

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

Writ Petition No. 11111 of 2017

District : Ahmednagar

Arshad s/o. Yunus Shaikh,
Age : 30 years,
Occupation : Service,
R/o. House No.19,
Naseman Colony,
Mukund Nagar, Ahmednagar,
Dist. Ahmednagar.

.. Petitioner.

versus

1. The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai - 400 032.
 2. The Education Officer (Primary),
Zilla Parishad, Ahmednagar,
District Ahmednagar.
 3. Ahmednagar Yatimkhana Trust,
Opposite of old Municipal
Corporation Building,
Ahmednagar,
Through its Chairman.
 4. Zakeria Aghadi Marathi
Primary School,
Opposite of old Municipal
Corporation Building,
Ahmednagar,
Through its Head Master.
- .. Respondents.

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Mr. Abasaheb D. Shinde, Advocate, for the petitioner.

*Mr. S.P. Sonpawale, Asst. Government Pleader, for
respondent no.01.*

Mr. S.T. Shelke, Advocate, for respondent no.02.

Mr. N.C. Garud, Advocate, for respondents
no.03 and 04.

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**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 25TH SEPTEMBER 2017

ORAL ORDER *(Per R.M. Borde, J.):*

01. The petitioner is praying for issuance of directions to respondent no.02 - Education Officer to consider proposal tendered by the institution i.e. respondents no.03 and 04 to accord approval to the appointment of the petitioner as Shikshan Sevak in furtherance of the proposal dated 31.08.2015 and reminder dated 08.09.2016.

02. Learned Counsel for the petitioner submits that earlier proposal tendered by the institution has been turned down by the Education Officer on account of failure of the management to secure prior permission of the Education Officer before proceeding to fill in the post of Assistant Teacher and the another ground raised for turning down the proposal is deficiency in qualification i.e. petitioner has not cleared TET examination. It is informed that respondent no.03 - institution is a minority institution and as such, in view of the law laid down by this court in the matter of *Pramati Educational and Cultural Trust (R) and others Vs. Union of India and others* [2014 AIR SCW 2859], the Education Officer cannot insist

management of the institution to accommodate surplus teacher. It is contended that the minority institutions are not governed by the provisions of the Right of Children to Free and Compulsory Education Act, 2009 [**For short, "Act of 2009"**] and the provisions of the said Act are held to be ultra vires of Article 30 of the Constitution of India by the Supreme Court. It is also contended that the Education Officer cannot insist upon institution to appoint such of those teachers who have cleared TET and as such insistence amounts to interference in the rights of the minority institution. It may not be necessary to go into the aspect whether the petitioner has cleared TET examination or not, since petitioner has cleared the TET.

03. Learned Counsel appearing for respondents no.02 - Zilla Parishad informs that the proposal tendered by the institution on 31.08.2015 is not traceable and if the institution presents a fresh proposal, appropriate steps can be taken and the Education Officer would deal with such proposal.

04. Learned Counsel appearing for respondent no.03 - institution states, on instructions, that the proposal seeking approval to the appointment of the petitioner would be re-submitted within four weeks from today.

05. If respondent no.03 - institution tenders a proposal seeking approval to the appointment of the

petitioner, within a period of four weeks from today, respondent no.02 - Education Officer shall consider the same in accordance with law and take appropriate decision in the matter, as expeditiously as possible, preferably within a period of three months from the date of receipt of the proposal.

06. With the directions, as above, the writ petition is disposed of.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

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