

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4506 OF 2017
(The Hindusthani Education Society, Ausa and others Vs.
The State of Maharashtra and others)

Mr. Syed Masood Chand, Advocate for the Petitioners
Mr. A.V. Deshmukh, A.G.P. for the respondents/State

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

DATE : 5th APRIL, 2017

ORAL ORDER :

Rule. Rule made returnable forthwith. The learned A.G.P. waives notice of Rule for all the respondents. With the consent of the learned counsel for the petitioners and the learned A.G.P., heard finally.

2. The proposal was submitted by respondent No. 2 seeking approval to the appointment of petitioner Nos. 3 to 6 as Shikshan Sevaks. The same is rejected on the ground that surplus candidates are available and they are to be absorbed. The learned counsel for the petitioners states that petitioner No. 1 is a Minority Institution. A certificate to that effect has been

issued. The learned counsel further submits that as per the Government Resolution dated 13th July, 2016, Minority Institution cannot be compelled to absorb surplus teachers. The 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 2015 (3) ALL MR 575**.

3. The learned A.G.P. states that as per the Government Resolution dated 13th July, 2016, separate list of surplus candidates of Minority Institution is to be maintained and operated.

4. We have considered the submissions canvassed by the learned counsel for the petitioners and the learned A.G.P.

5. Clause 6 of the Government Resolution dated 13th July, 2016 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

Service) Rules, 1981 cannot be made applicable to the appointment of surplus staff in Minority Institution without concurrence of the Institution.

6. In view of above, the impugned order, passed by the Education Officer, rejecting the proposal seeking approval to the appointment of the petitioner Nos. 3 to 6 as Shikshan Sevaks, is quashed and set aside. The Education Officer shall decide the said proposal afresh on its own merits and shall not reject it on the ground that surplus candidates were available. The same shall be decided expeditiously and preferably within four months.

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

[SANGITRAO S. PATIL]
JUDGE

[S.V. GANGAPURWALA]
JUDGE