

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 907 OF 2015
WITH
CIVIL APPLICATION NO. 4114 OF 2016
IN
WRIT PETITION NO. 907 OF 2015

Sunita d/o Baburao Bhangire ... **Petitioner**
Age 47 years, Occu: Service,
R/o Mudkhed, Tq. Mudkhed,
District Nanded

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai 400 032
2. The Education Officer (Primary),
Zilla Parishad, Nanded
3. Namdeo s/o gopalrao Gadegaonkar,
Age 45 years, Occu: Service,
R/o Mudkhed c/o Sardar Vallabhbhai
Patel Primary School, Mudkhed,
Taluka Mudkhed District Nanded
4. Sardar Vallabhbhai Patel Primary ... **Respondents**
School, Mudkhed,
Taluka Mudkhed District Nanded

Mr.N.P. Patil Jamalpurkar, Advocate for the petitioner,
Mrs. V. H. Patil, AGP for Respondent No.1
Mr. R. R. Mantry with Mr. S. R. chaukidar, Advocate for
respondent Nos. 3 and 4
Mr. S. B. Pulkundwar, Advocate for respondent No. 2.

**CORAM : S. V. GANGAPURWALA &
K. L. WADANE, JJ.**

RESERVED ON : 13th December, 2016.

PRONOUNCED ON : 21st December, 2016

JUDGMENT (Per K. L. Wadane, J.):

1. Heard the learned counsel for the parties.
2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.
3. The petitioner assailed the order passed by respondent No.2 dated 9th October, 2014 by which it has accorded approval in favour of respondent No.3 to function as Incharge Headmaster of respondent No.4 School to the extent of drawing salary of the sanctioned staff.
4. The petitioner claims to be incharge Headmaster of respondent No.4 School, having educational qualification of S.S.C. D.Ed. According to the petitioner, she joined Service as Assistant Teacher on 14th January, 1988. One Mr. N.L.Jakapure who was the Headmaster in Respondent No.4 school was retired in the year 2012. In view of his retirement, senior most teacher in the school was required to be appointed on the vacant post of Headmaster. The petitioner being the senior most teacher in the school and desirous to be appointed on the post of Headmaster but due to some

domestic difficulty, she informed the Management of respondent No.4 School as well as respondent No.2 Education Officer by an application dated 23rd November, 2012 that at present she does want to discharge duties as Headmaster. The next senior most teacher is Mrs. Usha Gainwad. However, the Education Officer did not approve claim of Mrs. Gainwad for the post of Headmaster since she had acquired D.Ed. qualification in 1994. Then next senior most teacher is the present respondent no.3 who had acquired D.Ed. qualification in 1989. According to the petitioner, for the purpose of appointment on the post of Headmaster, seniority is to be counted from the date of acquiring D.Ed. qualification and not from the date of initial appointment of the teacher and on this ground, the Education Officer has granted temporary approval in favour of respondent No.3.

5. On 31st December, 2012, the petitioner requested respondent No.2 and the Management of Respondent No.4 to appoint her on the post of Headmaster.

6. There is dispute amongst the Members of the management and there are two rival groups who are claiming the Management.

7. The Management has submitted proposal to Respondent No.2 seeking approval to the appointment of the petitioner on the post of Headmaster. Respondent No.3 also claimed the same post. After hearing both the sides, temporary approval came to have been granted in favour of the petitioner to discharge function as Incharge Headmaster.

8. It is contended by the petitioner that the Education Officer has granted temporary approval in favour of the petitioner till 13th November, 2014. Thereafter, the management had submitted proposal to the Education officer requesting to accord permanent approval in favour of the petitioner as Headmaster. The petitioner also prayed for the same relief.

9. Some members of the Management have interest to appoint respondent No.3 as Headmaster therefore, they have requested the Education Officer for granting approval in favour of respondent No.3. The Education Officer, by ignoring the provisions of Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and by ignoring its own decision, in collusion with some members of the Management, all of a sudden, issued impugned order

dated 9th October, 2014 and thereby granted approval in favour of respondent No.3.

10. Office bearers of the Management have submitted an application on 20th October, 2014 to withdraw the order dated 9th October, 2014 as respondent No.3 was insisting the petitioner to handover charge pursuant to the order dated 9th October, 2014.

11. On 14th November, 2014, written representation was made to the Zilla Parishad, Nanded. On it, the President of the Zilla Parishad ordered to accord approval in accordance with law and in favour of the senior most teacher in the school.

12. On behalf of respondent Nos. 3 and 4, affidavit in reply is filed by one Mr. Balasaheb Bhujangrao Deshmukh, President of Shikshan Prasarak Mandal, Mudkhed and has given brief history regarding the election of the members of the Management, names of previous committee and their designation and further it is contended that fresh election was held on 10.11.2011 in which the deponent Balasaheb Deshmukh and others are elected including one Mr. Baliram Unhale. Rival group of the deponent headed by Ramrao Pachling also claimed that they have held election. Due to dispute between

the two groups, the group of the deponent headed by Baliram Unale submitted a Change Report. On the other hand, Mr. Ramrao Pacnling also submitted a change report to the Assistant Charity Commissioner. Change report of Baliram Unhale was accepted while the change report of Mr. Pachling was rejected, against which an appeal was preferred before the Joint Charity Commissioner which is dismissed. Hence the present deponent Balasaheb Deshmukh is managing the affairs of the Trust. He denied that the Management had sent a proposal for approval to appoint petitioner as Headmaster. There was dispute between two groups of the Management. Hence there was temporary arrangement of continuation of the petitioner as incharge Headmaster. No decision was taken by respondent No.2 to appoint the petitioner permanently being a senior most teacher. At the relevant time, the petitioner was involved in the several illegal activities and thereby acted contrary to the interest of the Trust. Therefore, the Management sent a proposal to appoint respondent no.3, the next senior most teacher in the list. After satisfaction, respondent No.2 allowed the proposal by order dated 9th October, 2014.

13. The proposal to withdraw the impugned order was

sent under the signature of one Mr. N.L. Gainwad, claiming to be the Deputy Director of the Trust, who is not authorized in law to sign and sent such proposal. As per the impugned order, respondent no.3 had taken a Charge of Headmaster.

14. Departmental enquiry was initiated against the petitioner. The petitioner had not replied to the show cause notice, however, she has given reply in the newspaper. The petitioner was placed under suspension on 01.06.2015.

15. One Mr. Khade, the Deputy Education Officer filed affidavit in reply on behalf of respondent No.2 and has contended that there was dispute between two groups regarding the Management and the change reports were pending before the Assistant Charity Commissioner and therefore, being temporary arrangement, charge of Headmaster was given to the petitioner and presently the petitioner is working as Assistant Teacher.

16. It is further contended in his affidavit that pursuant to the constitution of the Trust, powers to make communication to the authorities are given to the Director of the Trust and the Deputy Director in the Trust has no power to sign any proposal. Hence, the

proposal dated 20th October, 2011 submitted for granting approval to the petitioner as Headmaster, signed by the Deputy Director of the Trust cannot be sanctioned as it is not in accordance with the constitution of the Trust.

17. The Management whose change report is accepted by the Assistant Charity Commissioner has submitted a representation dated 4th December, 2014 pointing out the irregularities and illegalities committed by the petitioner during her period as incharge Headmaster and proposed that the charge of the petitioner be withdrawn and handed over to the senior most teacher- Respondent No.3. Therefore, respondent No.2 has rightly handed over the charge of Headmaster to respondent No.3.

18. On 12.01.2015, respondent No.2 requested the Management to send proposal of senior most teacher, however, the Management, vide its letter dated 8th February, 2015, informed respondent No.2 that enquiry is going on against the petitioner and if she found no guilty in the enquiry, then only the proposal will be submitted to respondent no.2 for approval. With this averment, respondents have prayed to dismiss the writ petition.

19. We have heard Mr. N. P. Patil Jamalpurkar, the learned counsel for the petitioner. During the course of argument, Mr. Patil has argued that the petitioner, being senior most teacher serving in the school and acquired D.Ed. qualification in 1986, therefore, as per provisions of Rule 3 of the MEPS Rules, 1981, the petitioner ought to have been appointed as Headmaster, however, in contravention of the relevant provisions and rules, respondent No.3 who is junior to the petitioner has been appointed as Headmaster of the school. According to Mr. Patil, earlier the management had sent proposal to respondent No.2 to appoint the petitioner as Headmaster and respondent No.2 initially appointed the petitioner as Headmaster. Her term as Headmaster was extended from time to time. However, subsequently, under the influence of some members of the Management, respondent No.2 appointed respondent No.3 as Incharge Headmaster, which is illegal.

20. As against this, Mr. Mantri, the learned counsel for respondent Nos. 3 and 4 argued that the petitioner was acting against the interest of the Trust. The authorized management had not proposed her name for the appointment as Headmaster. The learned counsel further argued that the authorized management had signed the

proposal of respondent No.3. The authorized Management had pointed out the misconduct committed by the petitioner and therefore, respondent No.2 has approved the proposal of respondent No.3. The contention raised and taken by respondent Nos. 3 and 4 are supported by respondent No.2.

21. We have perused the record. On scrutiny of the record, it reveals that there was dispute between the two groups of the management who were trying to take the Institution in their hand. Therefore, there was litigation between two groups, one is headed by Mr. Unhale and another headed by Mr. Pachling. Fresh election of the Trust was held on 10.11.2011, in which group of Mr. Unhale seems to be elected, of which deponent Mr. Balasaheb Deshmukh is president.

22. On perusal of the proposal dated 20th October, 2014 Exh. H, it reveals that one Deputy Director Mr. Narayan Gainwad signed the representation/proposal and recommended name of the petitioner to be appointed as Headmaster permanently. However, on scrutiny of the record, it reveals that Mr. Gainwad appears to be from the Group of Pachling whose change report was not accepted by the Assistant Charity Commissioner and

therefore, it cannot be said that Mr. Gainwad was authorized to sign such proposal in the capacity of Deputy Director of the Trust. On the other hand, the proposal sent by the authorized Management not recommending the petitioner for the post of Headmaster has been accepted by respondent No.2 by the impugned order.

23. Mr. Patil-Jamalpurkar, the learned counsel has relied on the provisions of Rule 3 of the MEPS Rules, 1981, particularly Sub Rule (i) and has claimed that as per provisions of this Rule, it was for the respondent No.2 to appoint the petitioner on the post of Headmaster.

24. Mr. Patil-Jamalpurkar has relied on the unreported judgment of this court in Writ Petition No. 166/2015, dated 16.04.2015, in which it is observed that :

“Merely because respondent No.4 has written a letter before the Education Officer and he has shown his inability to accept the post of Headmaster, same letter cannot be taken as a conclusive proof, unless Education Officer invoke the provisions of Rule 3(3) and explanation below it, which is enabling provisions to find whether the contents of the

said letter written before the Education Officer was with free will or otherwise, it cannot be concluded that act of respondent No.4 was voluntary and with free will to relinquish the claim on the post of Headmaster."

Above observation is inapplicable to the facts of the present case, because for some time, the petitioner was unable to accept the charge of Headmaster but subsequently she accepted the charge and has served as incharge Headmaster for some time. Subsequently her name was not recommended by the management. Further, Rule 3 of the MEPS Rules will have to be read with the explanation which states that the Management shall communicate the occurrence of vacancy at the Head to the senior-most teacher having "satisfactory record of service".

25. The impugned order is not approving the appointment of one Mr. Gadegaonkar as Headmaster but simply authorizes him to take steps to draw salary of sanctioned staff. The petitioner can make a grievance only if some other person is appointed as Headmaster and petitioner feel same is in derogation of rights. It is for the Management in Office to appoint Headmaster, send proposal for approval. Prima facie, it appears that the persons who had forwarded the

proposal of Mr. Gadegaonkar on 22.09.2014 are in office. The recent change reports are pending. It is for the office of the Charity Commissioner to arrive at the conclusion as to the persons managing the Institution upon consideration of Change reports.

26. Suffice it to observe that the impugned order is only with regard to giving authority to the respondent No.4 to draw salary of sanctioned staff and nothing more. As such, it cannot be said that vested right is created in any person. The petitioner may raise grievance if the case of any candidate is being considered as Headmaster. The Authority would consider the same in accordance with law, more particularly Rule 3 of the MEPS Rules alongwith its explanation.

27. For the reasons stated above, there is no merit in the writ petition, hence it is rejected.

28. Rule discharged. No order as to costs.

29. In view of disposal of writ petition, civil application also stands disposed of.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC

