

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 523 OF 2015
WITH CA/1819/2015 IN WP/523/2015

SHARADCHANDRA BARKU NERKAR AND OTHERS
V/S
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Ramesh I. Wakade.
AGP for Respondent Nos.1 to 3 : Mr. S. N. Morampalle.
Advocate for Respondent Nos.4 & 5 : Mr. R. O. Awasarmol.

WITH
WRIT PETITION NO. 482 OF 2015
WITH CA/2513/2015 IN WP/482/2015

RAJENDRA BHIKAJI JADHAV
V/S
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Ramesh I. Wakade.
AGP for Respondent Nos.1 to 4 : Mr. S. N. Morampalle.
Advocate for Respondent No.5 : Mr. V. J. Dhage & Mr. D. A. Karnik

WITH
WRIT PETITION NO. 524 OF 2015
WITH CA/1818/2015 IN WP/524/2015

RAJENDRA BHIKAJI JADHAV
V/S
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Ramesh I. Wakade.
AGP for Respondent Nos.1 to 3 : Mr. S. N. Morampalle.
Advocate for Respondent No.4 : Mr. A. N. Patale.

WITH
WRIT PETITION NO. 909 OF 2015
WITH CA/3519/2015 IN WP/909/2015

YOGESH SHRIKRISHNA SAMBRE
V/S
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. S. B. Talekar.
AGP for Respondent Nos.1 to 4 : Mr. S. N. Morampalle.
Advocate for Respondent No.5 : Mr. C. K. Shinde.
Advocate for Respondent No.6 : Mr. R. I. Wakade.

WITH
WRIT PETITION NO. 1224 OF 2015

PRABODHAN BAHUVIDH SANSTHA, AURANGABAD AND ANOTHER
V/S
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. C. K. Shinde.
AGP for Respondent Nos.1 to 4 : Mr. S. N. Morampalle.
Advocate for Respondent No.5 : Mr. V. G. Salgare.
Advocate for Respondent No.6 : Mr. R. I. Wakade.

WITH
WRIT PETITION NO. 1225 OF 2015

RAJENDRA BHIKAJI JADHAV
V/S
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. R. I. Wakade.
AGP for Respondent Nos.1 to 4 : Mr. S. N. Morampalle.
Advocate for Respondent No.5 : Mr. C. K. Shinde.
Advocate for Respondent No.6 : Mr. S. B. Talekar.

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**CORAM : S. V. GANGAPURWALA &
A. M. BADAR, JJ.**

DATE : 28TH JANUARY, 2016.

PER COURT:

1] The present writ petitions are filed assailing the order dated 5.1.2015 passed by the Education Officer (Secondary), thereby staying the order dated 31.12.2014 and confirming the order dated 15.12.2010 till the hearing takes place before the Deputy Director of Education. The other writ petitions are for payment of unpaid salary, so also, for assailing the order dated 31.12.2014, thereby giving approval to the appointment of Mr. Sambre, as Incharge Head Master.

2] After hearing the learned counsel for respective parties and after going through the averments made in the petition, it is manifest that there is a total turmoil in the management. Various groups are claiming to be in the management. One of the groups, which has filed Writ Petition No. 1224 of 2015, claims that they are in the management, however, it is not disputed that their change report has been rejected in March, 2013. Though it is submitted that appeal against rejection of change report is pending, it does not appear that any stay is granted in the said appeal. The appointment of Mr. Jadhav is terminated by this Committee whose change report is already rejected prior to issuance of said termination order. Mr. Dhage, learned counsel, who represents one of the groups, which has filed Civil Application No. 3514 of 2015, also states that appointment of Mr. Sambre is also terminated. It appears that each group is indulging in activities of terminating the services of employees to show their supremacy in the management. When the change report of the petitioners in W.P. No. 1224 of 2015 was already rejected, subsequently they could not have terminated the appointment of Mr. Jadhav, more so, when no stay was granted in the proceedings challenging the rejection of their change report. It appears that even the appointment of Mr. Sambre is terminated without holding any inquiry. The management cannot use the employees as their pawns. The dispute is amongst the management and for that its employees are required to suffer.

3] It is also a fact that neither Mr. Jadhav, nor Mr. Sambre has been paid salary from July 2013 onwards on the ground their respective appointment as Incharge Head Master is terminated. The orders as against Mr. Jadhav and Sambre are certainly not legal and valid.

4] The normal remedy to challenge an order of termination is to file an appeal before the School Tribunal. It does not appear that the orders of termination are passed by authorities/persons competent to pass the same. Be that as it may, we need not dilate much upon the same.

5] The dispute is also about the seniority of Mr. Sambre and Mr. Jadhav or in other words, as to who amongst them is senior. Rule 12 of the MEPS Rules give powers to the Education Officer to decide about the seniority. It appears that earlier order was passed by the Education Officer determining the seniority of Mr. Jadhav, however, subsequently, the Director of Education has passed an order adjudicating Mr. Sambre as senior. It does not appear that procedure as laid down under Rule 12 of the MEPS Rules was at any point of time adhered to. The affected parties are required to be heard when seniority is being decided. No such recourse probably was taken.

6] In the light of that, we set aside all the orders in respect of determining the seniority. As it is, the matter was kept for hearing before the Deputy Director of Education, the learned AGP, on instructions submits that the Deputy Director of Education has not yet decided the issue before

it. As we have set aside all the orders determining the seniority passed by the Director/Deputy Director of Education/Education Officer, as the same were not in consonance with the procedure laid down under Rule 12 inasmuch as the affected parties were not given hearing, the Deputy Director of Education shall hear all the parties concerned, and thereafter determine the issue of seniority, in accordance with law, preferably within a period of six months. All the learned counsel for respective parties agree that aspect of seniority be decided by Deputy Director of Education. It is made clear that we have not dilated or concluded about the seniority of either Mr. Sambre or Mr. Jadhav. All contentions in this respect are kept open.

7] During the interregnum, it will be necessary to make payment of salary to the employees. It is submitted that the school is not yet de-recognized. Till this date, the employees would be entitled for the salary. The salary bills in respect of the approved teachers, be submitted to the Education Officer, presently under the signature of Mr. Sambre. Once the issue of seniority is decided, the person who is held to be senior shall officiate as Incharge Head Master and thereafter salary bills under his signature would be sent.

8] The parties shall appear before the Deputy Director of Education on 10th February, 2016. All the learned counsel for respective parties agree that they would appear before the Deputy Director of Education on the said date.

9] Considering the dispute in the management, the Education Officer shall take steps to ensure the proper functioning or else it can take effective steps as provided under the law, for appointment of administrator or otherwise.

With these observations and directions, writ petitions stand disposed of. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-