



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION No.1487 OF 2026

WRIT PETITION No.1489 OF 2026

WRIT PETITION No.1491 OF 2026

WRIT PETITION No.1487 OF 2026

1. Shahbabu Urdu Education Society, Patur,
Tq. Patur, District Akola
(Reg. No.B-79/59, U/s SR Act 1860 and
Reg. No.F-67-Akola U/s BPT Act, 1950)
having office at Shahbabu High School,
Near Old Bus Stand, Patur,
District Akola 444 501 (Minority Institution)
through its Secretary - Syed Ishaque Syed Nabi.
2. Shahbabu Urdu High School and
Junior College (Hamza Plot)
Akola-444 002, through Headmaster.
3. Mehraj Mehboob Mantuwale,
Aged about 25 years,
Occ. Service as Junior Clerk,
R/o. Near Babaji Math, Gawalipura,
Akola.

: PETITIONERS

...VERSUS...

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

: RESPONDENTS

 Mr. R.D. Karode, Advocate for Petitioners.

Mr. H.D. Futane, Assistant Government Pleader for Respondents.

WITH
WRIT PETITION No.1489 OF 2026

1. Shahbabu Urdu Education Society, Patur,
 Tq. Patur, District Akola
 (Reg. No.B-79/59, U/s SR Act 1860 and
 Reg. No.F-67-Akola U/s BPT Act, 1950)
 having office at Shahbabu High School,
 Near Old Bus Stand, Patur,
 District Akola 444 501 (Minority Institution)
 through its Secretary - Syed Ishaque Syed Nabi.
2. Shahbabu Urdu High School and
 Junior College of Arts and Science Patur,
 Tq. Patur, Dist. Akola,
 through Headmaster.
3. Syed Faizul Hasan Syed Abulhasan,
 Aged about 24 years,
 Occ. Service as Junior Clerk,
 C/o. Dahandbes, Barshitakali,
 Tq. Barshitakali, Dist. Akola 444 001. : PETITIONERS

...VERSUS...

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

 Mr. R.D. Karode, Advocate for Petitioners.

Mr. H.D. Futane, Assistant Government Pleader for Respondents.

WITH**WRIT PETITION No.1491 OF 2026**

1. Shahbabu Urdu Education Society, Patur,
Tq. Patur, District Akola
(Reg. No.B-79/59, U/s SR Act 1860 and
Reg. No.F-67-Akola U/s BPT Act, 1950)
having office at Shahbabu High School,
Near Old Bus Stand, Patur,
District Akola 444 501 (Minority Institution)
through its Secretary - Syed Ishaque Syed Nabi.
2. Shahbabu Urdu High School and
Junior College of Arts and Science Patur,
Tq. Patur, Dist. Akola,
through Headmaster.
3. Mohammad Wasif Mohammad Husain,
Aged about 35 years,
Occ. Service as Junior Clerk,
R/o. Deshpande Plot, Washim Road,
June Shahar, Akola, Dist. Akola 444 001. : PETITIONERS

...VERSUS...

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

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Mr. R.D. 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 : **07th MARCH, 2026.**
PRONOUNCED ON : **17th MARCH, 2026.**

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

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

2. All these three writ petitions are being disposed by this common judgment since subject matter and the impugned communication issued is by the same respondent i.e. respondent No.2 Education Officer (Secondary), Zilla Parishad, Akola. It is based on a communication of the respondent No.3 Director of Education issued on 28th May, 2025.

3. As far as Writ Petition No.1491/2026 is concerned, the facts are as under :

The petitioner No.1 is an educational Society and recognized as minority institution vide certificate dated 17.6.2005. In the year 2018-2019, in the non-teaching staffing pattern one additional post of Junior Clerk is sanctioned in the petitioner No.2. In pursuance thereto, petitioner No.1 Society published an advertisement in a daily newspaper inviting applications for the post of Junior Clerk. Thereafter, on 21.3.2020 the Selection

Committee interviewed the candidates which included the petitioner No.3. On 31.3.2020 School Committee passed a resolution and decided to issue an appointment order to the petitioner No.3. The petitioner No.3 was thus appointed on the post of Junior Clerk by following due process of law. On 9.6.2020 the petitioners forwarded a proposal for grant of approval to the appointment of the petitioner No.3 to the Office of the respondent No.2. Furthermore, on 9.11.2020, the Office of the respondent No.2 pointed out certain shortfalls in the proposal which were complied with on 24.11.2020.

4. Since no decision taken on the pending proposal, the petitioners approached this Court by filing Writ Petition No. 7688/2023. This Court directed the respondent No.2 to take a decision within four weeks. However, since no decision was taken as directed by this Court, the petitioners were constrained to file a Contempt Petition No.60/2024. It is further stated in the petition that the petitioners filed a complaint to the Deputy Director of Education, Amravati and the said Authority after hearing the parties on 24.4.2024 passed an order thereby setting aside the order dated 27.12.2023 which was issued by the Education Officer to show compliance of the order. Thus, the contempt petition came to be disposed of in view of the said fact. In the backdrop of these facts,

the respondent No.2 passed an order on 9.2.2026 rejecting the proposal for approval of the petitioner No.3. The basic ground for rejection is a letter issued by the respondent No.3 on 28.5.2025, thereby directing not to grant approval and not to allot Shalarth ID to the non-teaching staff till the absorption of surplus non-teaching staff. It is this order which is impugned in the present petition.

5. As far as Writ Petition No.1489/2026 is concerned, the facts are more or less identical. In this matter, the petitioner No.3 employee was appointed on 30th June, 2025 and his proposal for approval of the said appointment came to be rejected vide order dated 9.2.2026.

6. As far as Writ Petition No.1487/2026 is concerned, the petitioner No.3 employee herein was appointed on 1.7.2025 and this proposal also came to be rejected on identical grounds vide impugned order dated 5.2.2026.

7. It is noteworthy to mention that in all these three writ petitions, petitioner No.1 i.e. Society and petitioner No.2 i.e. School are one and the same. The difference is only regarding the petitioner No.3 i.e. the concerned employee.

8. We have heard Mr. R.D. Karode, learned counsel for the petitioners and Mr. H.D. Futane, learned Assistant Government Pleader for the respondents.

9. Mr. R.D. Karode, learned counsel for the petitioners submits that the action on the part of the respondents in rejecting the proposal for approval is apart from being an abuse of process of law shows total non-application of mind. He further submits that the respondents totally ignored the fact that the petitioner No.1 being recognized as a minority educational institution, no prior permission was necessary, in view of the policy of respondent No.1 State Government in that regard. He further submits that the letter dated 28.5.2025 is totally erroneous and has been dealt with by this Court in identical matters. It is his submission that the petitioner-Society being a minority institution cannot be directed by the State Government to absorb surplus employees from other schools unless the minority institution concurs for such absorption. He, therefore, submits that action is *de-hors* the provisions of law and is liable to be quashed and set aside. He relies on a judgment of this Court in the case of *New Era Education Society Vs. Deputy Director of Education and others*, in Writ Petition No.7564/2025 which according to him covers the issue.

10. Per contra, the learned Assistant Government Pleader appearing for the respondents supports the impugned order and submits that respondent No.3 was within his right to issue such direction as communicated in letter dated 28.5.2025.

11. We have perused the record of all three writ petitions and also gone through the judgment referred supra. After going through the same, we are of the considered opinion that the controversy in the present petitions is squarely covered by 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.”

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

13. We have come across a lot of writ petitions wherein the concerned Authorities i.e. Education Officer by relying on letter dated 28th May, 2025 of the Director of Education are rejecting approval/s with respect to employees of minority education institutions in spite of settled law in that regard as stated above. In

our opinion, therefore, it would be expedient that all the Education Officers in the districts of Vidarbha be circulated with a copy of this judgment by the Office of the Government Pleader, High Court, Nagpur, so that further litigation in that regard can be avoided.

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

ORDER

- (i) The Writ Petitions Nos.1487/2026, 1489/2026 and 1491/2026, are allowed.
- (ii) The Order dated 9.2.2026 in Writ Petition No. 1491/2026 and Writ Petition No.1489/2026, passed by respondent No.2 as also order dated 5.2.2026 in Writ Petition No.1487/2026 are hereby quashed and set aside.
- (iii) It is directed that the respondent No.2 Education Officer (Secondary) Zilla Parishad, Akola should grant approval to the appointment of the petitioner No.3 -Mehraj Mehboob Mantuwale (Writ Petition No.1487/2026), Syed Faizul Hasan Syed Abulhasan (Writ Petition No.1489/2026) and Mohammad Wasif Mohammad Husain (Writ Petition No.1491/2026) and grant all consequential benefits applicable to the said post.
- (iv) It is further directed that the respondent No.1 Deputy Director of Education, Amravati to

include the name of petitioner No.3 as stated above in all the three writ petitions in Shalarth Pranali and allot Shalarth ID in his name.

- (v) In view of what is stated above, we direct the Government Pleader to circulate the copy of this judgment as also all other judgments covering this issue to all the Education Officers as also the Deputy Director of Education and all other concerned authorities of all the districts within jurisdiction of this Bench and submit a compliance report to this Court. The said exercise to be done within four weeks from today.

15. Rule is made absolute in above terms.

(NANDESH S. DESHPANDE, J.)

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