

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

13 WRIT PETITION NO. 644 OF 2015

WITH

CONTEMPT PETITION NO. 49 OF 2016

IN WRIT PETITION NO.644 OF 2015

ALLAUDDIN KONDAJI CHAUDHARI

VERSUS

THE EDUCATION OFFICER, (SECONDARY), ZILLA PARISHAD,
LATUR AND OTHERS

...

Advocate for Petitioner : Mr. Dhorde Vikram R
AGP for Respondents State: Mrs. M. A. Deshpande
Advocate for Respondent No.2 : Mr. Rajendra S.
Deshmukh

Advocate for Respondent No.3 : Mr. V. D. Gunale
Advocate for the intervenor : Mr. Prashant Nagargoje
h/for Mr. R. J. Godbole

WITH

WRIT PETITION NO. 1391 OF 2015

1. MAHESHKUMAR RAMLU AKULWAR 2) SUNIL RAMKISHAN GURME
AND 3) JEEVANKALA ANNARAO PATL

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. S. R. Kolhare and Mr.
P. S. Kochar

AGP for Respondents State: Mrs. M. A. Deshpande
Advocate for Respondent No.5 : Mr. Rajendra S.
Deshmukh

WITH

WRIT PETITION NO. 7523 OF 2016

WITH

CIVIL APPLICATION NO. 12217 OF 2016

SHRIKANT JANARDHANRAO KULKARNI

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr. Prashant Nagargoje
h/for Mr. R. J. Godbole

AGP for Respondents State: Mrs. M. A. Deshpande
Advocate for Respondent No.7 : Mr. V. R. Dhorde

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

DATE : 28th November, 2016

ORDER:

1. Writ Petition No.644/2015 is filed by one of the employees who was appointed on 25.09.2011 as Shikshan Sevak. Writ Petition No.1391/2015 is filed by three employees who were also appointed on 25.09.2011 as Shikshan Sevak. Initially, the appointment of all these petitioners was approved on 21.10.2011. On 30.03.2012, the approval granted to the appointment of the petitioner in Writ Petition No. 644/2015 was stayed. On 04.05.2012, the approval granted to the appointment of the petitioner in Writ Petition No.644/2015 was cancelled. The matter came up to this Court. This Court set aside that order and remitted the matter back. After the matter was remitted back, again the approval came to be cancelled of the said petitioner in Writ Petition No.644/2015 on 03.08.2015. The said order is assailed in Writ Petition No.644/2015. The approval granted to the petitioners in Writ Petition No. 1391/2015 is cancelled on 18.02.2013. The said order is assailed in Writ Petition No. 1391/2015. During the pendency of

these two writ petitions, conditional approval is granted to the appointment of the petitioners in the aforesaid writ petitions. The said order granting conditional approval to these employees is assailed by a person claiming to be the President of the Sansthan which runs the School, in Writ petition No. 7523/2016.

2. Mr. Dhorde and Mr. Kolhare, the learned counsel for the petitioners/employees submit that after following due procedure, the petitioners were appointed. Advertisement was issued in the newspaper dated 19.09.2011, pursuant thereto, the employees/petitioners had applied and after conducting interviews, they were selected and appointment orders were issued to them on 25.09.2011 and proposal submitted for approval was granted. The learned counsel submit that no illegality has been committed while appointing the petitioners. There is dispute between the members of the Management and there are rival factions. As such, the Headmaster has, after issuing advertisement and following due procedure, appointed these petitioners/employees, relying on the Circular dated 19.11.2001. According to the learned counsel, the reasons given in the impugned orders are

erroneous. Roster is approved by the B.C. Cell. Even in earlier round of litigation, the Education Officer filed an affidavit clearly stating therein that the petitioner in writ petition No.644/2015 has been appointed as per the Roster. The learned counsel submit that since the date of appointment, the petitioners/employees are performing their duties regularly and diligently.

3. Mr. Deshmukh, the learned counsel appearing for the then Headmaster submits that on 08th September, 2011, an application was given by the Headmaster to the Education Officer seeking permission to advertise the posts and fill in the same. Since 2006, the said posts were vacant and the students were made to suffer. According to the learned counsel, the first advertisement was issued on 12.09.2011. As no application was received, again advertisement was given on 19.09.2011. On 21.09.2011, the Headmaster received permission from the Education Officer to fill in the said posts and as per permission, the appointment orders are issued. Dispute between two factions of the management exists. As such, the Headmaster exercised the powers as per Circular dated 19.11.2001.

4. Mr. Gunale, the learned counsel appears for Respondent No.3 in Writ Petition No. 644/2015 and submits that respondent No.3 is Secretary of the Trust/Sanstha and is functioning as such and added respondent Shrikant Kulkarni is not a Member of the Trust. He is nephew of the earlier President, who is no more and was appointed for remaining term of one year and five months and subsequently he is not the President. Change reports are pending. The learned counsel supports the cause of the petitioners/employees in both the writ petitions.

5. Mr. Nagargoje, learned counsel for the petitioner in Writ Petition No. 7523/2015 submits that the Change Report bearing No.477/2006 was initially rejected by the Assistant Charity Commissioner. An application preferred before the District Judge came to be allowed and the second appeal filed by the opponents therein came to be dismissed by this Court. The learned counsel submits that the person representing as Secretary in the writ petitions filed by the employees has no locus standi nor is a Secretary. The Headmaster at the relevant time, committed illegality and as such was suspended

subsequently. The learned counsel submits that even before the Assistant Charity Commissioner, the proceedings were filed, wherein, status quo order was passed restraining the Headmaster from issuing any appointment orders. The learned counsel submits that no permission could have been granted by the Education Officer on 21.09.2011 as is contended by the petitioners and the Headmaster, because, on 21.09.2011 meeting was scheduled in the Office of the Education Officer and the noting was made that at present no decision can be taken and it is inappropriate to grant any such permission. In view of that, on the very same day, the letter giving permission to the Headmaster to fill in the posts could not have been issued. The said letter is false one.

6. The learned counsel further submits that the initial order of approval itself is false as it would be seen that in the camp wherein the proceedings were taken up for approval, it was noted that the proposals are to be kept pending. The order of approval is contrary to the noting made in the said camp. This also shows that the letter of approval is erroneous and false. The Education Officer who had granted such

false and illegal approval was suspended and prosecution is also lodged against him. According to the learned counsel, preliminary enquiry was conducted upon the complaint of one MLA Mr. Bhalerao and in the said preliminary enquiry also, it has been observed that before the enquiry committee could submit the report, the approvals have been granted to the appointments of these employees and no plausible reason has been given inspite of the fact that the order of status quo was in force, the orders of approval have been passed. Orders of approval are issued in back dates. Specific observations are made in this regard. According to the learned counsel, inspite of the fact that for meeting to be held on 21st September, 2011, the Headmaster was directed to attend, the Headmaster remained absent in the meeting as it can be clear from the observations made in the minutes of the meeting. According to the learned counsel, no procedure has been adhered to and there are no applications received, no interviews conducted and it is shown that interviews are conducted at different places than the school. The order rejecting the approval makes the position abundantly

clear. The learned counsel submits that the approval was rejected by a speaking order. During the pendency of the writ petitions filed by the employees, the Education Officer could not have passed the order granting conditional approval. The same being illegal, is rightly assailed in the said writ petition.

7. Learned AGP submits that the the appointments are not made as per the Roster. No roster was approved at that time. According to the learned AGP, conditional approval granted during the pendency of these writ petitions filed by the employees was pursuant to the fact that contempt petition was filed and directions were given to pay salary and it was thought that the salary could not be paid unless the approval is granted and on that premise, the approval was granted. According to the learned AGP, the order rejecting approval is self speaking and all factors are rightly considered. The Headmaster did not follow the proper procedure.

8. We have considered the submissions canvassed by the learned counsel for the respective parties.

9. It is not disputed that the petitioners are working with the respondent School since 2011. It is also a fact that the dispute exists between the rival factions of the members of the Trust. Various change reports are still pending is an admitted fact, allegations and counter allegations are made about the right of the person representing himself as Secretary and person representing himself as President to prosecute their respective stands.

10. Circular dated 19.11.2001 lays down that if there is dispute amongst the members claiming to be in the Management, then the Headmaster is empowered to make appointment. It is also not disputed that since the year 2006, these four posts were vacant. It is also a matter of record that the Headmaster, on 8th September, 2011, sent letter to the Education Officer seeking permission to fill in these four posts. It also appears that the advertisement has been issued on 19.09.2011. The only contention of respondents is that it is not issued in widely circulated newspaper and further issue is about the Education Officer granting permission to fill in the posts on 21.09.2011. It is also a fact that during the relevant time, there was

no ban on the recruitment nor any direction were given to the Institution to absorb any surplus candidates. Appointment orders are placed on record.

11. We had asked the learned AGP about the roster and vacant posts on which the petitioners were appointed, whether the same are as per roster. Learned AGP, on instructions from the Officer present in the Court, accepts that the petitioners/employees are appointed on the vacant posts and the same is as per roster.

12. Eligibility of the petitioners is not disputed. The petitioners are eligible to be appointed on the said posts on which they are appointed and as per category from which they are appointed. It appears that there are some notings about the permissions not to be granted at this stage, however, on the subsequent date, letter is shown to have been issued by the Education on 21.09.2011 granting permission.

13. We may not enter into the said debate as there are rival contentions. Twice the matter was remitted back to the Education Officer in respect of the

petitioner in Writ Petition No. 644/2015. The reasons given for refusing approval to the appointment is that the Headmaster had not followed the proper procedure and that roster was not approved. The issue is no longer germane as the learned AGP, on instructions, submitted that four vacant posts exist, on which the petitioners claim their appointment and their appointment would be from the categories which, as per the roster, is permissible. It appears that order of status quo was passed by the Assistant Charity Commissioner in the proceedings filed by the petitioner in Writ Petition No. 7523/2016, on 12.10.2011, whereas the employees were appointed on 25.09.2011 i.e. prior to the order of status quo being passed. The petitioners employees cannot be faulted. It does not appear to be a case of back door entry. Advertisement was issued and the Headmaster, in the given circumstance, was empowered to issue appointment orders, more particularly in view of Circular dated 19.11.2001. The petitioners are eligible and qualified to be appointed on the said posts, interviews were held but, the only objection of the respondent Education Officer is that the

interviews were held at some other places than the school, in which the petitioners were being appointed. The petitioners are officiating their duties for more than 5 years continuously. Because of the warring members of the Management, they are being made to suffer. Even the approval in respect petitioners in Writ Petition No. 1391 of 2016 has been cancelled, without hearing the petitioners though earlier their appointment was approved.

14. We would not have interfered in the matter had these petitioners employees being not qualified to be appointed or were not appointed as per the roster. However, the facts are otherwise. Their appointment is as per roster and they are qualified and eligible to be appointed. The advertisement was issued, interviews were also conducted and the Headmaster at the relevant time, was competent to appoint these petitioners.

15. Considering the aforesaid aspects of the matter, the orders impugned in Writ petition No. 644 of 2015 and Writ Petition No.1391/2015 are quashed and set aside.

16. As far as the order impugned in writ petition No. 7523/2016 is concerned, in view of the aforesaid discussions, we are not inclined to interfere with the same.

17. The contempt petition is filed for disobedience of the orders of this Court. It is not disputed that the petitioners are now receiving regular salary. The learned AGP, on instructions, states that the proposal is already made for administrative sanction for the payment of arrears. On receipt of the same, the arrears also would be paid. The same shall be paid within three months.

18. In view of above, the writ petitions and contempt petition accordingly stand disposed of. No costs.

19. Civil applications also stand disposed of.

20. It is made clear that we have not observed anything about the capacity of various persons in the Management.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC