

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 5354 OF 2013

NIRAJ @ NANA DEVRAO KATEWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Gunale V.D.
AGP for Respondents: Mr.A.S.Shinde.
Advocate for Respondent No.5 : Mr. V.B.Narke.
Advocate for Respondent Nos.6 to 8 and 10 : Mr.R.J. Godbole.
Advocate for Respondent Nos.9, 11 and 12 : Mr. B.M. Gadegaonkar.
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CORAM : **S. V. GANGAPURWALA and
V.L. ACHLIYA, JJ.**

DATE : 12th January, 2015.

P.C.:

1 Mr.Gunale, learned counsel submits that the order of appointment issued to Respondent Nos.6 to 12 on 27th January, 2013, and the approval granted by the Education Officer dated 12th March, 2013, are bad in law and not in consonance with the statutes and by-laws of the society.

2 The learned counsel submits that the Petitioner is the Secretary of Bhagirath Shikshan Prasarak Mandal, Karla, Taluka Himayatnagar, district Nanded. The then President on his own volition issued an advertisement inviting applications for the post of assistant teachers with Respondent No.5 – School. The School is situated at Himayatnagar, whereas the applications were invited at Nanded at the residence of the

President. According to the learned counsel, interviews are shown to be held at the residence of the President on 27th January, 2013. The appointment orders are also issued on the very same day and the approval has been granted by the Education Officer without considering the objections that were raised by the present Petitioner. The learned counsel submits that even joining dates are shown to be 27th January, 2013. The approval will be required to be granted from the date the Respondent Nos.6 to 12 joined the services. 27th January, 2013 was a Sunday and naturally Respondent Nos.6 to 12 cannot join the service on Sunday, which is a Government holiday.

3 The learned counsel submits that as per Schedule 1 of the M.E.P.S. Act and Rules, the School Committee/ Coordination Committee is empowered to appoint the teacher. Here only the President has taken interviews and had not taken Coordination Committee/ Selection Committee in confidence. The learned counsel submits that as per the by-laws of the Society, it is the Secretary, who is the appointing authority, but the appointment order is shown to have been issued by the Headmaster. The learned counsel submits that it is a treasurer, who had appointed the in-charge Headmaster, who has filed affidavit in reply. The same is illegal. The learned counsel further submits that the roster is shown to have been verified by the Education Officer. He has no power to verify the roster. The same has to be done by the BC cell only. Even

the advertisement is not properly issued.

4 Mr.Godbole, learned counsel for Respondent Nos.6 to 8 and 10 and Mr.Gadegaonkar, learned counsel for Respondent Nos.9, 11 and 12 submit that these Respondents have appeared pursuant to the advertisement and after interviews and following due selection process, they were selected. These Respondents are unaware about the internal disputes between the Management. The learned counsel submits that as per Schedule-D of the M.E.P.S. Act and Rules, it is the Headmaster who has to issue the appointment order.

5 The learned counsel submit that prior permission was obtained from the Education Officer before the advertisement was issued. The learned counsel submit that the Headmaster's son had also applied for the said post and as he was not selected, the Headmaster has made a contrary statement and thereafter, the present writ petition is filed.

6 We have considered the submissions canvassed by the learned counsel for the respective parties. It is for the Education Officer, while considering the proposal for grant of approval to the appointment of the new incumbents, to observe and decide about the procedure being adhered and followed. The Education Officer is expected to consider each and every aspect while granting approval. The law presumes that an official act has been properly done unless the said presumption is

rebutted by the facts on record.

7 The advertisement which is filed on record by the Respondents suggests that the applications were invited on 27th January, 2013. On the very same day, the interviews are conducted and the appointment orders are also issued on 27th January, 2013. It is not clear as to when Respondent Nos.6 to 12 have joined. The order of approval also states that the approval is granted from 27th January, 2013. The Education Officer has not filed any affidavit in reply. Nor the order of the approval shows that the objections raised by the Petitioner has been considered.

8 At the same time, the petition is said to have been filed by one who claims to be the Secretary. The other members of the Managing Committee have not come forward before this Court. In light of that, the true state of affairs are certainly not before this Court. It would be appropriate for the Education Officer to consider all the said aspects after hearing all the parties concerned.

9 In light of that, we pass the following order:

- I. The Petitioner may file a fresh objection with the Education Officer;
- II. The Education Officer after hearing all the parties concerned including Respondent Nos.6 to12, shall take decision afresh on the proposal for approval

of the appointment of Respondent Nos.6 to 12.

However, till the fresh decision is taken, the Respondent Nos.6 to 12 shall continue to work as they are working earlier.

III. The Education Officer shall consider and decide the objection, if filed by the Petitioner, on its own merits after hearing all the parties concerned, expeditiously, preferably within six months from the date of receipt of the said objection.

IV. The writ petition is accordingly, disposed of with aforesaid observations and directions. No costs.

[V.L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

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