IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3836 OF 2020

1. Young Boys Educational & Industrial Circle,
Wadjai Road, Aksa Nagar, Dhule
Through its Vice President,
Habibur Rehaman Abdul Masjid

2. Islahul Banat Urdu Secondary &
Higher Secondary School,
Aqsa Nagar, Wadjai Road, Dhule.
Through its Headmaster

3. Mohd. Asif Salim Ahmed

4. Mohd. Ashraf Shabbir Ahmed ... **PETITIONERS**

VERSUS

1. State of Maharashtra,
Through its Secretary,
Department of School Education & Sports,
Mantralaya, Mumbai

2. The Education Officer (Secondary),
Zilla Parishad, Dhule ... **RESPONDENTS**

...

Advocate for the Petitioners : Mr. Santosh S. Jadhavar
AGP for Respondent Nos.1 and 2 : Mr. S.S. Dande

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CORAM : NITIN B. SURYAWANSHI &
ABASAHEB D. SHINDE, JJ.

Reserved on : 09.06.2026

Pronounced on : 03.07.2026

JUDGMENT (PER: ABASAHEB D. SHINDE, J.) :

1. Heard. Rule. Rule made returnable forthwith. With the consent of the parties Writ Petition is heard finally at the stage of admission.

2. By this writ petition, the Petitioners are taking exception to the order dated 18.01.2020, passed by the Respondent No.2 – The Education Officer (Secondary), Zilla Parishad, Dhule, thereby rejecting the proposal seeking approval to the appointments of Petitioner Nos.3 and 4 to the post of Peon.

Factual Matrix :-

3. The Petitioners contend that the Petitioner No.1 is an educational trust registered under the provisions of Maharashtra Public Trust Act, 1950, as well as the Societies Registration Act, 1860. Petitioner. No.1 is conferred with the minority status on 19.06.2013 and, therefore, the Petitioner. No.1 is entitled to enjoy all the rights and privileges enshrined under Article 30 (1) of the Constitution of India. In addition to Petitioner No.2 – School, Petitioner. No.1 is running two other Schools namely Islamic Day Primary School, Dhule and Islamic Day High School, Dhule. Both these Schools are being run by Petitioner. No.1 on no grant basis. It

is further contended that Petitioner No.3 came to be appointed on the post of Peon in Islamic Day Primary School, Dhule, vide appointment order dated 13.06.2016, after following due procedure of law, likewise, the Petitioner. No.4 came to be appointed on the post of Peon in Islamic Day High School, Dhule, on 13.06.2016. It is further contended that by virtue of retirement of two Peons from the Petitioner No.2 – School, Petitioner No.1 decided to transfer Petitioner Nos. 3 and 4 on those two posts of Peon in view of sanctioned staffing pattern.

4. The Petitioners further contend that pursuant to the resolution passed by respondent No.1 on 01.12.2018, Petitioner Nos.3 and 4 were transferred and appointment orders were issued accordingly on 03.12.2018. The Petitioner No.2, therefore, submitted a proposal for grant of approval to the appointments of Petitioner Nos.3 and 4 to Respondent No.2 on 02.02.2019. As the said proposal was kept pending by Respondent No.2, the Petitioners approached this Court by filing Writ Petition No.7484/2019 seeking directions for expeditious disposal of the said proposal and this Court by an Order dated 20.06.2019, directed Respondent No.2 to take decision on the said proposal within a period of six months.

5. Respondent No.2 vide impugned order dated 18.01.2020, rejected the said proposal on the following grounds:-

1) There was ban on recruitment of employees vide Government Resolution dated 02.05.2012;
2) Since post of Peon is not admissible in a Primary School as per the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter the RTE Act, 2009), therefore transfer of Petitioner No.3 from Primary School to Secondary School was impermissible.
3) The staffing pattern of non-teaching employees was sanctioned, excluding the post of Peons in view of Government Resolution dated 28.01.2019.
4) As the Government has not sanctioned the staffing pattern of Peon cadre, therefore, the transfer of Petitioner Nos. 3 and 4, is illegal.

Submissions:-

6. Learned counsel for the Petitioners assailed the grounds of rejection assigned in the impugned order *inter alia* contending that being a minority institution, the ground as regards ban on appointments in view of Government Resolution dated 02.05.2012, would not be applicable to the petitioner No.1. As far as ground No.2 is concerned, he submits that as stated earlier being a minority institution, the provisions of the RTE Act 2009 are also not applicable to the petitioner No.1.

7. So far as ground No.3 that staffing pattern for the academic year 2018–19 was sanctioned after excluding the post of Peon is concerned, learned counsel for the Petitioners would submit that, when the Petitioners were appointed in December 2018, the sanctioned staffing pattern as of 01.10.2018, admittedly shows six posts of Class IV employees including the post of the Petitioner Nos. 3 and 4.

8. As regards ground No.4 is concerned, it is submitted by learned counsel for the petitioners that, the Respondent No.2 ought to have considered the staffing pattern of academic year 2018–19 when the Petitioners were appointed. At the relevant time the post of Peons were very much available. He therefore urged that the impugned order is unsustainable and the same is liable to be quashed and set aside by directing Respondent No.2 to grant approval to the appointments of Petitioner Nos. 3 and 4 to the post of Peon.

9. Per contra, learned AGP inviting attention of this Court to the affidavit-in-reply filed by Respondent No.2 would submit that, vide Government Resolution dated 02.05.2012, a ban was imposed on

recruitment of non-teaching staff and more particularly the post of Peon. The appointments of Petitioner Nos. 3 and 4 are of December 2018, which were made during a ban period. He would further submit that when the post of Peon itself was not permissible in Primary School as per the provision of RTE Act 2009 in this background, the transfer of Petitioner Nos. 3 and 4 to Secondary School cannot be approved. He further submits that as per Government Resolution dated 28.01.2019, though the staffing pattern for the academic year 2018-19 has been approved, however, the post of Peon has been excluded. Last, but not the least, learned AGP would submit that the State Government has not yet approved the staffing pattern pertaining to post of Peon till date. He, therefore, urged that the impugned order is just and proper therefore, the writ petition deserves to be dismissed.

Consideration : -

10. We have heard learned counsel for the Petitioners and learned AGP and with their able assistance we have gone through the record. At the outset, it would not be out of place to mention that there is no dispute about qualification of the Petitioners and the record also depicts that they were initially appointed after following

due procedure of law.

11. As regards first ground is concerned, this Court has taken a consistent view that the Government Resolution dated 02.05.2012 imposing ban on recruitment is not applicable to the minority institutions. The Hon'ble Apex Court in the case of ***Pramati Educational Trust and Ors. Vs. Union of India and Ors.*; (2014) 8 SCC 1**, has held that the provisions of RTE Act, 2009 is not applicable to aided and unaided minority institutions. The relevant observations of the Hon'ble Apex Court in paragraph Nos. 55 and 56, reads thus :

> **55.** When we look at the 2009 Act, we find that Section 12(1)(*b*) read with Section 2(*n*)(*ii*) provides that an aided school receiving aid and grants, whole or part, of its expenses from the appropriate Government or the local authority has to provide free and compulsory education to such proportion of children admitted therein as its annual recurring aid or grants so received bears to its annual recurring expenses, subject to a minimum of twenty-five per cent. Thus, a minority aided school is put under a legal obligation to provide free and compulsory elementary education to children who need not be children of members of the minority community which has established the school. We also find that under Section 12(1)(*c*) read with Section 2(*n*)(*iv*), an unaided school has to admit into twenty-five per cent of the strength of Class I children belonging to weaker sections and disadvantaged groups in the neighbourhood. Hence, unaided minority schools will have a legal obligation to admit children belonging to weaker sections and disadvantaged groups in the neighbourhood who need not be children of the members of the minority community which has established the school. While discussing the validity of clause (5) of Article 15 of the Constitution, we have held that members of communities other than the minority community which has established the school cannot be forced upon a minority institution because that may destroy the minority character of the school. In our view, if the 2009 Act is made applicable to minority schools, aided or unaided, the right of the minorities under Article 30(1) of the Constitution will be abrogated. Therefore, the 2009 Act insofar it is made applicable to minority schools referred in clause

> (1) of Article 30 of the Constitution is ultra vires the Constitution. We are thus of the view that the majority judgment of this Court in *Society for Unaided Private Schools of Rajasthan* v. *Union of India* [(2012) 6 SCC 1] insofar as it holds that the 2009 Act is applicable to aided minority schools is not correct.
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> **56.** In the result, we hold that the Constitution (Ninety-third Amendment) Act, 2005 inserting clause (5) of Article 15 of the Constitution and the Constitution (Eighty-sixth Amendment) Act, 2002 inserting Article 21-A of the Constitution do not alter the basic structure or framework of the Constitution and are constitutionally valid. We also hold that the 2009 Act is not ultra vires Article 19(1)(*g*) of the Constitution. We, however, hold that the 2009 Act insofar as it applies to minority schools, aided or unaided, covered under clause (1) of Article 30 of the Constitution is ultra vires the Constitution. Accordingly, Writ Petition (C) No. 1081 of 2013 filed on behalf of Muslim Minority Schools Managers' Association is allowed and Writ Petitions (C) Nos. 416 of 2012, 152 of 2013, 60, 95, 106, 128, 144-45, 160 and 136 of 2014 filed on behalf of non-minority private unaided educational institutions are dismissed. All IAs stand disposed of. The parties, however, shall bear their own costs.

12. In the light of ratio laid down by the Hon'ble Apex Court in the case of **Pramati Educational Trust** (supra), the Petitioner No.1 being a minority institution, the provisions of RTE Act 2009 is not applicable. So far as ground as regards exclusion of the post of Peon from the staffing pattern of the academic year 2018-19 pursuant to the Government Resolution dated 28.01.2019 is concerned, as rightly pointed out by learned counsel for the Petitioners from the staffing pattern of academic year 2018–19, the post of Petitioner Nos. 3 and 4 were very much available.

13. In so far as fourth ground that the Government has not yet fixed staffing pattern of Peon Cadre therefore the transfers of

Petitioner Nos. 3 and 4 were contrary to the Rules is also erroneous, as when the Petitioners were appointed in December 2018, the staffing pattern as of 01.10.2018 shows 06 sanctioned posts of Class IV Employees including two posts on which the Petitioners are working.

Conclusion :-

14. In the light of the above discussion, the impugned order is unsustainable and therefore is liable to be quashed and set aside. Hence, the following order :

O R D E R

A. The Writ Petition is allowed.

B. The impugned order dated 18.01.2020 passed by the Respondent No.2 – Education Officer (Secondary), Zilla Parishad, Dhule, thereby, rejecting the proposal seeking approval to the appointments of the Petitioner Nos.3 and 4 to the post of Peon is hereby quashed and set aside.

C. The Respondent No.2 – Education Officer (Secondary), Zilla Parishad, Dhule, is directed to grant approval to the appointments of Petitioner Nos. 3 and 4 in the Petitioner No.2 - Schools on the post of Peon and pay all the

consequential benefits thereof.

D. Rule is thus made absolute in above terms with no order as to costs.

(ABASAHEB D. SHINDE, J.) (NITIN B. SURYAWANSHI, J.)

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