

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2069 OF 2015

[Moreshwar Damodhar Makade .vs. The Education Officer (Secondary), Zilla Parishad, Nagpur]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.Z. Jibhkate, counsel for the petitioner,
Shri N.R. Rode, AGP for the respondent no.1,
Shri A.S. Dhore, counsel for the respondent nos.2 and 3,
Shri V.K. Paliwal, counsel for the intervenor.

CORAM : SMT. VASANTI A. NAIK AND
A.I.S. CHEEMA, JJ.

DATED : AUGUST 27, 2015.

By this petition, the petitioner seeks a declaration that the respondent nos.2 and 3 namely, Ku. Nalini Bhaiyyaji Zade (Sau. Nalini Ashok Satpute) and Shri Ashok Harishchandra Satpute cannot constitute the enquiry committee and initiate the enquiry against the petitioner. The petitioner seeks a direction to the Education Officer to lodge a complaint against the respondent nos.2 and 3 in the concerned Police Station for registering the offence against them for cheating and impersonation.

The petitioner is working as a Assistant Teacher in Navjivan High School and Junior College, Pathrai, Tahsil-Ramtek, District-Nagpur. A departmental enquiry was initiated against the petitioner. According to the petitioner, the respondent no.2 is not the Secretary of the education society and the respondent no.3, who is the Head Master, is not the President of the Society. It is stated that the respondent nos.2 and 3 did not have the authority to constitute the enquiry committee and initiate the enquiry against the petitioner under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. According to the petitioner, since the respondent nos.2 and 3 have posed to be the Secretary and the

President, a direction needs to be issued to the respondent no.1- Education Officer to file a criminal complaint against the respondent nos.2 and 3. The learned counsel for the petitioner has relied on Schedule-I to submit that the respondent nos.2 and 3 have no role to play in the matter, as they are not in the management. The learned counsel for the petitioner has also relied on an order of the Assistant Charity Commissioner, dated 7.8.2014 to substantiate his submission.

The averments made in the petition against the respondent nos.2 and 3 are not seriously disputed by the respondent nos.2 and 3. It is submitted on behalf of the respondent nos.2 and 3 that the respondent nos.2 and 3 have filed a change report and the change report is pending. It is stated that the managing body comes into office as soon as the resolution effecting the change is passed. It is stated that the intervenor has wrongly claimed to be the President, as it is clear from the order of the Joint Charity Commissioner that the intervenor is not managing the affairs of the trust. It is stated that the petitioner has participated in the enquiry and has raised the objection in respect of the authority of the respondent nos.2 and 3 to constitute the enquiry committee. It is stated that the enquiry has proceeded and the parties have tendered evidence in the enquiry. It is stated that the disputed questions of facts may not be decided by this court in exercise of the writ jurisdiction.

Shri Paliwal, the learned counsel for the intervenor, states that intervenor is the President of the Society. It is stated that the President has not initiated any action against the petitioner.

On hearing the learned counsel for the parties, it appears that it would not be proper to consider granting the relief sought by the petitioner in the instant petition. It would not be proper for this court to decide in exercise of the writ jurisdiction under Article 226 of the Constitution of India, as who is the Secretary of the Trust and who is empowered to constitute the enquiry committee for initiating the enquiry against the petitioner. The petitioner has already raised an objection against the initiation of the inquiry at the behest of the respondent nos.2 and 3 and the constitution of the enquiry committee. The objections are considered and the petitioner has also tendered the

evidence in the enquiry. The petitioner would be free to raise a challenge against the improper initiation of the enquiry and the alleged illegal constitution of the enquiry committee at an appropriate stage after the culmination of the enquiry, if any punishment is imposed against the petitioner, before the appropriate authority. The petitioner cannot be permitted to stall the enquiry by asking this court to decide the issue as to who is in the management of the trust. We also find that the name of the respondent no.3 is on Schedule-I and the respondent no.3 is admittedly the Head Master of the School.

In the aforesaid circumstances, the writ petition is dismissed with costs.

JUDGE

JUDGE

Gulande