

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4074 OF 2018

1. Mrs. Pallavi Ashok Nayak
[Ms. Pallavi Ramesh Chandra Nayak]
Aged 34 years, Occu. Service, R/o
Room No.401, A-Wing, Building 'A'
Indralok Residency, Pipeline Temghar,
Kalyan Road, Biwandi, Dist. Thane.
2. Shanti Shikshan Prachar Mandal,
Near F-Cabin, Shivajinagar, Kalyan,
Dist. Thane, through its Secretary

...Petitioners

Versus

1. The State of Maharashtra
Through the Secretary, School
Education Department, Mantralaya,
Mumbai – 400 032.
2. The Administrative Officer,
Kalyan Dombivali Municipal
Corporation, Education Department,
Kalyan, Dist. Thane.

...Respondents

Mr. N. V. Bandiwadekar, I/b Ashwini N. Bandiwadekar, for
the Petitioners.

Mr. A. P. Vanarse, AGP for the State/Respondent no.1.

Mr. A. S. Rao, for Respondent no.2.

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

DATED: 18th JULY, 2019

Oral Judgment :- (Per : R. M. Borde, J.)

1. Heard the learned Counsels for the parties.
2. Rule. Rule made returnable forthwith and with the
consent of the learned Counsels for the parties, heard finally
at the admission stage.

3. The Petitioner no.1 is an employee appointed as Shikshan Sevak in the school operated by Petitioner no.2. According to Petitioner no.1, Petitioner no.2 is a minority institution and a certificate in that regard has been issued by the Deputy Director of Education on 23rd January, 1995. Petitioner no.1 makes a grievance that the proposal tendered by the institution seeking approval to the appointment of Petitioner no.1 as Shikshan Sevak has not been considered favourably by Respondent no.2 and same has been rejected on the ground that there are surplus employees available for accommodation in the Petitioner no.2 - School and, disregarding the directives issued in respect of the accommodation of surplus teachers, appointment of Petitioner no.1 has been made by Petitioner no.2. The Petitioner contends that the policy as regards the accommodation of surplus employees cannot be made applicable to the minority institution in view of the judgment of Division Bench of this Court in the matter of ***Parbhani Education Society, Parbhani vs. The State of Maharashtra and anr. in Writ Petition No.3707 of 2013, dated 2nd September, 2013***, as well as the judgment in the matter of ***St. Francis De Sales Education Society and***

***others vs. State of Maharashtra and anr. in Writ
Petition No.5547 of 2013, dated 30th September, 2013.***

4. Having regard to the law laid down by the Apex Court in the matters of ***Ahmedabad St. Xavier s College Society vs. State Of Gujarat¹*** and ***TMA Pai Foundation and ors. vs. State of Karnataka & ors.²***, it has to be concluded that Petitioner no.2 being a minority institution, is entitled to make appointment of the members of the teaching staff of its choice and, as such, appointments made by the minority institutions are not liable to be withheld. The policy contained in resolution relied upon by Respondent no.2 shall not be made applicable to the minority institution. It would be open for education officer to scrutinise as to whether the post against which the appointment of Petitioner no.1 has been made is available as per the staffing pattern applicable, while making appointment by the minority institution.

5. For the reasons recorded above, the instant petition deserves to be allowed and is accordingly allowed.

6. The impugned order dated 27th February, 2018, is quashed and set aside.

11974(1) SCC 717.

22002(8) SCC 481.

7. Respondent no.2 shall reconsider the proposal tendered by Petitioner no.2 Management seeking approval for the appointment of Petitioner no.1, in the light of the observations made in the judgment. Respondent no.2 is directed to take decision, as expeditiously as possible, preferably within three months from today.

8. Rule is made absolute as specified above. No costs.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]