

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1984 OF 2015**

1 Taslim Maulana Rampure,
Age 24 years, Occu.- Service,
Residing at 96, Sarvodaya Nagar,
Mulegaon Road,
Solapur.

2 Sanober Rafique Ahmed Mujawar,
Age 23 years, Occu. Service,
Residing at, Bhandar Kawata,
Tal. South Solapur, Solapur.

Through its Power of Attorney holder

Sathi Bashir Ahmed Bashamia Shaikh
President of Zilla Parishad Kamgar
Karmachari Union, Solapur.
Age 43 years, Occu. Service,
having office at 144, Siddhyeshwar Peth,
Gala No.6, National Complex,
Solapur.

....Petitioners.

Vs.

1 Education Officer,
(Primary) Zilla Parishad, Solapur.

2 Deputy Director of Education,
Pune Division, Pune,
Dr. Babasaheb Ambedkar Road,
Opposite Lal Deval Pune.

3 The State of Maharashtra,
 Through the Secretary,
 Department of Education,
 Mantralaya, Mumbai.

4 Sarvoday Krida Va Shikshan
 Prasarak Mandal, Sarvade Nagar,
 Mulegaon Road, Solapur.

....Respondents.

Mr. A.B. Tajane for the Petitioners.

Mr. Yuvraj Gharal i/by Mr. Vijay Killedar for Respondent No.1.

Mr. V.N. Sagare, AGP for the Respondent State.

Mr. P.B. Kulkarni for Respondent No. 4.

**CORAM : B.R. GAVAI AND
 RIYAZ I. CHAGLA, JJ.
DATE : 28 JUNE 2017.**

ORAL JUDGMENT (PER-B.R. GAVAI, J.):-

Rule. Rule made returnable forthwith.

Heard finally by consent.

2 The Petitioners have approached this Court being aggrieved by communication dated 7 July 2015 vide which, the proposal for grant of approval for appointment of Petitioner No.1 came to be rejected. The Petition, in so far as Petitioner No.2 is concerned, stands withdrawn and therefore, we are only concerned

with this issue with regard to Petitioner No.1.

3 The Petitioner came to be appointed as “*Shikshan Sevak*” on 2 May 2011. It is not in dispute that the Petitioner possesses the necessary qualification. The Respondent-Management had sent a proposal to Respondent No.1 for grant of approval of the Petitioner as Shikshan Sevak. However, as the same was not decided, the Petitioner was required to approach this Court by way of Writ Petition No. 1984 of 2015. The Division Bench of this Court vide order dated 8 May 2015, allowed the Petition and directed the Education Officer-Respondent No.1 to consider the said proposal.

4 By the impugned order, Respondent No.1. has passed an order rejecting the proposal on the ground that the Respondent-Management had failed to absorb the surplus teacher.

5 It is not in dispute that Respondent No.4 is a religious minority. The issue is no more *res-integra*. This Court at Aurangabad Bench in Writ Petition No. 3707 of 2013 (Parbhani Education Society Vs. The State of Maharashtra & Anr.), vide Judgment dated 2

September 2013, has held that in so far as the minority institutions are concerned, the same cannot be forced to absorb the surplus teachers. The State Government has also issued a Government Resolution dated 13 July 2016, in pursuance to the said Judgment.

6 In that view of the matter, we find that the rejection of the approval of Petitioner No.1 on the ground that Respondent No.4 has not absorbed the surplus teacher, in our view, is not sustainable in law.

7 The Petition is therefore, allowed in the following terms.

- a) Respondent No.1 is directed to grant approval of Petitioner No.1 as “Shikshan Sevak” w.e.f. 2 May 2011.
- b) On completion of 3 years of “Shikshan Sevak” i.e. on 2 May 2014, Petitioner No.1 shall be granted approval as an Assistant Teacher.
- c) Respondent No.1 shall start paying the salary to Petitioner No.1 as an Assistant Teacher from the month of August 2017. The arrears in pursuance to

the aforesaid order shall be paid within a period of
three months from today.

- d) Rule made absolute in the aforesaid terms.
- e) There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)