



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.3520 of 2018

[Siddharth Shikshan Sanstha, Astul, through its Secretary and others **VERSUS**
The State of Maharashtra and another]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's order
Registrar's orders.

Shri Anand Parchure, Counsel for Petitioners.
Shri H.D. Dhumale, Assistant Government Pleader for Respondents.
Shri R.D. Karode, Counsel for Intervenor.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : 2nd AUGUST, 2024

P. C. :

1. Heard.
2. The petitioner No.3 was appointed on the post of Shikshan Sevak pursuant to an advertisement dated 3-9-2014.
3. The appointment order was issued to the petitioner No.3 on 9-9-2014 and the proposal for approval to the appointment of the petitioner No.3 was accordingly forwarded to the Deputy Director of Education, Amravati, which was rejected by the impugned communication dated 31-8-2017.
4. Amongst other, the reason cited is that the Management has not taken the permission for filling in the post so as to accommodate the surplus teachers and there was absence of sufficient time period in between the advertisement and the date of appointment.

5. As far as the issue of advertisement and date of appointment is concerned, the fact remains that the appointment order was issued on 9-9-2014 as against the advertisement dated 3-9-2014. There is no embargo brought to the notice of this Court as to the insufficiency of the aforesaid period.

6. The fact remains that in the impugned order, the Deputy Director of Education has place reliance on the Government Resolution dated 6-2-2012, wherein it is claimed it is claimed that the conditions therein are not satisfied by the petitioner Nos.1 and 2- Management.

7. It is not in dispute that the petitioner-Management is a minority Institution and the protection extended under Article 13 of the Constitution of India is available to it.

8. In such an eventuality, the procedure to be adopted in the matter of making such appointment does not bind the minority Institution to seek no-objection from the Education Officer in case there existed sanctioned vacancy.

9. Apart from above, even if a surplus teacher is available, the services of such surplus teacher cannot be sponsored on the Institution, like the petitioner Nos.1 and 2.

10. The issue is squarely covered by the Division Bench judgment of this Court in the matter of *Canossa Society, Mumbai Versus Commissioner, Social Welfare, Pune*, reported in 2014 (4) ABR 521.

11. In this background, we deem it appropriate to quash and set aside the impugned order dated 31-8-2017 passed by the respondent No.2- Deputy Director of Education, Amravati.

12. We direct the respondent No.2- Deputy Director of Education, Amravati to grant approval to the appointment of the petitioner No.3, as it is claimed that the appointment of the petitioner No.3 was against a clear vacancy.

13. The petition stands allowed and disposed of in the aforesaid terms. No costs.

14. In view of the aforesaid order, the application for intervention also stands disposed of as infructuous, as nothing remains to be considered.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)