

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.10004 OF 2015

- 1 Ashok s/o Ramchandra Patil
Age – 60 years, Occ – Agriculture
& Trustee of the People Education
Society, Mandane,
R/o – At Village Mandane,
Tq. Shahada, Dist – Nandurbar.
- 2 Bhimsing s/o Harsing Pawara
Age- 65 years, Occ – Agriculture
& Director, People Education
Society, Mandane,
R/o – At village Bhongare,
Post – Chandsauli,
Tq. Shahada, Dist – Nandurbar.
...Petitioners...

Versus

- 1 Geetanjali w/o Prakash Patil
Age – 32 years, Occ-Assistant Teacher,
R/o – Village Mandane,
Tq. Shahada, Dist – Nandurbar.
- 2 Pankaj s/o Jijabrao Pawar
Age – 34 years, Occ – Assistant
Teacher, R/o – Village Mandane,
Tq. Shahada, Dist – Nandurbar.
- 3 Deepak s/o Sahebrao Pawar
Age – 40 years, Occu – Clerk,
R/o – Village Mandane,
Tq. Shahada, Dist – Nandurbar.

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- 4 Dhairyashil s/o Chandrakant Patil(More)
Age – 34 years, Occ – Clerk,
R/o – Village Mandane,
Tq. Sahada, Dist – Nandurbar.
- 5 People Education Society, Mandane,
Bearing Trust Registration No.F-57,
Through its Chairman, having
office at Village Mandane,
Tq. Shahada, Dist – Nandurbar.
- 6 Head Master,
Adarsh Vidyalaya and Kanishtha
Vidyalaya, Tq. Shahada,
Dist – Nandurbar.
- 7 Deputy Director of Education
Nashik Division, Nashik,
Dist – Nashik.
- 8 Education Officer (Secondary)
Zillha Parishad, Nandurbar,
Dist – Nandurbar.

...Respondents...

WITH

WRIT PETITION NO.10622 OF 2015

- 1 Ashok s/o Ramchandra Patil
Age – 60 years, Occ – Agriculture
& Trustee of the People Education
Society, Mandane,
R/o – At Village Mandane,
Tq. Shahada, Dist – Nandurbar.
- 2 Bhimsing s/o Harsing Pawara
Age- 65 years, Occ – Agriculture
& Director, People Education
Society, Mandane,
R/o – At village Bhongare,
Post – Chandsauli,
Tq. Shahada, Dist – Nandurbar.

...Petitioners...

Versus

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- 1 Deepak s/o Sahebrao Pawar
Age - 40 years, Occ - Clerk,
R/o - Village Mandane, Tq. Shahada,
Dist - Nandurbar.
- 2 People Education Society, Mandane,
Bearing Trust Registration No.F-57,
Through its Chairman, having
office at Village Mandane,
Tq. Shahada, Dist - Nandurbar.
- 3 Head Master,
Adarsh Vidyalaya and Kanishtha
Vidyalaya, Tq. Shahada,
Dist - Nandurbar.
- 4 Deputy Director of Education
Nashik Division, Nashik,
Dist - Nashik.
- 5 Education Officer (Secondary)
Zillha Parishad, Nandurbar,
Dist - Nandurbar.

...Respondents...

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WITH

WRIT PETITION NO.10624 OF 2015

- 1 Ashok s/o Ramchandra Patil
Age - 60 years, Occ - Agriculture
& Trustee of the People Education
Society, Mandane,
R/o - At Village Mandane,
Tq. Shahada, Dist - Nandurbar.
- 2 Bhimsing s/o Harsing Pawara
Age- 65 years, Occ - Agriculture
& Director, People Education
Society, Mandane,
R/o - At village Bhongare,
Post - Chandsauli,
Tq. Shahada, Dist - Nandurbar.

...Petitioners...

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Versus

- 1 Pankaj s/o Jijabrao Pawar
Age – 34 years, Occ – Assistant teacher
R/o – Village Mandane, Tq. Shahada,
Dist – Nandurbar.
- 2 People Education Society, Mandane,
Bearing Trust Registration No.F-57,
Through its Chairman, having
office at Village Mandane,
Tq. Shahada, Dist – Nandurbar.
- 3 Head Master,
Adarsh Vidyalaya and Kanishtha
Vidyalaya, Tq. Shahada,
Dist – Nandurbar.
- 4 Deputy Director of Education
Nashik Division, Nashik,
Dist – Nashik.
- 5 Education Officer (Secondary)
Zillha Parishad, Nandurbar,
Dist – Nandurbar.

...Respondents...

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WITH

WRIT PETITION NO.10628 OF 2015

- 1 Ashok s/o Ramchandra Patil
Age – 60 years, Occ – Agriculture
& Trustee of the People Education
Society, Mandane,
R/o – At Village Mandane,
Tq. Shahada, Dist – Nandurbar.

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- 2 Bhimsing s/o Harsing Pawara
Age- 65 years, Occ – Agriculture
& Director, People Education
Society, Mandane,
R/o – At village Bhongare,
Post – Chandsauli,
Tq. Shahada, Dist – Nandurbar.
...Petitioners...

Versus

- 1 Dhairyashil s/o Chandrakant Patil
(More)
Age – Major, Occ – Clerk,
R/o – Village Mandane, Tq. Shahada,
Dist – Nandurbar.
- 2 People Education Society, Mandane,
Bearing Trust Registration No.F-57,
Through its Chairman, having
office at Village Mandane,
Tq. Shahada, Dist – Nandurbar.
- 3 Head Master,
Adarsh Vidyalaya and Kanishtha
Vidyalaya, Tq. Shahada,
Dist – Nandurbar.
- 4 Deputy Director of Education
Nashik Division, Nashik,
Dist – Nashik.
- 5 Education Officer (Secondary)
Zillha Parishad, Nandurbar,
Dist – Nandurbar.
...Respondents...

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Shri Sandesh R. Patil, Advocate for petitioners.
Shri Ajinkya Kale, Advocate h/f Shri S.B. Talekar,
Advocate for respondent nos.1 to 4.
Shri R.S. Pawar, Advocate h/f Shri N.E. Deshmukh,

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Advocate for respondent nos.5 & 6.

Shri A.P. Basarkar, AGP for respondent nos.7 & 8.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 08.03.2016

ORAL JUDGMENT :

1] By Court notice, all the respondents have been served. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] While issuing notice, the issue of the *locus standi* of the petitioner nos.1 and 2 in filing these petitions was kept open considering the fact that the petitioners were not the parties to the appeals before the School Tribunal at Nashik.

3] Shri Patil, learned Advocate for the petitioners, submits that both are presently the trustees of respondent no.5 – trust. There is no dispute as regards their status of being trustees of the said trust as on date. The original appellants, who are respondent no.1 in all these matters, are the close relative of the President and the Secretary of the trust. Respondent no.1 – Pankaj Jijabrao Pawar in Writ Petition No.10624/2015 is the son of the President of the trust

namely Jijabrao T. Pawar.

4] Shri Patil, therefore, submits that the President and the Secretary of the trust as well as the Head Master of the concerned school, who was the respondent before the School Tribunal, are not challenging the impugned judgment of the School Tribunal since they intend to protect the interest of the original appellants, who are close relatives.

5] Shri Patil has strenuously contended that the impugned judgment of the School Tribunal dated 28.3.2014 in the appeals filed by respondent no.1 in all these matters is a perverse and erroneous conclusion. Contention is that since the Deputy Director of Education – respondent no.7 herein enquired into the grievances of the illegal appointments of the original appellants, a proper enquiry was conducted. The enquiry report dated 10.10.2013 is on record. The President of the trust as well as the original appellants were called upon to participate in the enquiry and submit their explanation with regard to three objections raised against their appointments / promotions, as the case may be. There is no dispute that pursuant to such notices, the original

appellants as well as the trust was heard and thereafter respondent no.7 delivered his report dated 10.10.2013.

6] Shri Patil further submits that the report of respondent no.7 is exhaustive, considers the contentions of the original appellants and is a decision on the objections raised against their appointments / promotions. Respondent no.7 has finally concluded that the original appellants namely Geetanjali, Dhairyashil and Pankaj have been terminated after concluding that their appointments were illegal. The other appellant Deepak has been reverted as his promotion on the basis of the Project Affected Person (PAP) certificate was held to be unsustainable as the Deputy Collector has canceled the PAP certificate.

7] Shri Patil submits that after these appellants were heard by respondent no.7, there was no requirement for a further hearing and hence the impugned order dated 18.10.2013 delivered by the Education Officer – respondent no.8 herein thereby canceling the promotion and the appointment orders, calls for no interference.

8] He further submits that the appellants preferred individual appeals before the School Tribunal,

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challenging the orders of termination / reversion dated 19.11.2013. The School Tribunal has set aside the said orders of termination purely on the ground that after the report dated 10.10.2013 was submitted by respondent no.7, there was no opportunity of hearing to the appellants. He, therefore, submits that the impugned judgments deserve to be quashed and set aside.

9] Shri Patil relies upon the judgment of the learned Division Bench of this Court in the matter of *Anna Manikrao Pethe v. The Presiding Officer, School Tribunal & others* (1998 (3) ALL MR 155) to contend that the School Tribunal is obliged to frame preliminary issues with regard to :-

- a] Whether the school is recognized ?
- b] Whether appointment of a teacher is as per statutory provisions ? and
- c] Whether the Education Officer has granted approval to their appointments ?

He, therefore, submits that all these petitions deserve to be allowed.

10] Learned Advocate appearing on behalf of original appellants – respondent nos.1 to 4 herein, challenges the

locus standi of the petitioners to file these petitions. He submits that notwithstanding whether the original appellants are closely related to the President of the trust or whether one appellant is the son of the chair person of the trust, the trust could have challenged the impugned judgments. However, it appears that the trust may have decided not to assail the judgments of the School Tribunal. That would not give the petitioners any right to challenge the judgments of the School Tribunal merely because they are trustees of the said trust.

11] He further submits that after respondent no.7 submitted his report dated 10.10.2013, the appellants were totally oblivious and kept in the dark as regards further action to be initiated by any competent authority. The Education Officer does not have the powers to set aside the appointment of any candidate or a promotion granted. At best, the Education Officer can refuse to accord approval or may choose to withdraw the approval already granted, but not without hearing the aggrieved person.

12] The learned Advocate for respondent nos.1 to 4 further submits that principles of natural justice cannot

be disregarded as if it is a mere formality. Principles of natural justice would entitle the appellants to an opportunity of hearing on the proposed adverse action that the Education Officer may initiate subject to his powers and/or the trust initiating any steps. There is no dispute that prior to the issuance of the order dated 18.10.2013 as well as the orders dated 19.11.2013, none of the appellants were heard by the Education Officer.

13] He further submits that had the Education Officer issued an appropriate notice for hearing, the appellants would have put forth a cause that the Education Officer is not vested with the power to set aside the appointment orders or withdraw or set aside the promotions. This was rightly appreciated by the School Tribunal and hence the impugned judgments do not call for any interference.

14] Learned AGP appearing on behalf of respondent nos.7 and 8 submits that if the Court is of the view that the appellants should have been heard before issuance of the order dated 19.11.2013, there is no difficulty for the Department / officer to cause such a hearing. He, however, submits that since the legality of the

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appointments of the appellants is in question, the appellants cannot be reinstated in service. He further submits that after hearing the appellants, respondent no.7 or respondent no.8, as the case may be, would pass a reasoned order and the orders of termination / reversion dated 19.11.2013 could be subject to the decision to be taken by following the doctrine of "relation back".

15] Learned Advocate appearing on behalf of respondent nos.5 & 6 submits that the petitioners have no *locus standi* to challenge the impugned judgments. It is for respondent nos.5 & 6 to take a decision in this regard. Merely because the petitioners feel that the impugned judgments deserve to be challenged, would not entitle the petitioners to put forth any challenge since the rules and bye-laws of the trust do not permit the petitioners to act on behalf of the trust when the President and the Secretary of the trust are available. He, therefore, submits that these petitions deserve to be dismissed on account of the petitioners having no *locus standi*.

16] I have considered the submissions of the learned Advocates for the parties.

17] Since I am not causing any interference in the impugned judgments as the principles of natural justice have not been observed by respondent no.8 while issuing the orders dated 19.11.2013, I am not going into the aspect of *locus standi* of the petitioners. Needless to state that it would not mean that this Court has upheld the claim of the petitioners that they can challenge the impugned judgments as independent trustees of the trust.

18] There is no dispute that respondent no.7 has submitted his report dated 10.10.2013. If the Education Officer – respondent no.8 was to initiate any action based on the said report, he was obliged to hear the appellants. By serving a copy of the report dated 10.10.2013 to the appellants, he should have heard them on any action that he proposed to take. The School Tribunal has rightly concluded that an opportunity of hearing in tune with the principles of natural justice was not afforded to the appellants. I, therefore, do not find that the impugned judgments could be termed as perverse or erroneous.

19] In the light of the above, these petitions are dismissed. Rule is discharged. Needless to state that

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respondent nos.7 and 8 are not precluded from following the due procedure of law in pursuance to the report dated 10.10.2013. In the event any action is proposed, the original appellants – respondent no.1 herein, shall be heard by following the principles of natural justice.

(RAVINDRA V. GHUGE, J.)