



## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION NO. 1034 OF 2015

- 1 Dr. Antonio Da Silva Technical  
High School and Junior College,  
Through its Head Master,  
A Private, recognized, Aided,  
Minority Educational Institution,  
having its office at  
S. Veer Savarkar Marg,  
Dadar, Mumbai-400 028.
  
- 2 Dr. Antonio Da Silva Trust,  
Through its Trustees/Hon. Secretary,  
Prof. Mrs. Lilla D'Souza,  
a/w the Trustees Mr. Erol Murzello  
Mr. Ralph Misquitta,  
A registered Public Trust  
registered under the Bombay  
Public Trust Act, 1950 having  
its office at  
S. Veer Savarkar Marg,  
Dadar, Mumbai-400 028.

....Petitioners.

Vs.

- 1 State of Maharashtra  
Through the Principal Secretary  
Higher & Secondary Education  
Department.  
Through the Govt. Pleader,  
PWD Building, Fort,  
Mumbai 400 023.
  
- 2 The Principal Secretary,  
Minority Development Department.  
State of Maharashtra,

Through the Govt. Pleader,  
PWD Building, Fort,  
Mumbai 400 023.

- 3 Director of Vocational Education  
& Training, 3, Mahapalika Marg,  
Dhobi Talao, Mumbai 400 001.
- 4 Joint Director Vocational Education  
& Training, Regional Office, 49,  
Kherwadi, Bandra (E), Mumbai-400 051.
- 5 District Officer,  
Vocational Education & Training,  
Government Technical High School,  
Dadar, Mumbai-400 028.
- 6 Mrs. Archana Swapnil Gonsalves,  
Prajyot, Umrале-Jasgar,  
Near Umrале Church,  
Post Sopara, Tal. Vasai,  
Dist. Thane 401 203 (Nalasopara) ....Respondents.

Mr. S.C. Naidu with Mr. T.R. Yadav, Mr. Rahul Tanwani and Mr.  
Aniketh Poojari i/by C.R. Naidu & Co. for the Petitioners.  
Ms. I.C. Calcuttawala, AGP for Respondent Nos. 1 to 5.

**CORAM : ANOOP V. MOHTA AND  
V.L.ACHLIYA, JJ.  
DATE : 7 AUGUST 2015.**

**ORAL JUDGMENT (PER V.L. ACHLIYA, J.):-**

Rule. Rule made returnable forthwith.

By consent of the parties, taken up for final disposal at the  
stage of admission itself.

2 By this Petition, the Petitioners have challenged the order dated 21 February 2015 passed by the Director of Vocational Education & Training i.e. Respondent No.3 to refuse to grant approval for appointment of Respondent No.6. The order is mainly challenged on the ground that the authority concerned i.e. Respondent No.3 has erroneously considered that Rule 9(7) to 9(10) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, MEPS Rules), are also applicable in the matter of institution established, run and administered by non-aided, minority institutions/trusts, as that of the Petitioners. The order is also assailed on the ground that no proper opportunity of hearing was given to Petitioners so as to explain and convince the authority concern that the said provisions of law are not applicable in the matter of appointments to be made to the Petitioner's institution. In support of the submissions advanced, the learned counsel appearing for the Petitioners has placed reliance on the decision of Full Bench of this Court in the case of St. Francis de Sales Education Society & Anr. Vs. State of Maharashtra & Anr.<sup>1</sup> wherein, this Court has ruled that the

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1 2002(1) Bom. C.R. 650

Sub-Rule (7) to (10) of Rule of MEPS Rules 1981 are not applicable in the matter of unaided minority institutions.

3 In this context, the learned counsel appearing for the Petitioners invited our attention to paragraph 36 of said judgment, wherein, the Full Bench of this Court in the case based on identical facts ruled as under:-

“In our judgment, the petitioner, being a minority institution, cannot be directed to appoint teachers or other staff on the basis of the reservation policy followed by the State as evidenced in Rules 9(7) to 9(10) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. We, therefore, hold that the said Rules 9(7) to 9(10), if applied to the petitioner, would violate the fundamental right guaranteed to the petitioner as a minority institution under Article 30(1). Hence, we allow the writ petition.”

4 The learned counsel appearing for the Petitioners, has further invited our attention to the decision rendered by Division Bench of this Court in the case of Canossa Society, Mumbai Vs. Commissioner, Social Welfare, Pune<sup>2</sup> wherein, this Court has again reiterated that the provisions of reservation is not applicable in the matter of aided minority institutions. In this context, the learned counsel has referred the observations of this Court as recorded in

2 2014 (4) ABR 521

paragraph No. 22, which reads thus:-

22 .....”*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 25A 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.*”

5           On due consideration of the submissions advanced by the learned counsel appearing for the Petitioners in the light of aforesaid two decisions rendered by this Court, we are of the view that the impugned order is not sustainable in law and liable to be set aside. Since the legal position appears to be not brought to the notice of concerned authority, it is desirable to direct the Petitioner to appear before the concerned authority and submit the detailed representation

supported by the precedents of law, so as to enable the authority concern to consider the case in the light of settled position in law and take the decision afresh in respect of the proposal submitted by the Petitioners' institution, seeking approval in respect of the appointment of Respondent No.6.

6 We, therefore, pass the following order:-

**ORDER**

- a) Impugned order dated 21 February 2015, is quashed and set aside.
- b) The Petitioner is directed to appear before Respondent No. 3 on 24 August 2015 and submit the representation in detail, in addition to representation, if any already submitted before the authority.
- c) The Petitioner is further permitted to submit the documents in support of the contentions that the provisions of Rules 9(7) to 9(10) of MEPS Act 1981 are not applicable in the matter of Petitioner's institution.

- d) Respondent No.3 is directed to consider afresh the proposal already submitted in respect of grant of approval to appointment of Respondent No. 6 submitted by Petitioners in the light of observations recorded in forgoing paragraphs of this Judgment/order as well as, the documents, if any, to be filed by the Petitioners.
- e) The final decision in the matter be taken on or before 5 September 2015.
- f) Writ Petition is disposed of with the aforesaid directions.
- g) Rule made absolute in above terms, with no order as to costs.

**(V.L. ACHLIYA, J.)**

**(ANOOP V. MOHTA, J.)**