

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 166 OF 2015

Vyankatesh Shikshan Sanstha
Latur, Tq. & Dist. Latur
Through its Secretary
Prashant S/o Shivappa Patane
Age : 46 years, Occ : Agri.,
R/o Shivaji Nagar, Latur,
Tq. & District Latur.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through its Secretary
School Education Department,
Mantralaya, Mumbai.
2. The Deputy Director of Education,
Latur Division, Latur
3. The Education Officer (Secondary),
Zilla Parishad, Latur.
4. Shri. Nagade V.A.
Deputy Headmaster,
Shri. Vyankatesh Secondary and
Higher Secondary School, Latur,
Tq. & District Latur.

..RESPONDENTS

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Advocate for Petitioner : Mr. Thombre S.S.
AGP for Respondent/State : Mr. D.V. Tele
Advocate for Respondent No.4 : Mr. N.P. Patil Jamalpurkar h/f
Mr. Awale Girish L.
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CORAM : S.S. SHINDE & P.R. BORA, JJ.

Dated: April 16, 2015

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ORAL JUDGMENT (S.S. SHINDE, J) :

Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. Heard the learned counsel appearing for the petitioner, he invited our attention to the resolution passed by the petitioner Management, wherein one Shri. Mukta Shivmurti Manmathappa, was appointed as Headmaster. He further submits that, his proposal was sent to the Education Officer for approval by forwarding letter dated 8th November, 2013, addressed to the Education Officer (Secondary), Zilla Parishad Latur. It is further submitted that, Respondent No.4 voluntarily agreed before the Education Officer to give up his claim for the post of Headmaster by promotion, though he was senior most teacher. The learned counsel invited our attention to the letter written by Shri. Nagade addressed to Education Officer (Secondary), Zilla Parishad, Latur dated 8th November,

2013, and submitted that, the contents of the said letter were written by said Shri. Nagade in presence of Education Officer. He agreed before Education Officer by the said letter that, he has voluntarily relinquished his claim to the post of Headmaster and given consent for appointment of Shri. Mukta as Headmaster. It is submitted that, there was no occasion for the Education Officer to reconsider the oral request of Shri. Nagade, for withdrawing his earlier voluntary act of giving up claim of promotion to the post of Headmaster, and further to reject the proposal of the petitioner for granting approval to Shri. Mukta for his appointment on the post of Headmaster. It is submitted that, though the Education Officer has placed on record, along with his affidavit in reply the letter dated 17th October, 2014, written by Nagade V.A. addressed to the Education Officer, the said letter was not part of record. It is further submitted that, the said letter appears to have been concocted and subsequently inserted in the record maintained by the Respondent –

Education Officer. The learned counsel invited our attention to the letter written by the Education Officer (Secondary), Zilla Parishad, Latur to the petitioner and also to Shri. Mukta, and in particular, reference claim in the said letter and submits that, there is no reference to the letter dated 17th October, 2014, addressed by Shri. Nagade V.A. to the Education Officer (Secondary), Zilla Parishad, Latur. It is submitted that, in the said communication, nowhere reference is made to the said letter, and reference is only to the oral request of Shri. Nagade to reconsider his claim for the post of Headmaster.

3. The learned counsel appearing for the petitioner invited our attention to the provisions of Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and, in particular, Explanation below the said Rule after sub-rule (3) and submits that, the claim of senior most qualified teacher having satisfactory record of service, for appointment to

the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that, he has voluntarily relinquished his claim to the post. According to the learned counsel for the petitioner, since Respondent No.4 himself has relinquished his claim voluntarily, and after giving the statement in writing to the Education Officer requirement of rule is completed on 16th December, 2013. There was no question of reconsidering request of the respondent no.4 for appointment on the post of Headmaster in view of the Explanation below Rule 3 of the said Rules, in as much as, once such statement is given in writing before the Education Officer and unless there occurs subsequent vacancy in future there can not be reconsideration of the claim on the post of Headmaster, by the Education Officer.

4. At the cost of repetition, learned counsel for the petitioner submits that, the proposal submitted by the petitioner for appointment of Shri. Mukta S.M. was

under consideration, and therefore, the Education Officer (Secondary), Zilla Parishad, Latur ought to have confined his decision to the extent of approval to the appointment of Mr. Mukta as Headmaster, and should not have reconsidered the oral prayer of Respondent No.4 for appointment on the post of Headmaster. It is submitted that, as a matter of fact Shri. Mukta S.M. was appointed as Headmaster, and he assumed the charge, and proposal was forwarded to the Education Officer only for the approval. The learned counsel appearing for the petitioner placed reliance on reported judgment of this Court in the case of **Hirji Bhojraj and Sons and others V/s Deputy Director of Education and others**¹ and, in particular paras 19 and 20 thereof. He submits that, the Division Bench of this Court had occasion to consider the scope and ambit of rule 3(3) and also explanation below the said rule, and upon considering the said rule and explanation, the Division bench of this Court in the facts of that case held that,

¹ 2012(1)Mh.L.J. 69

the substantive provision of rule 3(3) was complied with by the Management after appointment of Shivaji Janrao as Headmaster w.e.f. 5th November, 2007. In that view of the matter, the explanation below rule 3(3), which is the basis, on which the authority proceeded to decide the controversy, is inapplicable to the fact situation of the present case, as that explanation ought to apply only at the stage of initial appointment of a person of the school. Once the person is appointed as head of the school, but he wants to excuse himself from the said responsibility, the question of requiring him to give a statement in writing to the Education officer of that intention would be stretching the said provision beyond its intent. Therefore, relying upon abovementioned observations hereinbefore from para 20 of the judgment in the case of **Hirji Bhojraj & Sons (supra)**, the learned counsel appearing for the petitioner submitted that, the act of Respondent No.4 to relinquish the claim on the post of Headmaster in writing, before the Education Officer was his voluntary act, and therefore, the matter

ended there itself, and thereafter there was no further reconsideration of his oral request by the Education Officer. Before the Education Officer only proposal of Shri. Mukta S.M. was pending, who was already appointed by the Management by passing resolution as Headmaster by promotion, and as a matter of fact he assumed the charge of said post. The learned counsel further invited our attention to the explanation to rule 3 and submitted that, a statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn.

5. The learned Additional Government Pleader appearing for the respondent – State and the State Authorities relying upon the affidavit in reply filed by Respondent No.3 submits that, there is dispute in the management and due to which both the groups are claiming themselves to be the authorized or valid office bearers. The petitioner through Prashant Shivappa Patne forwarded proposal dated 8th November, 2013 for

approval of Shivismurti Manmathappa Mukta as Headmaster of the school. In reply to para 1 of the Petition, Respondent No.3 in para 4 of affidavit in reply stated that, Respondent No.4 has given consent to appoint Shri. Shivismurti Manmathappa Mukta as Headmaster on earlier occasion. Due to the dispute in the management, the proposal of Shri. Shivismurti Manmathappa Mukta was not decided. Respondent No.4 Shri Nagade was permitted to look after the day to day affairs to the said school as Incharge Headmaster. Shri. Mukta filed Writ Petition No. 2846 of 2014 challenging the order dated 26th December, 2014 and sought direction to decide the proposal dated 8th November, 2013. This Court by order dated 23rd September, 2014 directed the Education Officer to decide proposal dated 8th November, 2013 on its own merits and accordingly the impugned decision has been rendered by the Education Officer. It is further stated in para 8 that, respondent No.4 though earlier had given consent to appoint Shri Shivismurti Manmatappa

Mukta as Headmaster, however, he submitted application dated 17th October, 2014 to Education Officer thereby showing his willingness to accept the post of headmaster. It is submitted that, after hearing both the parties and keeping in view the willingness expressed by Respondent no.4 in its letter dated 17th October, 2014, and since he is already working as Incharge Headmaster in the said school, the Education Officer has come to the final conclusion and has granted approval to Respondent No.4 as Headmaster.

6. The learned counsel appearing for Respondent No.4 submits that, the petitioner has no locus to file this Petition, in as much as, change report submitted by the petitioner is rejected by the Assistant Charity Commissioner. It is submitted that, no further appeal is filed by the petitioner aggrieved by the order passed by the Assistant Charity Commissioner rejecting the change report. It is submitted that, the really aggrieved person i.e., Mr. Mukta, has not filed Petition.

It is submitted that, though the earlier letter was addressed by Respondent No.4 to Education Officer, wherein willingness was shown for the appointment of Shri. Mukta as Headmaster, the said letter was under coercion/pressure. It is submitted that, inspite of fact that, the said letter was written on 16th December, 2013, the Education Officer appointed Respondent No.4 to act as Incharge Headmaster on 24th April, 2014. The learned counsel appearing for Respondent No.4 invited our attention to Exhibit 'R-3' Page 110 of the affidavit in reply and submits that, some criminal cases are filed and pending against the petitioner and also against Shri. Mukta. The learned counsel also invited our attention to the averments in the affidavit in reply. It is submitted that, Respondent No.4 stands at Sr. No.1 in the seniority list and Shri Mukta is at Sr. No. 5. It is submitted that, the provisions of rule 3(3) and explanation thereto, is enabling provision to the Education Officer to find out that, whether the willingness shown in writing by the senior most teacher

voluntarily relinquished his claim on the post of Headmaster is with freewill or otherwise. In the present case, there was no approval to the resolution taken by the petitioner – Management to appoint Shri. Mukta as Headmaster and as long as the Education Officer has not granted approval to the said appointment, it cannot be construed that, the appointment of Shri. Mukta was first appointment. It is submitted that, in pursuance to the order passed by the Division Bench of this Court in Writ Petition No. 2846 of 2014, the Education Officer has passed the impugned order. The learned counsel therefore submits that, the Petition is devoid of any merits and same may be dismissed.

7. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the Respondent/State and State Authorities and also the learned counsel appearing for Respondent No.4. With

their able assistance, we have perused the pleadings in the Petition, annexures thereto, reply filed by respondent No.3 and also Respondent No.4.

8. At the outset, it would be apt to reproduce hereinbelow relevant portion of the order passed by this Court dated 23rd September, 2014, in Writ Petition No. 2846 of 2014 with Civil Application No. 8021 of 2014, wherein all the parties to the present Petition were the parties to the said proceedings. This Court after adverting to the contentions raised by the parties in para 6 observed thus :-

“6. This Court would not enter into the investigation as to who is officiating as the members of the committee. The proposal is sent by the petitioner no.1 on 8.11.2013 to the concerned authority seeking approval to the appointment of the petitioner no.2 as Head Master. It is for the authority to decide the same. The authority can consider the validity of the proposal and all other relevant aspects of the matter while deciding the said proposal.”

This Court in para 7 issued directions to the Education Officer to take decision on the proposal dated 8th November, 2013 on its own merits.

9. Though the learned counsel appearing for the petitioner contended that, the Education Officer ought to have confined its decision to the proposal dated 8th November, 2013, and ought not to have traveled beyond it, in our opinion, in view of directions contained in para 7 of the earlier order passed by this Court in Writ Petition No. 2846 of 2014, the Education Officer, after hearing all the concern, passed the impugned order, and no infirmity can be attributed to the procedure adopted by the Education Officer. The provisions of rule 3(3) and explanation thereto read thus :-

“3. Qualifications and appointment of

Head :-

(1)

(2)

(3) The Management of a school including a night school shall fill up the post of the head by appointing the senior-most member of the teaching staff (in accordance with the guidelines laid down in Schedule “F”, from amongst those employed in a school (if it is the only school run by Management) or schools (if there are more than one school (excluding night school) conducted by it) who fulfills the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

Explanation :-For the purpose of this rule, the Management shall communicate the occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him

from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period fifteen days, it shall be assumed that he has relinquished his claim on the said post.

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the

Management to finalise the appointment. Such a teacher shall thereafter as soon as possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid, it shall be assumed that he has relinquished his claim on the said post.”;

10. Upon perusal of explanation below rule 3(3) as interpreted by the Division Bench of this Court in the case of **Shri. Venkatesh Shikshan Sanstha Latur and another V/s The State of Maharashtra and others** in Writ Petition No. 2846 of 2014 with Civil Application No. 8021/2014, said provision is enabling provision to the Education Officer to find out whether, the teacher who has relinquished his claim or shown

inability to act as Headmaster on promotion, his willingness as reflected through the contents of the letter written before the Education Officer is with free will or otherwise ?. In the present case, as it appears from the material placed on record, though the petitioner has passed the resolution appointing Shri. Mukta to act as Headmaster on promotion, the said resolution was not approved by Respondent No.3 – Education Officer. In our opinion, as long as the said approval has not been granted by the Education Officer to the appointment of Shri. Mukta, it cannot be said that, the appointment of Shri. Mukta was first appointment, and therefore, request of Respondent no.4 to reconsider his earlier decision relinquishing his claim on the post of Headmaster, was contrary to proviso to Rule 3(3) of the said Rules. The appointment of Shri. Mukta by the management cannot be considered as first appointment, since there was no approval by the Education Officer to his appointment at any point of time. On the contrary, it appears from the

facts appearing on record that, the Education Officer asked Respondent No.4 to act as Incharge Headmaster. The Education Officer was well within his jurisdiction. In pursuance of the directions given by this Court in Writ Petition No. 2846 of 2014 to hear all concern, he rightly invoked the explanation to rule 3(3) and to undertaken exercise to find out whether Respondent No.4 really shown his willingness with free will to relinquish his claim on the post of Headmaster, and gave way to appoint Shri. Mukta to act as Headmaster. Merely because Respondent No.4 has written a letter before Education Officer, and he has shown his inability to accept the post of Headmaster, same letter cannot be taken as conclusive proof, unless Education Officer invoke the provisions of Rule 3(3) and explanation below it, which is enabling provisions to find out whether the contents of the said letter written before the Education Officer was with freewill or otherwise, it can not be concluded that, act of respondent No.4 was voluntary and with free will to

relinquish the claim on the post of Headmaster. We are not entering into said controversy since it would lead to adjudication of disputed questions of fact. Suffice it to say that, Respondent No.3 – Education Officer by considering the material placed on record and the fact that, Respondent No.4 stands at Sr. no.1 in the seniority list and Mr. Mukta stands at Sr. No.5, and all other material placed on record reached to the correct conclusion. We do not think it necessary to interfere in the impugned decision. Therefore, in the facts and circumstances of this case, the decision of the Education officer will have to be considered in accordance with the relevant provisions and keeping in view the material placed on record. Therefore, the Writ Petition sans merits, hence rejected.

11. Rule discharged.

12. At this stage, the learned counsel appearing for the petitioner prays for continuation of the interim

order, which was in force during the pendency of Petition for further six weeks. The learned counsel appearing for Respondent No.4 vehemently opposed the said prayer. In the facts and circumstances of the present case and since respondent no.4 is already working as Headmaster and senior most teacher, we do not think it proper to continue the said interim order when Petition is finally decided.

Sd/-
(**P.R. BORA, J.**)

Sd/-
(**S.S. SHINDE, J.**)

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SGA/-