

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1840 OF 2009

Shardashram Vidyamandir
A Public Trust, having office at
Dr. Bhavani Shankar Dadarkar Marg,
Dadar, Mumbai – 400 028

.... Petitioner

Vs.

1 The State of Maharashtra
through the Department of Education,
Mantralaya, Mumbai – 400 032

2 The Deputy Director of Education,
Mumbai Division, having office at
Jawahar Bal Bhavan, Charni Road,
Mumbai – 400 004

3 The Education Inspector,
Greater Mumbai (South Zone),
Topiwala Road,
Municipal School Building,
Grant Road, Mumbai – 400 007.

4 Seema P. Kanse
An Adult, Indian Inhabitant,
Supervisor,
Shardashram Vidyamandir,
Dr. Bhavani Shankar Dadarkar Marg,
Dadar, Mumbai – 400 028

.... Respondents

Mr. Vijay Thorat, Senior Counsel alongwith Ms. Varsha Palav, for the Petitioner.

Mr. M.D. Naik, AGP for respondents no.1 to 3.
Mr. Y.V. Divekar i/by Divekar & Co. for respondent no.4.

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 19th October, 2015

JUDGMENT :

1 This petition filed under Article 226 of the Constitution of India challenges the directions issued by respondents no. 2 and 3 to the petitioner to appoint respondent no.4 as the Headmistress of Shardashram Vidyamandir English Medium High School (the School). At the relevant time, respondent no.4 was working as the Supervisor with the School. Respondent no.1 is the State of Maharashtra, through it's Department of Education. Respondent no.2 is the Deputy Director of Education, Mumbai Division and respondent no.3 is the Education Inspector.

2 The occurrence of the subsequent event has in fact made this petition infructuous. During the pendency of the petition, the services of respondent no.4 as the Superintendent stood terminated for misconduct, after due departmental enquiry. Consequently, the petition was liable to be dismissed as the directions for her appointment as Headmistress cannot be implemented. However, Mr. Divekar, the learned advocate

appearing for respondent no.4 states that respondent no.4 has challenged the order of termination from service and the challenge is pending before the School Tribunal. Therefore, according to him, the petition cannot be said to have become infructuous. In view of the submission advanced and also the stand taken by respondents no.2 and 3 on the subject matter of the petition in the affidavits-in-reply filed by them, it would be imperative and also in the interest of justice that the petition is considered and disposed off on merits.

3 The factual matrix of the case is as under :

The petitioner is a registered public trust, that runs the school, which is an unaided institution. Respondent no.4 joined services of the petitioner on 8th June, 1981 as an Assistant Teacher. In the year 1986, she was placed in Trained Graduate Category and thereafter promoted as the Supervisor. As will be seen hereinafter, the service tenure of the petitioner however, has not been straight. During the period 1988 to 2004, she was issued as many as 28 memos for the allegations of high-handed behaviour, acting against the interest of the petitioner as well as the school and acting contrary to the rules and regulations governing the school. In fact one of the actions taken by the petitioner against her was at the instance of respondent no.3.

4 On 13th June, 2003, respondent no.4 was intimated about the adverse remarks in her confidential reports and was issued a show cause notice enclosing 28 memos issued to her in the past and the complaints against her. She then approached respondent no.3 with a complaint as regards the show cause notice issued to her and the adverse remarks in her confidential reports. Notice of that complaint was served upon the petitioner. In it's reply, the petitioner pointed out that the school being an unaided institution, enjoyed maximum autonomy in it's administration and therefore, respondent no.3 had no jurisdiction to interfere with it's administration. The petitioner thereafter held the domestic enquiry against her and on the finding of guilt of misconduct proposed to impose punishment upon her. After giving the necessary notice, it imposed punishment of withholding of one annual increment due on 14th June, 2004 for a period of one year exclusive of the leave except the casual leave taken during the period, as minor punishment and warned her to improve her conduct and behaviour in future.

5 The petitioner received notice dtd.21st February, 2004 from respondent no.3 directing it to adopt an appropriate action in view of the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 as regards appointment of respondent no.4 as the Headmistress, who according to respondent no.3 had rendered 22 years of satisfactory service, but had been superseded for promotion to

the post of Headmistress. As the notice sent by respondent no.3 was overlooking the factual and legal position, the petitioner complained to respondent no.2 and once again placed on record the legal position. Thereafter there was further misconduct on the part of respondent no.4 in refusing to accept the remuneration offered by SSC board towards her work of correcting answer sheets, complaining that the remuneration was not commensurate with her entitlement.

6 On retirement of Mrs. Agate, the petitioner appointed Mr. K.R. Shirsath as Headmaster on 20th June, 2004 w.e.f. 1st July, 2004 on probation for a period of two years. Respondent no.3 then sent another letter dtd. 21st August, 2004 calling upon the petitioner to adopt appropriate action for appointment of respondent no.4 as the Headmistress. Around the same time, the petitioner was required to attend hearing of the appeal preferred by respondent no.4 against the order of withholding of her increment. The petitioner submitted it's reply to the appeal pointing out that as per the provisions of Rule 3(3) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1991 the petitioner was unable to appoint respondent no.4 as the Headmistress because of her unsatisfactory service record. It also pointed out that the petitioner's Governing Counsel in it's meeting dtd. 25th June, 2004 had unanimously approved appointment of Mr. K.R. Shirsath as Headmaster of the School. Respondent no.2,

however by his letter dtd. 5th October, 2004, informed the petitioner that withholding of the increment and refusal of promotion to respondent no.4 as the Headmistress of the School was not proper and once again called upon the petitioner to take appropriate steps in the matter in accordance with the rules.

7 The petitioner, being aggrieved by the the conduct of the respondents No.2 and 3 filed Writ Petition No.129 of 2005 in this Court. By the order dated 16th February, 2005 the petition was disposed off by setting aside the direction and the order dated 5th October, 2004 and remanding the matter back to respondent No.2 for passing a fresh order. Even before, the order could be communicated by the petitioner to respondent No.2, he by the letter dated 16th February, 2005 i.e. of the same date as the order on the Writ Petition, intimated the petitioner that he had fixed hearing on 18th February, 2005. The petitioner accordingly attended the hearing and pointed out that without going through the contents of the order of this Court, it would not be proper to proceed in the matter. Thereupon, the respondent No.2 adjourned the hearing to 4th March, 2005. The proceedings were finally conducted on 17th March, 2005. Respondent No.2 on the basis of the xerox copies and the letter submitted by respondent No.4 held that she had rendered service for 25 years with the petitioner and her merits were not so inadequate as to supersede her in the matter of appointment as the Headmistress. Respondent No.2 further opined that he

had no objection for promoting the respondent No.4 on the basis of her seniority and merit.

8 Being aggrieved by the order of 17th March, 2005, the petitioner preferred second petition being Writ Petition No.1391 of 2005. This Court disposed off the petition by its order dated 22nd September, 2008 with a following specific observations :

“5. On a careful perusal of the order, it is clear that the impugned order does not give any such direction to the petitioner to appoint the respondent no.4, as apprehended by it. Indeed, such an order could not have been passed in exercise of the powers under rule 3 or under rule 29. There is thus no reason to strike down the impugned order.”

Despite the above order recording that there was no order to appoint respondent No.4 to the post of Headmistress of the school, respondent No.3 by his letter dated 21st November, 2008 directed the petitioner to promote respondent No.4 to the post of Headmistress of the school contending that dismissal of the petition filed by the petitioner amounts to confirmation of the decision of respondent No.2 dated 17th March, 2005. He directed the petitioner to submit report to the Additional Deputy Director of Education to the effect within eight days. By the same letter, respondent No.3 threatened the petitioner that on failure to comply with the order, it would be liable for committal for contempt of Court. Respondent No.3 forwarded copies of his letter to respondent No.2, the Government Pleader, High Court (Original Side), Bombay and respondent No.4. The petitioner

immediately by its letter dated 24th November, 2008 replied stating that there was no direction of Regional Director to Deputy Director to promote respondent No.4 to the post of Headmistress and therefore, question of implementation of the direction of respondent No.3 in his letter dated 21st November, 2008 did not arise. Respondent No.3, however, did not leave the matter at that stage. By another letter dated 1st January, 2009, he alleged that the petitioner was indulging into unnecessary correspondence and informed the petitioner that the Hon'ble Minister, School Education had fixed the hearing in the subject matter for compliance of the report. When the petitioner reiterated its stand, respondent No.3 by his order dated 24th August, 2009 directed the petitioner to appoint respondent No.4 to the post of Headmistress and submit report thereof on or before 26th August, 2009 to the office of respondent No.3 by hand delivery. Similar letter had been received from the office of respondent No.2 after which the petitioner filed the present petition.

9 Within a week after issuance of the impugned order dtd. 24th August, 2009, respondents no.1 to 3 in an extraordinary move filed caveat in this court on 29th August, 2009 through the office of the Government Pleader, Mumbai. The petitioner filed the present petition on 28th August, 2009 and served copy thereof upon the Government Pleader for and on behalf of respondents no.1 to 3. Thereafter the petitioner was

required to take out Notice of Motion No.498 of 2009 for interim reliefs in view of the further developments in the matter, which further developments have been disclosed in the affidavit-in-support of the Notice of Motion dtd. 8th September, 2009. In that affidavit, the petitioner states that on the same date as service of the petition upon the Government Pleader i.e. on 2nd September, 2009, seven officers from the Office of Education Inspector visited the school at 12.00 noon without any prior intimation and started inspecting the record of the school as if they were carrying a raid. The inspection continued till 7.00 pm. While leaving, Mr. Thite, the Deputy Education Inspector handed over a letter to the Headmaster directing him to submit information on five points, out of which only one was relevant for the present petition, i.e. approval obtained to the post of Headmaster. On 4th September, 2009, the petitioner received one more letter dtd.31st August, 2009 from respondent no.2, reiterating the contents of the order dtd. 24th August, 2009. On the same day, at about 11.00 am., the officer from the office of respondent no.3, one Mr. Puri, un-officially visited the petitioner's office to threaten that if the petitioners did not comply with the orders of respondents no.2 and 3, the office of the Hon'ble Minister may consider appointment of Administrator of the school.

10 The petitioner filed additional affidavit dtd.12th October, 2009, in support of the Notice of Motion to bring on record further actions on the part of respondents no.1 to 3.

Despite the interim orders passed in the petition, respondents no.1 to 3 served notice dtd.16th September, 2009 upon the petitioner calling upon it to show cause as to why administration of the school be not taken over by the Director of Education under Section 3(1) of the Maharashtra School Educational Institutions (Management) Act, 1976. The notice was received by the petitioner on 6th October, 2009. Out of seven reasons set out in the notice, four related to appointment of respondent no.4 as the Headmistress of the school. The petitioner challenged the show cause notice by preferring Writ Petition No.16 of 2010 in this court. Since the petitioner had already filed its reply to the show cause notice, this court allowed the petitioner to withdraw the petition with a direction that if the order appointing the Administrator were to be made, the same will not be implemented for a period of two weeks from the date of the order. On 18th December, 2012, the petitioner received order dt.27th November, 2012 passed by the Director of Education under Section 3(1) of the Maharashtra Educational Institutions (Management) Act, 1976 appointing Administrator of three schools run by the petitioner, though the show cause notice dtd. 16th September, 2009 was limited to only one of the schools i.e. Sharadashram Vidya Mandir English Medium High School. The petitioner then was required to again approach this court by way of Writ Petition (L) No.3050 of 2012 challenging the order dtd.27th November, 2012. That petition was disposed off by the order dtd. 24th December, 2012 permitting the petitioner to

prefer appeal against the order and protecting the petitioner with a direction that the order dtd. 27th November, 2012 appointing Administrator shall not be implemented until 15th January, 2013. Thereafter the petitioner preferred an appeal before the Government of Maharashtra, which is pending till date. By the interim orders dtd. 15th April, 2013 and 27th May, 2013, the action of appointment of Administrator has been stayed.

11 The affidavits-in-reply to the petition on behalf of respondents no.1 to 3 has been filed not by any of them but by one Maroti Thite, Deputy Education Inspector from the office of respondent no.3. He has filed two affidavits. The first is dtd. 9th December, 2009 and is filed to oppose the admission of the petition and grant of interim reliefs. The second affidavit is dtd. 20th November, 2009 filed by way of reply to the additional affidavit of the petitioner to support the Notice of Motion for interim reliefs. There are no further affidavits filed by respondents no.1 to 3 in reply to the petition.

12 In his first affidavit dtd. 9th September, 2009, the deponent seeks to justify the action of respondents no.1 to 3 with a specific contention that despite respondent no.4 being senior to Mr. Shirsath, the petitioner is bent upon promoting Mr. Shirsath and thereby flouting Rule 3(3) of M.E.P.S. Rules, 1981. The deponent claims that the question of seniority between respondent no.4 and Mr. Shirsath was resolved by the then

Education Inspector, South Zone, Mumbai under powers vested by Rule No.12(3) of M.E.P.S. Rules, 1981 and decision in favour of respondent no.4 was given vide letter No.EI/SZ/Se.6/g 13/6353 dtd. 4th December, 1993. The tenor of the affidavit filed shows that these respondents have in fact taken up the cause of respondent no.4. In the affidavit, these respondents reiterate that with the dismissal of the earlier petition, these respondents were justified in asking the petitioner to promote respondent no.4 to the post of Headmistress. According to them, the petitioner is adamant in not implementing the order. The specific averments in the reply on these aspect read as under:

“It is contended that this office is of the view that in view of the dismissal of W.P. No.1391/2005, the order of the Deputy Director, Mumbai dated 17/3/2005 (which was under challenge) remains in force. Therefore, the said letters were issued.”

and

I say the Management is adamant on not implementing the Order, thus this office again wrote a letter on 24/8/09 to the Secretary that the Management is not complying with the directions of Educational Department and Hon'ble Courts order. In fact they are committing contempt of the court's order. Also it was seen as per Secondary School Code Rule 3.2 (10) & (14), the School is not fulfilling the conditions of recognition of the school. Therefore, it is suggested that Smt. Seema Kanse be appointed as Headmistress as per Hon'ble Court's order and the action should be

completed before 26/8/2009 and report is also to be submitted to the Department till 26/8/2009 by hand delivery. Also it was stated that if the order is not complied with, the appropriate administrative action will be taken.”

13 The second reply dtd. 20th November, 2009, by the same officer as already mentioned above is to the additional affidavit-in-support of the Notice of Motion filed by the petitioner. In this affidavit also, these respondents have taken the same stand stating that “as per the seniority list and even on merits, Smt. Kanse is eligible for the promotion to the post of Headmistress and therefore the office has issued direction to the management to act as per Rules and promote Smt. Kanse”. They however, claim that the directions given by the office of respondents no.1 to 3 to the petitioner are only to follow the rules and do not amount to interference with the administration of the petitioner. As regards the sudden visit of the officers from the office of respondent no.3, these respondents do not deny the visit but they deny that visit was without authority. According to these respondents, the authority exercised by respondent no.3 was under Rule 84.1 of Secondary School Code, which authorises the Inspector to inspect the records of a school even without notice. The visits under the provision are under the directions of the Education Inspector and are made with the purpose and intention of ensuring that the management of the school functions in accordance with law. These respondents

allege that the petitioner is mixing up two different issues i.e. the issue of promoting respondent no.4 to the post of Headmistress and appointing Administrator of the school or de-recognition of the petitioner's school.

14 As regards the visit of Mr. Puri, Deputy Education Inspector, on 4th September, 2009 and the threat given by him of the consequence unless the petitioner approached the higher authorities to resolve the issue, the deponent of the affidavit states as follows:

“I say that upon discussing certain points with Mr. Puri, Deputy Education Inspector, he told me that he did not tell the Petitioner to approach the higher authority so that the dispute could get resolve as alleged or at all. He further deny that having said that the Hon'ble Minister's office is interested and if the Petitioner would not comply with the Orders of Respondent nos.2 and 3, the appointment of the Administrator may also be considered as alleged or at all.”

This means the visit of Mr. Puri on that date is not denied. What is denied is the alleged communication by him. This denial could not have come from the deponent of the affidavit. It could have come only from Mr. Puri himself. The allegations of the incident made by the petitioner are extremely serious. But these respondents have chosen not to deal with it in a correct and effective way. This fact would speak for itself. The only

irresistible inference to be drawn therefrom would be that the allegations of the petitioner stand established. It is also to be noted that the affidavit on behalf of respondents no.1 to 3 does not explain the purpose of visit of Mr.Puri on 4th September, 2009.

15 Mr. Thorat, the learned Senior Counsel appearing for the petitioner submits that the entire conduct on the part of respondents no.1 to 3 is shocking to say the least. It is obvious from the actions of respondents no.1 to 3 and the replies filed on their behalf that these respondents had unabashedly taken up the cause of respondent no.4, tried to pressurise the petitioner to have her promoted to the post of Headmistress and thereby sought to interfere with the administration of the petitioner without any authority. He points out that these respondents do not even answer the contention of the petitioner as regards the lack of authority, either in the affidavits filed by them or in the submissions advanced across the bar in the court.

16 Mr. Naik, the learned AGP appearing for respondents no.1 to 3 has not been able to point out any authority under any provision of law, which enables them to decide as to who should be the Headmistress of the school run by the petitioner. That they do not have any such authority has also been judicially noticed in the order dtd.22nd September, 2008 passed in Writ Petition No.1391 of 2005, the relevant portion of which has been

quoted earlier. Astonishingly the very order is being used by these respondents as the basis for their actions in question. The collusion of respondents no.2 and 3 with respondent no.4 is thus writ large in the facts of the case. When the order says in no uncertain terms that respondents no.1 to 3 could not have given direction or order to appoint respondent no.4 as the Headmistress of the school, there was no scope for these defendants to contend that because of the order, the direction of the Deputy Director dtd.17th March, 2005 “remains in force”. Respondents no.2 and 3 are the responsible posts in Department of Education of the State of Maharashtra. The then incumbents of the posts must be deservingly responsible persons to hold the posts. As such it would be difficult to say that they did not follow or understand the text of the order dtd. 22nd September, 2008. In that circumstance, the illegal action on the part of these respondents would be a deliberate action only with intent to help respondent no.4. This was clear abuse of power by these respondents.

17 The further abuse of power by thee respondents was of pressurising the petitioner by resorting to the powers vested in them under Rule 84.1 of the Secondary School Code as claimed by them. It is not even the case of these respondents that the sudden inspection taken by respondent no.3 was on account of any complaints received about the management of the school. As already mentioned hereinabove, the incident of

the threat given by Mr. Puri to the petitioner stands established for want of proper denial. These respondents not just inspected the school, but took action of appointment of Administrator not just of the school concerned, but of two other schools run by the petitioner as well, thereby driving the petitioner to the court again and again and putting an educational institution to avoidable expenses.

18 For all the above reasons, the petition must be allowed with costs. Hence, the order.

ORDER

- 1 The petition is allowed
- 2 Rule is made absolute in terms of prayer clause (b).
- 3 Respondents no.1 to 3 shall pay costs quantified at Rs.50,000/- in one set to the petitioner and Respondent no.4 shall pay costs quantified at Rs.10,000/- to the petitioner. Costs on behalf of respondents no.1 to 3 shall initially be paid by respondent no.1, who may later recover the same from the officers holding the posts of respondents no.2 and 3 at the relevant time.

(Smt. R.P. SondurBaldota, J.)