

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

WRIT PETITION NO. 10265 OF 2012

Aayaji Jaywant More

... Petitioner

Vs

1 The State of Maharashtra & Ors.

... Respondents

Mr. Amit Sheth and Mr. Kailas S. Surve for the Petitioner.

Mrs. R.M. Shinde for the Respondent Nos.1 to 3.

Mr. Vinod N. Tayade with Mr. Shaikh Nasir Masih i/b Kalpesh Joshi for the Respondent Nos.4 & 5.

**CORAM : S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.**

TUESDAY, 27TH NOVEMBER, 2018

P.C. :

1 The petitioner challenges the appointment of respondent No.5 as a Headmistress of the Welfare School, Section 25, Ulhasnagar, District Thane and the approval granted on 11th May, 2007, by the Education Officer (Secondary), Zilla Parishad, Thane.

2 We have heard Mr. Amit Sheth at some length and perused with his assistance, the petition and the annexures thereto so also the affidavits-in-reply and rejoinder.

3 On the date when this petition was filed on 9th October, 2006, may be the issue was alive and the order impugned though dated 22nd November, 2006, its validity and legality could have been tested in the writ petition filed in the year 2012. However, by passage of time, the fifth respondent has also ceased to be in service of the Management. She is stated to have resigned as Headmistress. The petitioner has completed twenty years of service, but has not retired. In the event the petitioner feels that the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 applies in its entirety and the stand of the Management that it is a minority institution is not accurate or valid, he can question the same in the event the vacancy caused by the resignation of respondent No.5 is sought to be filled in. He can then contend that despite production of the certificate, sub-section (2) of section 3 does not apply to the Welfare School and, therefore, the Management cannot fill in the post of the Headmaster by appointing a person of its choice.

4 Presently, we do not think that we should examine any wider issue or larger controversy. On account of the subsequent development noted by us, this Writ Petition is disposed of as infructuous, but by clarifying that the issue of law raised in the petition is kept open for consideration on an appropriate occasion at the instance of the petitioner.

SMT. BHARATI H. DANGRE, J.

S.C. DHARMADHIKARI, J.