



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6368 OF 2018**

1. Shaikh Mainoddin Yousuf,  
Age : 26 Years, Occu. : Service  
as Assistant Teacher in Gulshan  
E-Atfal Urdu Primary School,  
Udgir, R/o Sayyed Chand Dargah  
Choubara Road, Nideben Ves,  
C/o Abdul Razak Jagirdar,  
Udgir, Tq. Udgir, Dist. Latur.

2. The Headmaster,  
Gulshan-E-Atfal Urdu Primary  
School, Udgir, Tq. Udgir,  
Dist. Latur.

.. Petitioners

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
School Education and Sports  
Department, Mantralaya,  
Mumbai – 32.
2. The Deputy Director of Education,  
Latur Region, Latur.
3. The Education Officer (Primary),  
Zilla Parishad, Latur.
4. Jt. Secretary,  
AL-Farooq Taleemi Society,  
Udgir, C/o Gulshan-E-Atfal  
Urdu Primary School, Udgir,  
Tq. Udgir, Dist. Latur.

.. Respondents

Shri Syed Masood Chand, Advocate for the Petitioners.  
Shri S. P. Joshi, A.G.P. for the Respondent Nos. 1 and 2.

Shri V. C. Patil Ashtekar Advocate h/f Shri U. B. Bondar,  
Advocate for the Respondent No. 3.  
Shri G. R. Syed, Advocate for the Respondent No. 4.

**CORAM : MANGESH S. PATIL AND  
SHAILESH P. BRAHME, JJ.  
DATE : 12 JUNE 2024.**

**JUDGMENT (*Per Shailesh P. Brahme, J.*) :-**

. Rule. Rule is made returnable forthwith. With the consent of parties heard both sides finally.

2. Petitioners are challenging order dated 05.02.2018 passed by the respondent No. 3/Education Officer (Primary), Zilla Parishad, Latur refusing to grant approval to the appointment of petitioner No. 1 on the ground that no previous permission was solicited for the appointment and surplus teachers were not being accommodated.

3. Petitioner No. 2 school is being run by the respondent No. 4/ AL-Farooq Taleemi Society, Udgir. According to the petitioners, respondent No. 4 is declared to be a minority institution by the competent authority and certificate dated 20.06.1990 was issued. A copy of the certificate is produced on record. Before proceeding for the recruitment, management solicited permission of the respondent No. 3/Education Officer vide application dated 13.11.2017. The petitioner No. 1 was appointed as an assistant teacher by order dated 21.12.2017 by following due procedure of law. The proposal was forwarded to the respondent No. 3/Education Officer seeking approval to the

appointment of the petitioner No. 1, which was rejected by the impugned letter.

4. Learned counsel for the petitioners submits that being a minority institution it was not mandatory to accommodate surplus teachers in view of law laid down by the Division Bench of this Court in the matter of The Canossa Society, Canossa Convent and The Canossa special School Canossa Annexe Vs. The commissioner Social Welfare reported in *2014 CJ(Bom) 656*. It is further submitted that the respondent No. 3/Education Officer did not respond to the application dated 13.11.2017. It has been duly verified that minority status was conferred upon the educational institution of the respondent No. 4. It is being suppressed by the respondents that G. R. dated 17.07.2022 would endorse the sanctity of minority certificate dated 20.06.1990.

5. Per contra, learned Assistant Government Pleader would support the impugned order on the basis of affidavit in reply. He would submit that minority certificate is doubtful in view of communication dated 08.04.2002. It stood cancelled. It is further submitted that two teachers referred to the institution were not being accommodated.

6. We have considered rival submissions of the parties. It reveals from the earlier orders passed in this matter that a doubt was expressed as regards genuineness of application dated 13.11.2017 soliciting prior permission of the Education Officer and minority certificate dated 20.06.1990. In pursuance of order dated 06.09.2021, petitioners placed on record few documents at

Exhibit X- 1 collectively, comprising of letter dated 07.10.2021, minority certificate, the correspondence and the order of appointment. Letter dated 07.10.2021 addressed by the Deputy Director of Education to the Head Master shows that minority certificate was borne from the record of his office. Affidavit in reply also does not dispute the existence of minority certificate. Its format has been questioned.

7. Learned A. G. P. relies on letter dated 08.04.2002 to contend that the minority certificate stood cancelled. Our attention is invited to subsequent G. R. dated 17.07.2002 by the learned counsel for petitioners. It has been clarified that those education institutions who were conferred minority status prior to 17.07.2002 need not have to apply for minority status afresh. In view of G. R. dated 17.07.2002, we are of the considered view that the minority certificate dated 20.06.1990 issued prior to G. R. dated 17.07.2002 cannot be doubted and it would enure to the benefit of the petitioner.

8. The doubt regarding application dated 13.11.2017 stands removed by order passed on 16.11.2021. On that day original inward register was placed before the Court and it was recorded that it bears inward entry No. 9462. Thus, it is clear that an endeavour was made to intimate Education Department by the management before appointing petitioner No. 1.

9. Minority certificate and the application dated 13.11.2017 are the clinching documents, which support the claim of the

petitioners. We prefer to rely upon those documents in view of above discussion.

10. The legal position is no more *res-integra* in view of law laid down by the Division Bench of this Court in the matter of **The Canossa Society, Canossa Convent and The Canossa special School Canossa Annexe Vs. The commissioner Social Welfare** (supra).

Following para No. 22 is relevant :

“22. There is merit in the submissions of the learned counsel for the petitioners. In the present case by the impugned directive dated 17.6.2011 the respondent nos. 1 to 3 have foisted upon the petitioners the appointment of the respondent no.4 who is rendered a surplus employee in view of the closure of a school situate in Nanded District. Admittedly, there is no consultation with petitioner no.2-school before such appointment is thrust upon the petitioner no.2-school. The respondent-authorities have also failed to take into consideration the fact that there is no vacancy as urged by the petitioners before the authorities, in view of the appointment of Mrs.Jyotsna Thorat who came to be appointed on 30.9.2006 and whose appointment was approved on 18.8.2007. Consequence of the impugned order issued by the respondent no.1 is that the approved appointment of Mrs.Jyotsna Thorat as validly done by the petitioner No.2-institution in exercise of its right to administer a minority educational institution is being interfered, coupled with a consequence that such valid appointment would be required to be cancelled. In our considered opinion it is impermissible for respondent nos. 1 to 3 to resort to such an action of foisting appointment of respondent no.4 on the petitioner no.1-institution as it directly infringes the fundamental right guaranteed under Article 30 (1) of the Constitution of India conferred on the petitioner no.2 institution to administer and establish petitioner no.2 school. The State authorities cannot indirectly do an act which cannot directly be done. In other words, when the State has no authority to make

appointment of teaching and non-teaching staff in respect of a minority institution, even if aid has been granted, such action of making an appointment cannot be taken by directing absorption of a surplus employee. This is nothing but, making appointment of a staff member in a minority institution. The law confers no such authority and power with the State Government to thrust an employee rendered surplus in other schools to be absorbed by a minority institution. Rule 25 A of the Maharashtra Employees of Private Schools (Conditions of Services) Rules cannot be made applicable to appoint surplus staff in a minority institution unless the minority institution is consulted and concurs for such an appointment. We, therefore have no hesitation to conclude that the impugned order dated 17.6.2011 issued by respondent no.1 is wholly arbitrary and illegal as the same infringes on the petitioner's right guaranteed under Article 30 (1) of the Constitution of India.”

11. As the petitioners enjoy privilege under Article 30(1) of the Constitution of India, the management was not under obligation to accommodate surplus teachers referred to it. The respondent No. 3/Education Officer failed to respond to application dated 13.11.2017. It would not be open for the respondents to reject the proposal on the ground that prior permission was not solicited before recruitment. The reason cited in the impugned order is thoroughly unsustainable.

12. For the reasons stated above, we quash and set aside the impugned order dated 05.02.2018 passed by the respondent No. 3/Education Officer (Primary), Zilla Parishad, Latur. The respondent No. 3 shall reconsider the proposal for grant of approval to the appointment of the petitioner No. 1 afresh. However, he shall not reject the proposal on the ground, which we have disapproved in this order. The respondent No. 3 shall take

the decision over the proposal within a period of four (04) weeks from the date of receipt of copy of this order and communicate the decision to the petitioners. Writ petition is disposed of. Rule is made absolute in above terms. There shall be no order as to costs.

**[ SHAILESH P. BRAHME, J. ]      [ MANGESH S. PATIL, J. ]**

*bsb/June 24*