation. On 30.01.2010 the institution sought permission from the Education Officer to fill in the said post. No response was received from the Education Officer, as such after following due selection process the petitioner was appointed in March 2010. The learned counsel submits that, the respondent No. 3/institution is minority institution. The certificate to that effect is also issued. Mr.

Kakade, the learned counsel further submits that, the petitioner belongs to the Scheduled Caste category.

3. The learned counsel for respondent Nos. 3 and 4 submits that, the vacancy exists. The petitioner is appointed as against clear vacant post. Prior permission of the Education Officer was sought, as no response was received, thereafter after following due procedure of law, the petitioner has been appointed. The learned counsel also submits that, the respondent No. 3/institution is a minority institution and even otherwise permission would not be required.

4. The proposal seeking approval to the appointment of the petitioner is rejected solely on the ground that the management has not taken prior permission of the Education Department for filling in non teaching post.

5. It is a fact that, the respondent No. 3/institution is a minority institution. A certificate to that effect is also issued, may be at the time when the petitioner was appointed certificate did not exist, but now the said certificate has been issued recognizing the respondent No. 3/institution as a minority institution.

6. The application was made by the respondent No. 3 seeking

permission to fill in the post. No response was received. Thereafter, the petitioner was appointed. The petitioner is not at fault. It is submitted that, even the petitioner belongs to the S. C. category.

7. Considering the above, the impugned order is quashed and set aside. The respondent No. 2/Education Officer shall decide the proposal seeking approval to the appointment of the petitioner as a clerk afresh on its own merits and shall not reject it on the ground that prior permission was not obtained before filling in the post of clerk. The said proposal be decided expeditiously and preferably within a period of four (04) months from today.

Rule accordingly is made absolute in above terms. No costs.

Sd/-

[K. L. WADANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]