

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

WRIT PETITION NO.2067/2014.

Shri Sainath Kejuram Naitam -**VERSUS**- State of Maharashtra and others.

WRIT PETITION NO.2068/2014.

Shri Harish Wamanrao Karmarkar -**VERSUS**- State of Maharashtra and others.

WRIT PETITION NO.2066/2014.

Shri Manoj Amrit Vaidya -**VERSUS**- State of Maharashtra and others.

WRIT PETITION NO.2069/2014.

Shri Chhanna Shankar Khobragade -**VERSUS**- State of Maharashtra and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : **B.P.DHARMADHIKARI**
& P.N. DESHMUKH, JJ.

DATE : **AUGUST 31, 2015.**

Heard Shri P.P. Thakare, learned Counsel
for the petitioners, Shri N.R. Patil, learned A.G.P. for
respondent nos. 1 to 3, Shri A. Parchure, learned
counsel for respondent nos. 4 and 5 and Shri B.G.
Kulkarni, learned counsel for intervenors /respondent
nos. 6 to 11.

2. Petitioners who are working in a School
namely – Sainath Vidyalaya and Junior College,
Malewada are before this court for direction to

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respondent no.3 Education Officer to consider the pending proposals submitted for approving their appointments.

3. Petitioners in Writ Petition Nos. 2067 and 2068 of 2014 claim that they have been appointed in the year 2006, while petitioners in other two writ petitions claim that they have been appointed in the year 2009.

4. According to Shri Kulkarni, learned counsel, who represents one of the fraction in the management i.e. Shri Tukaram Shikshan Sanstha, Kadholi, submits that the proposals are already rejected.

5. Learned A.G.P. has pointed out that the permission given by the Education Officer was to fill in the post only for a period of one year, and ignoring this period, permanent vacancies were advertised. The education officer therefore, directed the Headmaster to correct the advertisement. That correction was not done and appointments have been made, as such the appointments are not valid.

6. Shri Kulkarni, learned counsel submits that he represents the majority group in the management

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and Authorities functioning under the Bombay Public Trust Act have passed certain orders, which did not enable the headmaster, who is also Secretary of the minority group, to take such decision and steps, hence, the approval has already been rejected.

7. Shri Thakare, learned counsel has pointed out that on 30.09.2006, permission to fill in the vacancy was given by the education department to the headmaster and then an advertisement was published on 04.10.2006. After that advertisement, petitioners have been interviewed and appointed on 09.10.2006.

8. Similar permission was asked for and given on 25.08.2009. Advertisement was then published on 26.08.2009, and thereafter appointment order has been issued on 31.08.2009. He submits that the petitioners are not concerned with the dispute between the management and though the order permitting the management to issue advertisement carried certain conditions, the advertisement does not reflect it. According to him, in the face of these developments, though initially the Education Officer granted approval for one year, i.e. for the year 2006-07, that approval was then further extended for one more year i.e. upto

2008. He argues that thus the Education Officer has found that the vacancies were permanent in nature and, therefore, in terms of the advertisement, the appointments made were considered.

9. It is obvious that because of internal dispute, the situation has cropped up. However, fact that the petitioners are working either from 2006 or from 2009 is not seriously in dispute. The group allegedly claiming to be in majority or then the Education Officer has not pointed out that some other appointments have been made and those persons are working against those vacancies.

10. As such the petitioners before this Court appear to be working either from 2006 or 2009, and hence the proposals for their appointment needed to be evaluated in accordance with law.

11. It is apparent that there are certain orders passed by the Charity Commissioner Authorities. Those orders also needed to be kept in mind while considering this facet. The advertisements were published within a short time, after the permission and within 2 or 3 days thereafter, the appointments orders have been issued. The Education Officer

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therefore, has to also find out the propriety of procedure then followed.

12. In this situation, we find that the rival groups in the management also needed to be heard while granting the approval.

13. Shri Kulkarni, learned counsel has invited our attention to the orders by which the proposal has been rejected way back in the year 2008 and in other matters, communication dated 05.07.2011 has been pointed out.

14. Shri Thakare, learned counsel however, has made a grievance that no such communication has been received by the petitioners and communication dated 05.07.2011, was sent to the Deputy Director of Education with copy to M.L.A.

15. We do not wish to go into this controversy. The education department has permitted petitioners to continue to work even after rejection of their approval is presumed. In this situation, we direct the respondent nos. 4 and 5 to submit a suitable proposal afresh within a period of three weeks from today for grant of approval to the appointment of petitioners. After receipt of such proposal, the education officer

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(secondary) shall evaluate it in accordance with law and after hearing all concerned, including the respondent nos. 6 to 11. the decision in this respect shall be taken within next three months.

16. With these directions and keeping all rival contentions open, we dispose of the Writ Petitions. No cost.

JUDGE

JUDGE

Rgd.