



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

WRIT PETITION No.7564 OF 2025

1. New Era Education Society Andheri (East),
Mumbai, Registration No.F-10138(Mumbai)
Having its office at 618 Ekta Building No.1,
Gilbert Hill Road, Andhari (W),
Mumbai - 400 058 building
Through its Secretary,
Mohammad Zeeshan Abdul Gani.
2. Lashkaria Noorbano High School,
Lakhanwada, Tq. Khamgaon,
Distt. Buldhana-444 303,
Through its Head Master.
3. Azhar Ahmad Khan S/o.
Zafar Ahmad Khan Pathan,
Occ.: Service as a Junior Clerk,
C/o. Lashkaria Noorbano High School
Lakhanwada, Tq. Khamgaon,
Distt. Buldhana-444303. : PETITIONERS

...VERSUS...

1. The Deputy Director of Education,
Amravati Division, Amravati.
2. The Education Officer (Secondary),
Zilla Parishad, Buldhana.
3. The Director of Education,
Maharashtra State,
Central Building, Pune,
Dist. Pune. : RESPONDENTS

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Mr. Ram Karode, Advocate for Petitioners.
Mr. H.D. Futane, Assistant Government Pleader for Respondents.

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CORAM : **SMT. M.S. JAWALKAR AND**
NANDESH S. DESHPANDE, JJ.
RESERVED ON : **21st JANUARY, 2026.**
PRONOUNCED ON : **29th JANUARY, 2026.**

JUDGMENT : (Per : NANDESH S. DESHPANDE, J.)

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioners, by way of the present Writ Petition, challenge the impugned order dated 28.10.2025 passed by respondent no.2, whereby approval to the appointment of petitioner no.3 as Junior Clerk in petitioner no.2 School has been rejected.

3. Petitioner No.1 is a Society registered under the Societies Registration Act, 1860 and the Maharashtra Public Trusts Act, 1950 running petitioner No.2 School, which is a 100% grant-in-aid minority institution, recognized by an order dated 09.02.2015 issued by the Department of Minority Development, Government of Maharashtra, Mumbai.

4. On 01.08.2025, the then Junior Clerk, Tausif Khan Rahim Khan, tendered his resignation, thereby creating a vacancy. The petitioner Nos.1 and 2 issued an advertisement on 07.08.2025 in the daily newspapers *Deshonnati* and *Matrubhoomi*, and

conducted interviews on 26.08.2025. Petitioner no.3, who possesses qualifications of B.E. Mech., MS-CIT, and other requisite qualifications, was selected and appointed as Junior Clerk by a resolution dated 29.08.2025, with effect from 30.08.2025. A proposal seeking approval to the said appointment was submitted to respondent no.2 on 25.09.2025.

5. The State Government issued a Government Resolution (G.R.) dated 04.04.2025, permitting recruitment to specified non-teaching posts. However, by a subsequent communication dated 28.05.2025, directions were issued that no approval or Shalarth ID be granted to non-teaching staff until the absorption of surplus staff. On this basis, respondent no.2 rejected the petitioners' proposal, without granting any opportunity of hearing or issuing a show cause notice.

6. The petitioners contend that, being a recognized minority institution, no prior permission is required for making appointments; that all applicable State guidelines governing minority institutions have been duly complied with; and that the communication dated 28.05.2025 cannot be made applicable to minority institutions so as to compel absorption of surplus staff

without their consent, as the same infringes Article 30(1) of the Constitution of India.

7. It is further contended that the State cannot indirectly impose appointments upon a minority institution by mandating absorption of surplus staff, when it has no direct authority to do so. It is also submitted that Rule 25-A of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, cannot be made applicable without the concurrence of the minority institution.

8. The petitioners have placed reliance on the judgments in **Canossa Society and Others v. Commissioner and Others, 2014 SCC OnLine Bom 536; Young Boys Educational and Industrial Circle v. State and Others, 2016 (2) Mh.L.J. 212**; and the judgment dated 05.12.2016 passed in W.P. No. 6550 of 2016, in support of their contentions.

9. We have heard the learned Assistant Government Pleader, who opposed the contentions advanced by the petitioners. It is also noted that no reply has been filed on behalf of the respondents.

10. The controversy in the present petition is squarely covered by an authoritative pronouncement of this court in **Canossa**

**Society and another vs Commissioner, Social Welfare, Directorate,
Government of Maharashtra and Others (2014 SCC OnLine Bom
536)** and more particularly para 22 thereof which reads as under :

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 wp1049.12.doc 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. The view has been followed in **Young Boys Education and Industrial Circle vs. State of Maharashtra and others (2016 (2) Mh.L.J. 212.**

12. In view of the law laid down supra we pass the following Order :

ORDER

(i) The Writ Petition is allowed.

(ii) The order dated 28.10.2025 issued by Respondent No.2 - Education Officer (Secondary), Zilla Parishad, Buldhana is quashed and set aside.

(iii) It is hereby directed that the respondent No.2 - Education Officer (Secondary), Zilla Parishad, Buldhana should grant

approval to the appointment of the petitioner No.3 – Azhar Ahmad S/o. Zafar Ahmad Khan Pathan as Junior Clerk and grant all the consequential benefits applicable to the said post and further be pleased to direct the respondent No. 1 – Deputy Director of Education, Amravati to include the name of petitioner No.3 in Shalarth Pranali and allot Sahalarth ID in his name.

(iv) Rule is made absolute in the abovestated terms.

(v) Petition is disposed of.

(NANDESH S. DESHPANDE, J.)

(SMT. M.S. JAWALKAR, J.)