

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

WRIT PETITION NO. 2662 OF 2017

THE NATIONAL EDUCATION SOCIETY LATUR THROUGH ITS
PRESIDENT AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. Syed Masood Chand

AGP for Respondents : Mr. P.S.Patil

...

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

DATED : 28th FEBRUARY, 2017

O R D E R :

Rule. Rule made returnable forthwith.

With the consent of learned counsel for respective parties, taken up for final hearing.

2. The proposal was submitted by petitioner nos. 1 and 2 seeking approval to the appointment of petitioner no.3 as a Shikshan Sevak. The same is rejected on the ground that surplus candidates are available

and they are to be absorbed. Learned counsel for the petitioner states that the petitioner is a minority institution. Certificate to that effect has been issued. Learned counsel further submits that as per the Government Resolution dated 13.7.2016 a minority institution cannot be compelled to absorb surplus teachers. Learned counsel also relies on the judgment of the Division Bench of this Court in the case of **Canossa Society vs the Commissioner, Social Welfare**, reported in **2015 (3) All MR 575**.

3. Learned A.G.P. states that as per the Government Resolution dated 13.7.2016 separate list of surplus candidates of minority institution is to be maintained and operated.

4 We have considered the submissions canvassed on behalf of the learned counsel for respective parties.

5. Clause 6 of the said Government Resolution lays down that in case the minority institution is not ready to absorb surplus candidates, then the minority institution cannot be compelled to absorb them. The judgment of this Court in the case of **Canossa Society** (supra) also states that Rule 25A of the Maharashtra Employees of Private Schools (Conditions of Services) Rules cannot be made applicable to the appointed surplus staff in minority institution without concurrence of such appointment.

6. In view of that, the impugned order, passed by the Education Officer rejecting the proposal seeking approval to the appointment of the petitioner as Shikshan Sevak is quashed and set aside. The Education Officer shall decide the said proposal afresh and shall not reject it on the count that surplus candidates were available, expeditiously, preferably within four months.

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

(K.L.WADANE, J.) (S.V.GANGAPURWALA, J.)