

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 8218 OF 2016

1. Asifa Khanam Gula Ahmed Khan,
Age 32 years, Occu. Service,
R/o. Powerloom, MIDC, Chikhalthana,
Aurangabad.
2. Lal Bahadur Shastri Urdu High
School,
Through Head Master,
Mr. Rafiya Zareen w/o. Mohd.
Shafi, Age 54 years,
Occu. Service, R/o. Powerloom,
MIDC, Chikhalthana, Aurangabad.
3. Urdu Education Society,
Through its Chairman,
Shaikh Mohammed Ayyub s/o.
Shaikh Habib,
Age 42 years, Occu. Service,
R/o. Juna Bazar, Aurangabad. **..Petitioners.**

Versus

1. The State of Maharashtra
Through Secretary, School
Education Department,
Mantralaya, Mumbai-400032.
2. The Director,
Secondary Education Maharashtra
State, Central Building,
Pune.
3. The Deputy Director of Education,
School Education Department,
Aurangabad.
4. The Education Officer (Secondary),
Zilla Parishad, Aurangabad. **...Respondents.**

WITH
WRIT PETITION NO. 8219 OF 2016

1. Syed Mohammed Syed Abdul Jabbar,
Age 21 years, Occu. Service,
R/o. Kaisar Colony, Roshan Gate,
Aurangabad.
2. Fatema Girls High School,
Through its Head Mastress,
Mrs. Khan Shamim Bano w/o.
Mohammed Hasham, Age 57 years,
Occu. Service, R/o. Kaisar Colony,
Roshan Gage, Aurangabad.
3. Urdu Education Society,
Through its Chairman,
Shaikh Mohammed Ayyub s/o.
Shaikh Habib,
Age 42 years, Occu. Service,
R/o. Juna Bazar, Aurangabad. **..Petitioners.**

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State, Central Building,
Pune.
3. The Deputy Director of Education,
School Education Department,
Aurangabad.
4. The Education Officer (Secondary),
Zilla Parishad, Aurangabad. **...Respondents.**

WITH
WRIT PETITION NO. 8220 OF 2016

1. Smt. Nasiba Farheen Abdul Rashid,
Age 39 years, Occu. Service,
R/o. Sidharth Nagar, HUDCO,
Aurangabad.
2. Razia Sultana Urud High School,
Through its Head Master,
Mr. Mohammed Shaker Abdul Azim,
Age 32 years, Occu. Service,
R/o.Sidharth Nagar, HUDCO,
Aurangabad.
3. Urdu Education Society,
Through its Chairman,
Shaikh Mohammed Ayyub s/o.
Shaikh Habib,
Age 42 years, Occu. Service,
R/o. Juna Bazar, Aurangabad. **..Petitioners.**

Versus

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Through Secretary, School
Education Department,
Mantralaya, Mumbai-400032.
2. The Director,
Secondary Education Maharashtra
State, Central Building,
Pune.
3. The Deputy Director of Education,
School Education Department,
Aurangabad.
4. The Education Officer (Secondary),
Zilla Parishad, Aurangabad. **...Respondents.**

WITH

WRIT PETITION NO. 8221 OF 2016

1. Sadaf Tabinda Abdul Wahid,

Age 28 years, Occu. Service,
R/o. Kaisar Colony, Roshan Gate,
Aurangabad.

2. Smt. Hashmi Gufrana Nayyar Moiz,
Age 32 years, Occu. Service,
R/o. Kaisar Colony, Roshan Gate,
Aurangabad.

3. Smt. Shaikh Shafiq Naaz
Mohammad Hasham,
Age 28 years, Occu. Service,
R/o. Kaisar Colony, Roshan Gate,
Aurangabad.

4. Fatema Girls High School,
Through its Head Mastress,
Mrs. Khan Shamim Bano w/o.
Mohammed Hasham, Age 57 years,
Occu. Service, R/o. Kaisar Colony,
Roshan Gage, Aurangabad.

3. Urdu Education Society,
Through its Chairman,
Shaikh Mohammed Ayyub s/o.
Shaikh Habib,
Age 42 years, Occu. Service,
R/o. Juna Bazar, Aurangabad. **..Petitioners.**

Versus

1. The State of Maharashtra
Through Secretary, School
Education Department,
Mantralaya, Mumbai-400032.

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State, Central Building,
Pune.

3. The Deputy Director of Education,
School Education Department,

Aurangabad.

4. The Education Officer (Secondary),
Zilla Parishad, Aurangabad. ...**Respondents.**

Mr. Quadri Taher Ali h/f. Mr. Zia Ul Mustafa,
Advocate for petitioners.

Mr. A.R. Borulkar, A.G.P. for respondent Nos. 1 to
4.

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATED : February 13, 2017.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. By
consent, heard both the sides for final disposal.

2) The petitions are filed by minority
institutions to challenge the decisions given by
Education Officer on the applications submitted
for approval of the newly appointed teaching staff
and non-teaching staff. Writ Petition Nos. 8218,
8220 and 8221 of 2016 pertain to teaching staff
and Writ Petition No. 8219 of 2016 pertains to
non-teaching staff. The proposals for approval are
rejected by the Education Officer by giving reason
that no certificates were obtained in respect of

absence of surplus staff.

3) The learned counsel for petitioners places reliance on the Government Resolution dated 13.7.2016 of the Education Department of the Government in which it is made clear that in respect of such recruitment, Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as 'the Act' for short) will not be applicable, both against the institution and also for the benefit of the institution. There is also one case decided by the Division Bench of this Court bearing **Writ Petition No. 1049/2012 [The Canossa Society and Anr. Vs. The Commissioner, Social Welfare, Directorate, Government of Maharashtra and Ors.]** dated 17.1.2014. Similar point was before the Division Bench of this Court for consideration and this Court held that in view of the decisions given by the Apex Court in various cases involving minority institutions, the Government cannot compel the minority institutions to accept the

staff found surplus in other institutions. In view of this decision given by Division Bench of this Court cited supra and aforesaid Government Resolution of the Government, this Court holds that interference is warranted in the orders made by the Education Officer.

4) In the result, the petitions are allowed. The orders made by the Education Officer in all the matters which were communicated to the petitioners by the letter dated 13.6.2016 are hereby set aside. The matters are remanded back for fresh consideration. Education Officer (Secondary) is expected to keep in mind the aforesaid Government Resolution and the observations made by this Court in W.P. No. 1049/2012 cited supra.

Rule is made absolute in aforesaid terms.

[SANGITRAO S. PATIL, J.] [T.V. NALAWADE, J.]

ssc/