

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

WRIT PETITION NO. 8628 OF 2016

Sumaiyya Bano Riyazul Haq ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 8629 OF 2016

Ansari Tabassum Bano Binte Hifzurrenhan ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 8630 OF 2016

Ansari Mustafa Mohammad Husain ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 8672 OF 2016

Masud Ahmad Inamullah ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

WITH

WRIT PETITION NO. 8674 OF 2016

Kafil Ahmed Mohammed Siddique ..PETITIONER

VERSUS

State of Maharashtra and Others ..RESPONDENTS

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Mr. S.P. Brahme, Advocate for petitioners.

Mr. A.A. Jagathkar, A.G.P. for Respondent Nos. 1 and 2.

Mr. A.R. Syed, Advocate for Respondent Nos. 3 and 4.

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

DATED : 27th MARCH, 2017

ORDER :

1. In all these writ petitions, the proposals submitted by the management seeking approval to the appointments of the petitioners have been rejected.

2. Mr. Brahme, learned Counsel for the petitioners states that the petitioners were appointed after following due procedure of law. The respondent - institution is the minority institution. The declaration of the respondent being a minority institution has been given by the authority on 05th August, 2016. Learned Counsel submits that the application for the same was filed on 26th May, 2016. Earlier to the said application, one more application was filed seeking declaration of the institution as minority institution in the year 2014. According to learned Counsel for the petitioners, the respondent institution is linguistic minority institution. The management has right to appoint the staff. Learned

Counsel submits that the reasons given for rejection of the proposals seeking approval to the petitioners are totally erroneous. The ban on recruitment does not apply to the minority institution.

3. Learned Counsel further submits that in all these matters, before appointment of the respective petitioners, proposals were submitted to the Education Officer seeking permission. The Education Officer did not intimate nor directed the institution to absorb the surplus candidates. After following due procedure, the petitioners were selected and appointed. There is no dispute in management. It was only directed that policy decision should not be taken. Appointment of the teachers on the post rendered vacant on retirement of the earlier members of the teaching staff is statutory duty of the institution and would not come within the ambit of the policy decision. All these grounds on which the proposals for approval are rejected do not stand to any reason.

4. Learned A.G.P. submits that the order of the Education Officer is clear that the management is only entitled to conduct the day to day affairs, however, the management is not entitled to take any policy decision. In view of that the management could not have appointed these

petitioners. Learned A.G.P. submits that as on the date when the appointments were made, the institution was not the minority institution. So, ban on recruitment squarely applies. Even otherwise, the posts on which the petitioners are appointed, are inadmissible.

5. Mr. Syed, learned Counsel for the institution submits that staffing pattern as stated by the Education Officer is objected by the institution and the said objection is pending for consideration.

6. We have considered the submissions canvassed by learned Counsel for respective parties. It is a matter of record that respondent – institution has been declared as minority institution. It is a linguistic minority institution. It seems that appointment of petitioners are made on retirement of the persons holding the said posts. It appears as is suggested by the petitioners that on each and every occasion application has been given to the Education Officer seeking permission. It also appears that no point of time the Education Officer ever directed the respondent – institution to absorb the surplus candidates. Now the same also cannot be directed as the respondent – institution has been declared as minority institution. Appointment of these petitioners are made on account of retirement of the persons holding the posts on which the

petitioners are appointed subsequently. The Education Officer naturally has to see as to whether proper procedure is followed while appointing the petitioners.

7. Considering the fact that the respondent – institution is a minority institution and has been declared as such, ban on recruitment would not apply, nor the Education Officer can now direct the respondent – institution to absorb the surplus candidates. It is also not on record that till now the Education Officer at any point of time had directed the institution to absorb the surplus candidates. The appointments were made as the posts on which they are appointed had become vacant due to retirement of the persons working on the said posts. It also does not appear that some other persons raised the objection to the appointment of these petitioners. The Education Officer would be concerned about procedure being followed and certainly is entitled to consider the compliances of the proper procedure being followed while appointing the petitioners. As the respondent – institution is declared as minority institution, ban on recruitment would not apply. Staffing pattern will have to be considered by the Education Officer as on the date the petitioners were appointed.

8. Considering the above, we pass following order:-

The impugned order rejecting the proposals seeking approval to the appointment of the petitioners is quashed and set aside. The Education Officer shall reconsider the said proposals seeking approval to the appointment of the petitioners and shall not reject the proposals on the ground that at the relevant time there was ban on recruitment. The Education Officer shall also consider that the respondent – institution is declared as minority institution. However, the Education Officer is entitled to consider the proper adherence to the procedure being followed while appointing the petitioners and shall also consider the staffing pattern as would be declared on the date of the appointment of the petitioners. The said proposals shall be decided expeditiously and preferably within a period of six months from today. The petitioners and respondent – institution may represent themselves before the Education Officer. The writ petitions stand disposed of. No costs.

SSD (SANGITRAO S. PATIL, J.) (S.V. GANGAPURWALA, J.)