

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.874 OF 2014

Mohd. Afsar Sk.Taj Mohammad and others

-vs-

Public Education Society thr.its President and others

AND

WRIT PETITION NO.3014 OF 2014

Riyaz Ahmed Khan S/o Niyaz Ahmed Khan

-vs-

Education Officer (Secondary), Washim and others

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

Court's or Judge's Orders.

W.P.No.874 of 2014

Mr.A.De, counsel for the petitioners.

Mr.A.S.Kilor, counsel for the respondent Nos.1 and 2.

Mr.S.M.Ghodeswar, AGP for the respondent Nos.3 to 7.

W.P.No.3014 of 2014

Mr.A.De, counsel for the petitioners.

Mr.N.S.Rao, AGP for the respondent No.1.

Mr.S.P.Bhandarkar, counsel for the respondent No.2.

CORAM : SMT. VASANTI A. NAIK &
A.M.BADAR, JJ.

DATE : 08.04.2015.

Since the issues involved in these petitions are interconnected, they are heard together and are decided by this common order.

The petitioners in Writ Petition No.874 of 2014 claim to be the resident of Dhanaj (Bk.), District Washim and the parents of the students taking education in National Urdu High School. By a prayer made in Writ Petition No.874 of 2014, the petitioners have challenged the communication dated 18/07/2013 permitting the Management of the

National Urdu High School to transfer the school from Dhanaj (Bk.) to Naigaon, District Akola.

It is the case of the petitioners in Writ Petition No.874 of 2014 that the respondent No.3 could not have permitted the transfer of the school from Dhanaj (Bk.) to Naigaon, in view of the policy in the Government Resolution dated 31/07/2013. It is stated that as per the policy of the State Government in respect of transfer of schools, as mentioned in the Government Resolution dated 31/07/2013, a school cannot be transferred at a distance of more than 10 kilometers. According to the petitioners in Writ Petition No.874 of 2014, the school could not have been transferred without ensuring that there was another grant-in-aid Urdu medium school in the same locality i.e. Dhanaj (Bk.). It is stated that the respondent No.3 has not considered the Government Resolution dated 31/07/2013 before granting permission for transfer of the school from Dhanaj (Bk.) to Naigaon. It is stated that though the order permitting the transfer of the school was passed on 18/07/2013, the Management had resolved to transfer the school to Naigaon only from the Academic Session 2014-15 and hence, it was necessary for the respondent No.3 to ensure that the conditions mentioned in the Government Resolution dated 31/07/2013 for permitting the transfer of the school are satisfied.

It is submitted on behalf of the Management that the Management has transferred the school to Naigaon in pursuance of the order dated 18/07/2013 during the Academic Session 2013-14 and the policy, as reflected in the Government Resolution dated 13/07/2013 could not have applied to the order of transfer, passed before issuance of the Government Resolution. It is stated that the school is running

at Naigaon since past more than one and half year and the dismissed Headmaster of the school, who has filed the other writ petition bearing Writ Petition No.3014 of 2014 seeking the cancellation of his approval as a Headmaster, is illegally running another school at Dhanaj (Bk.).

The learned Assistant Government Pleader has relied on the report of the Education Officer, Akola to submit that the Management has transferred the school to Naigaon and the school is being run at Naigaon since the Academic Session 2014-15. It is stated that it is clear from the report of the Education Officer that the Management is running a school at the place of transfer, that is Naigaon.

The petitioner in Writ Petition No.3014 of 2014 claims to be the Headmaster of the National Urdu High School. The petitioner in Writ Petition No.3014 of 2014 has challenged the order of the Education Officer, Washim dated 02/06/2014 cancelling the approval to the appointment of the petitioner on the post of Headmaster and seeking recovery of the salary paid to the petitioner after 30/04/2013. According to the petitioner in Writ Petition No.3014 of 2014, the approval to the appointment of the petitioner could not have been cancelled without affording an opportunity of hearing.

Shri Rao, the learned Assistant Government Pleader appearing for the Education Officer, Washim, has filed an affidavit-in-reply stating therein that the petitioner in Writ Petition No.3014 of 2014 was not heard before the impugned order dated 02/06/2014 was passed.

The learned counsel for the Management has, however, relied on a notice issued by the Education Officer (Secondary), Washim by which the petitioner in Writ Petition No.3014 of 2014 was asked to remain present for hearing in

the matter of cancellation of the approval. It is stated that the services of the petitioner have been terminated by the Management by an order dated 26/03/2013 and the reliance placed by the petitioner in Writ Petition No.3014 of 2014 on a subsequent order purportedly passed by the Secretary of the respondent-Management is ill-founded. It is stated that the document dated 01/05/2013 is a forged and fabricated document and an F.I.R. is lodged against the petitioner in Writ Petition No.3014 of 2014 in that regard. It is stated that a private complaint has been filed by the Management against the petitioner and process has been issued in the said case. It is further stated that Writ Petition No.874 of 2014 is also filed at the behest of the petitioner in Writ Petition No.3014 of 2014, who claims to be the Headmaster of the school. It is stated that it is necessary for the petitioner in Writ Petition No.3014 of 2014 to file an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 before the School Tribunal against the order of termination and in the same proceedings the question in regard to cancellation of the approval to the appointment of the petitioner in Writ Petition No.3014 of 2014 could be considered. It is stated that the documents tendered by the petitioners in Writ Petition No.874 of 2014 are sought by the petitioner in Writ Petition No.3014 of 2014 under the provisions of the Right to Information Act. It is stated that the said fact clearly demonstrates that the petitioner in Writ Petition No.3014 of 2014 is instrumental in filing Writ Petition No.874 of 2014. Also, it is submitted that the petitioner in Writ Petition No.3014 of 2014 is illegally running a school at Dhanaj (Bk.) despite his termination and though the Management is running the school at Naigaon, District Akola in pursuance of

the order dated 18/07/2013. It is stated that even assuming that the petitioner is running a school at Dhanaj (Bk.), the said school is being run illegally by the petitioner in Writ Petition No.3014 of 2014, as the report of the Education Officer, Akola clearly shows that the Management has transferred the school from Dhanaj (Bk.) to Naigaon and the school is functioning at Naigaon. It is lastly stated on behalf of the Management that the Education Officer, Washim is trying to help and support the petitioner in Writ Petition No.3014 of 2014 and despite the issuance of notice to the petitioner to remain present for hearing in the matter of cancellation of approval, an affidavit is filed by the Education Officer, Washim that the petitioner in Writ Petition No.3014 of 2014 was not afforded an opportunity of hearing.

On hearing the learned counsel for the parties and on a perusal of the several documents annexed to the writ petitions and the affidavits-in-reply filed on behalf of the respondents, it appears that the relief sought by the petitioners in both the writ petitions cannot be granted. Admittedly, before the issuance of the Government Resolution dated 31/07/2013, the respondent No.3 had permitted the transfer of the school from Dhanaj (Bk.) to Naigaon. The policy as framed by the Government and reflected in the Government Resolution dated 31/07/2013 cannot be made applicable to the transfer order that was passed before the issuance of the Government Resolution dated 31/07/2013. The Government Resolution would not be retrospective in operation. There is a report of the Education Officer, Akola on record and an affidavit is also filed on behalf of the Education Officer, Akola that the Management is running the school at the place of transfer i.e. Naigaon, Akola. If the Management is running the school at

Naigaon in pursuance of the order dated 18/07/2013, the petitioner in Writ Petition No.3014 of 2014 cannot run the school at Dhanaj (Bk.). We find that by an order of termination annexed to Writ Petition No.3014 of 2014 at Annexure-D, the services of the petitioner were terminated. The Management has clearly stated in its affidavit-in-reply in both the writ petitions that the services of the petitioner in Writ Petition No.3014 of 2014 were terminated on 26/03/2013 and the subsequent communication reinstating the petitioner in Writ Petition No.3014 of 2014 as a Headmaster was not issued by the Management. It is stated by the Management that the document dated 01/05/2013 is a forged and fabricated document. The Management has reiterated that the services of the petitioner in Writ Petition No.3014 of 2014 are terminated on 26/03/2013 and the petitioner is not reinstated on the post of Headmaster. If that is the case of the Management, it was necessary for the petitioner in Writ Petition No.3014 of 2014 to file an appeal against the order of his termination before the School Tribunal. However, instead of filing an appeal, the petitioner in Writ Petition No.3014 of 2014 is illegally running the school at Dhanaj (Bk.) despite the order permitting its transfer to Naigaon and despite the fact that the Management has already transferred the school to Naigaon. Even if it is assumed that the petitioner in Writ Petition No.3014 of 2014 is running a school at Dhanaj (Bk.) and some students are taking education in the said school, the running of the said school at Dhanaj (Bk.) by the petitioner in Writ Petition No.3014 of 2014 is illegal, when the Management has shifted the school at Naigaon. The Headmaster of a school cannot continue to run a school at a place from where it is transferred after the Management shifts the school and starts

running the same at a place to which it is transferred. The Education Officer, Washim, therefore, rightly relied on the order of termination of the petitioner dated 26/03/2013 to cancel the approval to the appointment of the petitioner on the post of Headmaster. If the petitioner in Writ Petition No.3014 of 2014 is aggrieved either by the action of the Management which claims to have terminated the services of the petitioner on 26/03/2013 or the action of the Education Officer cancelling the approval on the basis of the said termination order dated 26/03/2014, it would be necessary for the petitioner in Writ Petition No.3014 of 2014 to challenge the action on the part of the Management and / or the Education Officer, Washim in an appeal under Section 9 of the Act of 1977. Instead of filing an appeal in the matter of his termination in which the matter of rejection of his approval could also be tried, the petitioner in Writ Petition No.3014 of 2014 has filed the writ petition challenging the order of cancellation of his approval on the ground that he has not been afforded an opportunity of hearing. The documents are produced by the respondents to show that indeed a notice was issued to the petitioner Headmaster, allegedly dismissed, in respect of the scheduled hearing to the petitioner, in Writ Petition No.3014 of 2014. It appears on a perusal of the documents annexed to the affidavit-in-reply in both the writ petitions that Writ Petition No.874 of 2014 is also filed at the behest of the Headmaster i.e. the petitioner in Writ Petition No.3014 of 2014. If the petitioner in Writ Petition No.3014 of 2014 is of the view that his services are not terminated, the petitioner is free to approach an appropriate forum seeking a declaration in that regard. If the services of the petitioner in Writ Petition No.3014 of 2014 are 'otherwise terminated', he may file an appeal under

Section 9 of the Act of 1977. It is, however, not possible for this Court to decide the factual issues involved in Writ Petition No.3014 of 2014, in exercise of the writ jurisdiction as several disputed questions of facts including the facts based on the allegations of fraud and fabrication of documents are involved in the same. However, we are clearly of the view that the petitioner in Writ Petition No.3014 of 2014 did not have the authority to run the school at Dhanaj (Bk.) after the Management transferred it to Naigaon in pursuance of the order dated 18/07/2013.

In view of the aforesaid, we dismiss both the writ petitions with costs.

JUDGE

JUDGE