

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

WRIT PETITION NO. 7962 OF 2017

Mr.Jaydev Subhash Manerkar	]	
A/p. Shetali-Bhedshi, Tal.: Dodamarg,	]	
District : Sindhudurg.	]	.. Petitioner
Vs.		
1. State of Maharashtra	]	
School Education Department,	]	
Mantralaya, Mumbai.	]	
	]	
2 Deputy Director of Education	]	
Kolhapur Region, Hatti Mahal building,	]	
Somwar Peth, Kolhapur.	]	
	]	
3 Education Officer (Secondary)	]	
Zillah Parishad, Sindhudurg.	]	
	]	
4 The Sindhudurg Diocesan Education Trust	]	
'Bishop's House' Kankavali,	]	
Sindhudurg- 416 602.	]	.. Respondents

**WITH
WRIT PETITION NO. 4350 OF 2017**

Mr.Ravindranath Madhusudan Sawant,	]	
A/p. E/203, Kashilwada, Tal.: Sawantwadi,	]	
District : Sindhudurg.	]	.. Petitioner
Vs.		
1. State of Maharashtra	]	
School Education Department,	]	
Mantralaya, Mumbai.	]	
	]	
2 Deputy Director of Education	]	
Kolhapur Region, Hatti Mahal building,	]	
Somwar Peth, Kolhapur.	]	
	]	
3 Education Officer (Secondary)	]	
Zillah Parishad, Sindhudurg.	]	
	]	

4 The Sindhudurg Diocesan Education Trust]
'Bishop's House' Kankavali,]
Sindhudurg- 416 602.].. Respondents

Mr.Meelan Topkar for petitioners in both petitions.

Mr.S.B. Kalel, AGP for respondent Nos. 1 to 3-State.

**CORAM : R. M. BORDE &
N.J. JAMADAR, JJ.**

DATE : 27TH JUNE 2019

ORAL JUDGMENT (PER R.M. BORDE, J.)

1 Rule. Rule made returnable forthwith and, with the consent of the learned counsels for the parties, petition is taken up for final disposal at admission stage.

2 The petitioner in Writ Petition No.7962 of 2017 was appointed on 2nd November 2015 as a Junior Clerk in the Educational Institution operated by the respondent No.4-Trust. The proposal for according approval to the appointment of the petitioner was forwarded to the Education Officer (Secondary), i.e., the respondent No.3 herein on 15th January 2016. However, the same has been rejected by the Education Officer by an order dated 3rd March 2016.

3 The petitioner in Writ Petition No.4350 of 2017 was appointed as Laboratory Assistant on 14th August 2014 in the School operated by the

respondent No.3. The proposal for securing approval to the appointment of the petitioner was forwarded to the Education Officer on 16th August 2014. However, the said proposal has been turned down by the Education Officer by an order dated 26th May 2016. While turning down the proposals tendered by the institution, the Education Officer has referred to the Government Resolution, dated 12th February 2015 prescribing prohibition/ban for making the appointment by the educational institutions to fill up vacant posts. According to the Education Officer, since the appointment of both the petitioners has been made during continuance of ban imposed under the Government Resolution dated 12th February 2015; approval sought by the institution for appointment of the petitioners, cannot be granted. It is contended that the Government Resolution dated 12th February 2015 is in continuation of earlier Government Policy, dated 23rd October 2013 in relation of making appointment of the non-teaching members. The State Government has directed the institutions not to make appointments to fill in vacant posts until the State Government takes a decision in respect of the 'new staffing pattern' to be applied in the private schools. The State Government proceeded to prescribe the total strength of non-teaching staff in the school (partly or fully aided) operated by the private management. On application of the fixation of new staffing pattern, in certain schools, non-teaching staff was found to have been appointed in

violation of the staffing pattern and as such surplus employees were required to be accommodated in other aided schools. The same logic has been applied to the appointment made by minority institution is illegal, since relevant condition recorded in that resolution, cannot be made applicable to the school run by the minority institutions.

4 In the instant matter, the petitioners claim that the respondent No.4-Trust is a minority institution and, as such, has freedom to make the appointment of employees of its choice and that the policy prescribed by the State Government as regards accommodation of the surplus employees either from teaching or non-teaching category, is not applicable to the minority institutions. Reliance is placed on the judgment of a Division Bench in the matter of *Parbhani Education Society, Parbhani Vs. State of Maharashtra & Anr.*¹ and also the judgment of Division Bench of this Court in the matter of *St. Francis De Sales Education Society & Ors. Vs. The State of Maharashtra & Anr.*², both decided at Aurangabad Bench. It has been recorded in the judgments referred above that the policy prescribed by the State Government as regards accommodation of the surplus employees, shall not be made applicable to the minority institutions. Reference is made to the various judgments of the Apex Court as well as this Court to conclude that the law which interferes with a

1 Writ Petition No. 3707 of 2013 dt. 2.09.2013

2 Writ Petition No. 5547 of 2013 dt 30.09.2013

minority's choice of members of staff, or its disciplinary control over teachers and other members of the staff of the institution could not be held valid as being violative of Article 30 (1). It is permissible for the State and its educational authorities to prescribe qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minority institution, the State would have no right to veto the selection of those teachers. The right to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management and this is facet of fundamental right of the minorities to administer the educational institutions established by them. It is made clear in the judgments of the Supreme Court, cited above, that making appointment of teacher is a part of regular administration and management of the educational institution and, therefore, minority institutions have right to appoint a teacher selected and chosen by them and nobody can force upon the minority institutions to appoint a particular person who is not selected by it as a teacher.

5 Having regard to the law laid down by the Apex Court, it has to be concluded that the respondent No.4-Trust, being a minority institution, is

entitled to make appointment of members of teaching and non-teaching staff and, such appointments made by the minority institutions are not liable to be able to be withheld till the time surplus teachers/members of non-teaching staff are accommodated or absorbed. The policy contained in the Government Resolution referred to by the Education Officer, shall not be made applicable to the minority institution. Only the issue that has to be scrutinized by the Education Officer is that the posts on which the appointment of the petitioners have been made, are available as per the existing staffing pattern applicable while making appointments by the minority institutions. This aspect has been overlooked by the Education Officer.

6 In the circumstances, and for the reasons recorded above, the impugned order issued by the Education Officer, refusing to accord approval to the appointment of the petitioners, deserves to be quashed and set aside. The Education Officer is directed to reconsider the proposals for according approval to the appointment of the petitioners, tendered by the institution in accordance with law and having regard to the legal position recorded in the preceding paragraphs, as expeditiously as possible, preferably within eight weeks from today and it is accordingly directed.

7 Rule is made absolute in the above terms. However, there shall be no order as to costs.

[N.J. JAMADAR, J.]

[R. M. BORDE, J.]