

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6271 OF 2018

1 Mrs. Shital Nitin Nehalkar
(Ms. Shital Minanath Thorat)
Age : 28 Years, Occ.: Service.
R/o: Room No. 408, Building No.3,
Dattanagar Vasahat, Tandon Road,
Dombivli (East), District Thane

2 Shri. Dnyaneshwar Math Trust
Matunga, Mumbai,
through it's Chairman Petitioners

Vs.

1 The State of Maharashtra
Through the Secretary,
School Education Dept., Mantralaya,
Mumbai

2 The Administrative Officer
Kalyan Dombivli Municipal Corporation,
Education Department, Kalyan Respondents

Mr. V.R. Kumbhar I/by Ms. Ashwini N. Bandiwadekar for Petitioners.

Ms. Vaishali Nimbalkar, AGP for Respondent no.1.

Mr. Sandip Dilip Shinde for Respondent No.2

Coram : SMT. SADHANA S. JADHAV, J.
Date : 1st November 2018.

P.C.:

1 Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2 The petitioners herein impugns the order dated 21st April 2018 issued by the respondent no.2, Administrative Officer, Kalyan Dombivli Municipal Corporation, Education Department, Kalyan. In fact the petitioner no.1 herein was appointed as Shikshan Sevak vide order dated 27th February 2018 in the School, Shri. Dnyaneshwar Hindi School (Primary), Dombivli (East) run by the petitioner no.2. In fact the petitioner no.2 is a Linguistic (Hindi) Minority Educational Institution.

3 Needless to say that the petitioner no.1 is entitled to all the rights and privileges as conferred under Article 30(1) of the Constitution of India. A proposal was sent for approval of the post of the petitioner no.1. The said proposal for approval has been rejected

vide order dated 21st April 2018 on the ground that there were surplus teachers in the jurisdiction of respondent no.2 and therefore the petitioner no.2 ought not to have made a fresh appointment. In any case, it is a minority institution and therefore the G.R. dated 20th June 2014 would not be applicable to the appointment of petitioner no.1.

4 The Division Bench of this Court (Coram : R.M. Borde and Sunil P. Deshmukh, JJ) in the case of Parbhani Education Society Vs. The State of Maharashtra and Another in Writ Petition No. 3707 of 2013 decided by Aurangabad Bench of this Court by placing implicit reliance on several catena of decisions of the Hon'ble Apex Court has held that:

“position clearly emerges that petitioner institution is indisputably a minority institution and, in various rulings cited on behalf of the petitioner, it is held that the appointments by minority institutions would not be able to be withheld till the time surplus teachers are accommodated/ absorbed. In view of the aforesaid prevailing position, as exemplified under the decisions of the Apex Court and the High Courts, particularly of this Court as depicted in judgment dated 16th July 2012, which could not be effectively countered by

the respondents, save that impugned order being tried to be supported by Government Resolution dated 02.05.2012, the impugned order is incompatible with emerging legal position and as such is unsustainable.”

5 This Court in the case of Shri. Vilas Ramrao Rathod & Anr. Vs. The State of Maharashtra & Ors. in Civil Writ Petition No. 6773 of 2018 has held that the G.R. dated 2nd May 2012 would not be applicable to the minority institutions.

6 Learned counsel for respondent no.2 has vehemently opposed the grant of relief in favour of the petitioners on the ground that it is incumbent upon the petitioners to follow the GRs passed by the Education Department.

7 Needless to say that the issue has been decided by the catena of decisions that the said resolution is not applicable to the administration of the School run by Minority Institutions. In view of this, the petition deserves to be allowed.

8 The impugned order dated 21st April 2018 issued by the respondent no.2, is hereby quashed and set aside.

9 The respondent no.2 is directed to consider a fresh proposal submitted by the petitioner no.2 for approval to the appointment of the post held by Mrs. Shital Nitin Neharkar as Shikshan Sevak in petitioner no.2 institution in the light of the observations made in the judgment of the Division Bench in the case of Parbhani Education Society (supra) decided vide order dated 2nd September 2013.

10 Rule is made absolute in above terms. The petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)