

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 769 OF 2014
WITH CA 2723 OF 2014 IN WP 769 OF 2014
WITH CA 2725 OF 2014 IN WP 769 OF 2014

VINAYAK GOVINDRAO KULKARNI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Mr. S. S. Dambe, Advocate for petitioners
Mr. G. K. Naik-Thigale, AGP for respondent No. 1
Mr. K. J. Suryawanshi, Advocate for respondent No. 4
.....

WITH
WRIT PETITION NO. 10243 OF 2013

RAVI MAROTIRAO SOREKAR
VERSUS
THE EDUCATION OFFICER, PARBHANI AND OTHERS

.....
Mr. K. C. Sant, Advocate for petitioner
Mr. G. K. Naik-Thigale, AGP for respondent No. 3
Mr. V. D. Solunke, Advocate for respondent No. 4
Mr. S. S. Dambe, Advocate for respondent No. 5
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**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 18th JUNE, 2015

PER COURT :

1. The Petitioner in writ petition no. 10243 of 2013 claims that he was appointed as Head Master in the School at Manwath. Orders were issued by the Secretary of the said trust. The same was after the petitioner in writ petition no. 769 of 2014 had shown is inability to

work and accept the post of Head Master. According to the learned counsel, the petitioner had also joined as Head Master at Manwath. However, the Education Officer said that for technical reasons, the approval cannot be granted. Vide order dated 22.03.2013, the Education Officer has observed that for technical reasons the approval cannot be granted to the appointment of the petitioner as a Head Master at Manwath and had directed to pay the salary as per the last salary drawn. The learned counsel submits that vide order dated 30.04.2013, the Education Officer directed to draw the salary bills from the School at Pathri and not from Manwath. According to the learned counsel, erroneously, vide order dated 19.10.2013, approval was granted to the appointment of respondent no. 5 Mr. K. S. Shinde as the I/c. Head Master in the School at Manwath. According to the learned counsel, the same could not have been granted. Respondent no. 4 had given a letter dated 13.08.2012 stating that he does not wish to work as Head Master at any of the schools. According to the learned counsel, the petitioner is not paid salary. It is not made clear as to where the petitioner should work. The learned counsel submits that the Deputy Director of Education, thereafter, has cancelled order of the Education Officer appointing Mr. K. S. Shinde as I/c. Head Master. The learned counsel submits that the petitioner be allowed to work as Head Master and the salary be paid to the petitioner.

2. Mr. Solunke, the learned counsel for respondent no. 4 submits that the person who had allegedly issued order in favour of respondent no. 5 is not the Secretary of the Trust. The orders are passed by the office of the Charity Commissioner in that regard. Even the application under Section 41-A of the Maharashtra Public Trust Act was rejected. The learned counsel submits that the respondent no. 4 has filed affidavit and has placed on record all these facts. Uttam Marotrao Sorekar is the Secretary of the said Trust. After the letter was given by respondent No. 5 that he does not wish to accept the post of Head Master at any of the schools, the appointment was given to the present petitioner by following proper procedure.

3. Mr. Suryawanshi, the learned counsel states that he has also filed affidavit on behalf of respondent no. 4 and Mr. Uttam Marotrao Sorekar is not the Secretary, however, the Secretary is one Mr. Madhukar Vithalrao Patil and respondent no. 5 is validly appointed as Head Master. The order of Deputy Director is erroneous.

4. Mr. Dambe, the learned counsel for respondent no. 5 in writ petition no. 10243 of 2013 and for the petitioner in writ petition no. 769 of 2014 submits that the order of the Deputy Director dated 13.01.2014 is without issuing notice to the petitioner, without hearing

Mr. K. S. Shinde in whose favour the approval was granted by the Education Officer. The learned counsel submits that in case if notice would have been issued, he would have been in a position to bring on record the actual facts. The letter allegedly dated 13.08.2012 is false and fabricated. The learned counsel submits that his client Mr. Shinde is the senior-most teacher and is eligible to be appointed as Head Master.

5. We have considered the submissions canvassed by the learned counsel for respective parties. There is no dispute that Mr. Shinde i.e. respondent no. 5 in writ petition no. 10243 of 2013 is the senior-most teacher. The bone of contention is the letter dated 13.08.2012 which is alleged to have been issued by Mr. K. S. Shinde stating that he does not wish to occupy the post of Head Master in any of the schools. The said letter is disputed by said Mr. K. S. Shinde.

6. However, while considering the orders passed by the Education Officer, so also the Deputy Director of Education, there does not appear to be any reference or finding on the said letter dated 13.08.2012. The finding of the said letter would be relevant for determining as to who is to be appointed to the post of Head Master. Normally, an eligible senior-most teacher is appointed as Head

Master. However, if the said person gives no objection as per the procedure laid down in the MEPS Act and Rules, then he loses his right to be appointed as Head Master. This aspect has to be considered by the authority while considering the proposal for approval, so also has to consider as to who is the person who had issued appointment orders, considering the orders of the Office of the Charity Commissioner.

7. In the light of the above, the order passed by the Deputy Director of Education dated 13.01.2014 is quashed and set aside. The parties shall appear before the Deputy Director of Education who shall consider the case put forth by either of the parties and shall also consider the letter dated 13.08.2012, its legality and whether the said letter can be acted upon considering the provisions of MEPS Act and Rules, so also the persons who have issued the appointment orders, about their authority and then pass orders afresh.

8. The Education Officer shall consider the aspect of payment of salary to the petitioner in writ petition No. 10243 of 2013 after hearing the petitioner and the management, within two (02) months of appearance of parties. The petitioner and the management shall appear before the Education Officer for the said purpose on 29.06.2015.

9. The parties shall appear before the Deputy Director of Education, Aurangabad on 1st July, 2015. The Parties are at liberty to place on record the relevant documents on which they wish to rely. The Deputy Director of Education shall, thereafter, decide the said proceedings expeditiously and preferably within a period of two (02) months.

10. Writ Petitions accordingly stands disposed of with aforesaid observations. No costs.

11. In view of disposal of Writ Petitions, all Civil Applications are also disposed of.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

aaa/-