

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

WRIT PETITION NO. 3242 OF 2017

The Hindusthani Education Society
Ausa through its Secretary and others .. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri Masood Chand Syed, Advocate for Petitioners.
Shri P. S. Patil, Addl. G. P. for Respondent Nos. 1 to 3.

**CORAM : S. V. GANGAPURWALA AND
SANGITRAO S. PATIL, JJ.**

DATE : 23RD MARCH, 2017.

ORDER :

. 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 No 2 seeking approval to the appointment of petitioner Nos. 3 to 16 as Shikshan Sevaks. The same is rejected on the ground that surplus candidates are available and they are to be absorbed. Learned counsel for petitioners states that the petitioner No. 1 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 vs the Commissioner, Social Welfare** (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.

[SANGITRAO S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

bsb/March 17