

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2790 OF 2014

Yateemkhana & Madrasa & ors. .. Petitioners.

V/s.

The Deputy Education Officer & anr. .. Respondents.

Mr. A.G. Kothare, advocate for petitioners.

Mr. Javed Shaikh, advocate for MCGM.

**CORAM : RANJIT MORE &
SMT. SADHANA S. JADHAV, JJ.**

DATE : APRIL 2, 2018.

P. C. :

1 Heard the learned Counsel for the petitioners and the learned Counsel for respondent No. 1.

2 By this Petition under Article 226 of the Constitution of India, the petitioners have taken exception to the order dated 11/11/2013 passed by respondent No. 1. The Petitioners have also sought a direction against the respondents to grant approval to the appointment of teachers appointed by petitioner Nos. 2, 3 and 4 with effect from the date of their appointment and release salary of these

teachers.

3 Petitioner No. 1 is an Educational Trust and Petitioner Nos. 2, 3 and 4 are the minority educational schools. In the year 2013, there were four vacancies of assistant teacher in petitioner Nos. 2, 3 and 4. Accordingly, by separate applications, No Objection Certificates were sought from respondent No. 1 to fill up these vacancies. All these applications were considered by Respondent No. 1-Deputy Education Officer. Respondent No. 1-Deputy Education Officer has granted conditional "No Objection Certificate" by the orders dated 14/2/2013. The condition was that petitioner Nos. 2, 3 and 4 shall absorb Mr. Peerzada Ibrahim, surplus teacher of Ismail Baig Mohammed Urdu Primary School.

4 It is pertinent to note that before passing the above referred orders dated 14/2/2013 granting conditional NOC to the petitioners to appoint assistant teachers, the petitioners had appointed four assistant teachers on 7/7/2012, 23/6/2011 and 25/11/2011. When respondent No. 1 came to know about this, they cancelled the order dated 14/2/2013. Consequently, No Objection Certificates were cancelled. As stated above, this order is challenged by these petitioners in this petition.

5 Mr. Kothari, learned Counsel for the petitioners submits that minority schools cannot be compelled to absorb surplus teachers from another school. Therefore, the condition on which respondent No. 1 granted NOC to petitioners namely the surplus teachers from other schools should be absorbed before making appointments of assistant teacher, is illegal.

6 Mr. Shaikh, Learned Counsel for Respondent No. 1 does not dispute this proposition of Mr. Kothari. However, he invited our attention to the applications made by the petitioners and submitted that the petitioners themselves requested respondent No. 1 to send surplus teachers in view of the vacancies in their schools.

7 It must be noted that during the pendency of the petition, all the four teachers appointed by petitioner Nos. 2, 3 and 4 were granted approval by respondent No. 1 on 14/2/2015. Therefore, the main challenge in the petition to the conditional “No Objection Certificate” to the appointment of the surplus teacher will not survive. Mr. Kothari, Learned Counsel for the petitioners however, submitted that the said teachers are entitled for approval and consequent for salary from the date of their appointments.

8 We are unable to accept the contention of Mr. Kothari. We have perused the applications made by the petitioner Nos. 2, 3 and 4 for grant of "No Objection Certificate" to fill up vacancies arising in their schools. By the subject applications, petitioners informed respondent No. 1 about the vacancies and requested him either to send surplus teachers or issue "No Objection Certificate" for filling-up the post of assistant teachers. On the request of the petitioners themselves, No Objection Certificate was granted, thereby granted permission for appointment of teachers subject to condition that surplus teacher namely Mr. Peerzada Ibraim from Ismail Baig Mohammed Urdu Primary School be absorbed. The petitioners themselves having given consent to the effect that they are ready and willing to accommodate surplus teacher, now cannot say that respondent No. 1 cannot compel them to absorb surplus teacher.

9 That apart, as stated earlier, the petitioners merely challenged the cancellation of "No Objection Certificate". This relief is rendered infructuous in view of the events subsequent to filing of the petition namely, the teachers appointed by the Petitioners were granted approval on 14/2/2015.

10 In the light of this, we are not inclined to entertain this petition in exercise of Article 226 of the Constitution of India. The same is dismissed.

[SMT. SADHANA S. JADHAV, J.]

[RANJIT MORE, J.]