

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8134 OF 2012

Anil S/o Govindrao Korde,
Age-36 years, Occu-Service,
R/o Maniknagar, Sillod, Taluka Sillod,
Dist.Aurangabad

- PETITIONER

VERSUS

1. Siddeshwar Krida Mandal, Sillod,
Taluka Sillod, Dist.Aurangabad,
Through its President,
Nagnath S/o Ganpatrao Thakur,
Age-53 years, Occu-Service,
R/o Bhushannagar, Pundliknagar-50,
Garkheda Area, Aurangabad,
2. Raneshwar Vidyalaya, Hatti,
Taluka Sillod, District : Aurangabad,
Through it's Head Master,
3. The Education Officer (Secondary),
Zilla Parishad, Aurangabad,
4. Shivaji S/o Bajirao Dabhade,
Age-33 years, Occu-Service,
R/o Maniknagar, Sillod,
Taluka Sillod, District Aurangabad,
5. The Administrator,
Siddheshwar Krida Mandal, Sillod,
C/o Rameshwar Vidyalaya Hatti,
Tq.Sillod, Dist.Aurangabad,
6. Dy.Director of Education,
Aurangabad.

- RESPONDENTS

Mr.S.S.Jadhavar, Advocate for the petitioner,
Mr.V.V.Bhavthankar, Advocate for respondent No.1,
Mr.S.D.Kaldate, AGP for respondent Nos. 3 to 6,
Mr.Shrikrishna Shinde, Advocate for respondent No.4,
Respondent Nos.2 and 5 served.

CORAM : RAVINDRA V. GHUGE, J.
Reserved on : August 22, 2016
Pronounced on : September 8, 2016

JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner has challenged the judgment and order dated 3.9.2012 passed by the School Tribunal, Aurangabad by which his Appeal No.18/2009 has been dismissed. The petitioner has also challenged the order dated 22.4.2013 passed by respondent No.6 Deputy Director of Education, Aurangabad.
3. The contentions of the petitioner can be summarized as follows :-
 - [a] After following the due procedure of law, the petitioner was appointed as an 'Assistant Teacher' in respondent No.2 school from 25% Graduates' quota.
 - [b] After completion of his probation of 2 years, he was granted permanency.
 - [c] Respondent No.3/Education Officer granted approval to the permanent appointment of the petitioner.
 - [d] In WP No.5184/2007, the Education Officer was directed to consider the grievance of the petitioner.
 - [e] The appointment of the petitioner was declared to be valid by the directions of the Education Officer dated 25.3.2009 and the appointment of respondent No.4 was held to be invalid.
 - [f] Respondent No.4 is the son of the President of respondent No.1 / Management.

- [g] Upon being annoyed by the above, and since his son could not be accommodated, the President and the Secretary of the Institution terminated the permanent services of the petitioner by order dated 22.4.2009.
- [h] Prior to terminating the permanent service of 10 years of the petitioner, he was not given an opportunity of hearing.
- [i] The petitioner filed Appeal No.18/2009 on 8.5.2009.
- [j] During the pendency of the appeal, the Administrator was appointed on the Management of the society.
- [k] Respondent No.4/Son of the President sought intervention in the appeal before the Tribunal, which was permitted.
- [l] The Management raised the issued of unlawful appointment of the petitioner after 10 years.
- [m] Question of legality of the petitioner's appointment was entertained by the School Tribunal after 10 years and by the impugned judgment dated 3.9.2012, the appeal was dismissed.
- [n] The School Tribunal lost sight of the fact that the MEPS Rules prescribing a procedure to terminate an employee, was not followed by the Management, that the Management was estopped from challenging the appointment of the petitioner after 10 years, that no opportunity of hearing was given to the petitioner and an unlawful resolution was passed.
- [o] On 25.3.2009, the Education Officer considering the objections raised by respondent No.4 / son of the President delivered a detailed and well reasoned order running into about more than 50 paragraphs thereby concluding that the appointment of the petitioner was perfectly legal and proper and the appointment of respondent No.4 / son of the President was made illegally and hence his continuance in service would be subject to the pleasure of the Management.
- [p] This order of the Education Officer was challenge by respondent No.4 in WP No.1615/2010. No interim relief was granted to respondent No.4 by this Court.

- [q] Respondent No.4 filed a civil application No.5885/2011 seeking an order from this Court by way of a direction to the Administrator to pay the monthly salary of respondent No.4.
- [r] When this Court indicated its inclination to reject the civil application, respondent No.4 withdrew the application and which has been disposed of by order dated 19.3.20012.
- [s] WP No.1615/2010 is still pending before this Court in relation to the order of the Education Officer dated 25.3.2009.
- [t] Despite the above fact, respondent No.6 herein entertained the representation of respondent No.4 and by a cryptic order dated 22.4.2013, directed the Education Officer to reconsider the appointment of the petitioner.

4. Learned Advocate for the Management Mr.Bhavthankar has strenuously supported the impugned order. His contentions can be summarized as follows :-

- [a] The subsequent appointment order of the petitioner dated 18.8.2003 was converted into a temporary appointment.
- [b] The petitioner has accepted the said order.
- [c] The approval granted does not have the outward number of the Zilla Parishad.
- [d] The monthly salary of the petitioner has been paid from the salary grants and after they were sanctioned by the Education Officer.
- [e] It is true that the Management did not assail the appointment of the petitioner from 1999 till 2008 when the Management raised its objection.
- [f] The Education Officer is to be held responsible for having supported the petitioner.
- [g] The order dated 25.3.2009 passed by the Education Officer has not been implemented.

- [h] Respondent No.6 Deputy Director of Education is a higher authority and hence he has the scope and jurisdiction to decide the legality of the order of the Education Officer.
- [i] The petitioner was appointed in suspicious circumstances.
- [j] Though respondent No.1 is the son of the President, his appointment was pursuant to the advertisement dated 20.6.2001 published in 'Dainik Tarun Bharat'.
- [k] After conducting the interviews on 24.6.2001, respondent No.4 was appointed as a 'Assistant Teacher'.
- [l] Two more persons namely Sanjay Shrikhande and G.B.Wagh have been appointed alongwith respondent No.4.
- [m] The approval granted to respondent No.4 is on 'No grant basis'.
- [n] By order dated 24.9.2003, the approval of the petitioner was rejected.
- [o] The subsequent approval dated 16.1.2006 submitted by the petitioner is a forged document.
- [p] The affidavit in reply filed by the Deputy Education Officer namely Madhukar Kisanrao Deshmukh dated 30/04/2008 indicates in paragraph No.12 that the appointment of respondent No.4 was legal and proper.
- [q] The petition, therefore, deserves to be dismissed.

5. Mr.Shinde, learned Advocate for respondent No.4 has adopted the entire submissions of the Management and he further submits that respondent No.6 has rightly set aside the order dated 25.3.2009 passed by the Education Officer. The impugned order dated 22/04/2013 is legal and proper. The Deputy Director has rightly ordered that since the petitioner has prepared a forged approval, the same deserves to be quashed and set aside. In this backdrop, this petition deserves to be dismissed.

6. The learned AGP relies upon the affidavit in reply filed by the Education Officer Bhagwan Shridharrao Sonawane dated 25/02/2016. He submits that the appointment of the petitioner from 1999 is illegal as the appointment order does not bear the signatures of the President of the Management. A member of the Management had signed the first appointment order. The order of permanency dated 18.8.2003 does not bear any outward number. As per the staffing pattern, the post of B.P.ed in 1989 was not approved and hence the petitioner was not eligible. He further submits that the Education Officer did not grant individual approval to the petitioner since the forged approval did not bear the outward number.

7. He then submits that since the learned Division Bench of this Court in WP No.5971/2012 filed by respondent No.4, had directed the Deputy Director of Education to decide the representations filed by respondent No.4, that, respondent No.6 Deputy Director has gone into the allegations against the petitioner and has concluded that it appears that the appointment of the petitioner as a permanent employee is based on a forged approval.

8. I have considered the submissions of the learned Advocates and have gone through the petition paper book with their assistance.

9. In so far as the issue of raising a challenge to the appointment of the petitioner is concerned, it is apparent that he had worked for 9 years, had

regularly performed his duties of imparting education and was granted permanency and regular monthly salary from the salary grants. It was only after respondent No.4, who is son of the President of the Institution developed interest in the post of Head Master, that he and his father raised issues about the legality of the appointment of the petitioner.

10. This Court, dealt with a similar case in the matter of Trimurti Balak Mandir Shikshan Sanstha Vs. Smt.Vithabai Bhikan Desale in WP No.9329/2015 and by judgment dated 22/03/2016, set aside the termination of the employee. It was held that the employer was precluded/estopped from raising the ground of illegal appointment after 6 years (in the said case).

11. In the instant case, the petitioner has worked for about 10 years. After respondent No.4 developed interest in becoming the Head Master, he and his father raised objections about the appointment of the petitioner and it was at this juncture that the dispute arose in the litigating sides.

12. By order dated 25/03/2009, the Education Officer extensively dealt with the objections raised by respondent No.4 as against the petitioner's appointment. In a detailed order comprising of more than 50 paragraphs, the Education Officer dealt with each and every objection raised by respondent No.4 and supported by his father President of the Institution. It was concluded that the appointment of the petitioner was in accordance with Law and from the 25% Graduate Teachers' quota. This order was challenged by respondent No.4 in WP No.1615/2010 and the learned Division

Bench of this Court declined interim relief to respondent No.4 by its order dated 5.10.2010. The Civil Application No.5887/2011 filed by respondent No.4 seeking salary from the salary grants was not granted and the civil application was disposed of on 19.3.2012.

13. In the above backdrop, respondent No.4 filed a representation within two weeks on 4.4.2012 before respondent No.6 and then preferred WP No.5971/2012 before the learned Division Bench of this Court seeking a direction to respondent No.6 to decide his pending representation dated 4.4.2012. After going through the memo of the petition No.5971/2012, I find that respondent No.4 has shrewdly suppressed the fact from the learned Division Bench that the Education Officer has already dealt with the objections of respondent No.4 by delivering an order on 25.3.2009 and respondent No.4 had already challenged the said order in WP No.1615/2010 which petition is still pending before the learned Division Bench.

14. It is, therefore, obvious that writ petition No.5971/2012 has been disposed of by order of the learned Division Bench dated 8.12.2012 directing the Deputy Director to decide the representation of respondent No.4, since respondent No.4 did not bring it to the notice of the learned Division Bench that the similar dispute was already adjudicated upon by the Education Officer and the said issue was subjudice in WP No.1615/2010.

15. Considering the above, the impugned order dated 22.4.2013 passed by respondent No.6 Deputy Education Officer is therefore quashed and set

aside. It be noted that the objections raised by respondent No.4 and the Management with regard to the petitioner shall be subject to the decision of the learned Division Bench in WP No.1615/2010.

16. The impugned order dated 22.4.2009 has been passed without hearing the petitioner and without adhering to the principles of natural justice and the MEPS Rules, 1981. It cannot be overlooked that the decision of the Education Officer dated 25.3.2009 which is subject matter of adjudication in WP No.1615/2010 was delivered about 4 weeks prior to the issuance of the termination order dated 22.4.2009. As such, on the date of issuance of the termination order, the Education Department had sustained the appointment of the petitioner as being legal and proper. The order of the Deputy Director of the Education dated 22.4.2013, which has been quashed in this judgment has been delivered after 4 years from the date of termination. In short, as on date of the termination, there was no decision by any authority so concluding that the appointment of the petitioner is illegal.

17. Rule 16(3) of the MEPS Rules, 1981 provides that if a permanent employee is absent from duty without leave continuously for a period exceeding 3 years, he shall be deemed to have abandoned his service. Besides this provision, Rule 28 is the only provision by which the service of a permanent employee can be terminated. Rule 28 therefore, enables the Management to terminate a permanent employee only on the ground of misdemeanor or commission of misconduct. Rule 25-A and 26 provide for

retrenching a permanent employee on account of abolition of posts.

18. In the instant case, the stand taken by the Management would not fall under Rule 16 or 25-A or 26. The Management has suo-motu concluded that the appointment of the petitioner is illegal by its termination order dated 22.4.2009 despite the order of the Education Officer dated 25.3.2009 on the complaint filed by the father of respondent No.4, that the appointment of the petitioner is legal and sustainable. Yet, the same President Bajirao Trambakrao Dabhade, father of respondent No.4 has apparently terminated the service of the petitioner highhandedly and without any adherence to the rules applicable and the principles of natural justice.

19. In my view, the above recorded factors have been totally lost sight of by the School Tribunal thereby rendering the impugned judgment unsustainable. On these premise, the reliance placed by respondent Nos.1 and 4 on the judgments of the Hon'ble Apex Court in the matter of Nagendra Chandra and others Vs. State of Zarkhand and others [(2008) 1 SCC 798], Ashok Kumar Sonkar Vs. Union of India and others [(2007) 4 SCC 54], State of MP and others Vs. Shyama Pardhi etc. [AIR 1996 SC 2219] and the judgments of this Court in the matter of Priyadarshini Education Trust and others Vs. Ratis (Rafia) Bano Abdul Rasheed and others [2007(6) ALL MR 238], Rayat Shikshan Sanstha and another Vs. Yeshwant Dattatraya Shinde [2009(6) Mh.L.J. 475] and Chandramani Devraj Tiwari Vs. Secretary, Smt.R.B.Tiwari Sanskrutik Kendra and others [2008(3) Mh.L.J. 274] is

misconceived. After 10 years of permanent service by the petitioner and without any challenge from the Management for 9 years, renders the action of termination illegal and unsustainable.

20. As such, this petition is allowed. The impugned order of the School Tribunal dated 3.9.2012 and the impugned order passed by respondent No.6 dated 22.4.2013 are quashed and set aside. Consequentially, the termination of the petitioner by order dated 22.4.2009 is quashed and set aside. He shall stand reinstated in service with continuity w.e.f. the date of his termination.

21. In so far as the back wages are concerned, I am granting 50% back wages to the petitioner in the light of the judgment of the Hon'ble Supreme Court in the matter of Nicholas Piramal India Ltd., Vs. Hari Singh 2015(2) CLR 468. These back wages shall be calculated at the rate of the last drawn gross salary with allowances, that was payable to the petitioner at the time of his termination and shall be paid by the Management since the effect of the illegalities committed by the Management shall be suffered by the Management. The Education department or the State shall not bear this burden of back wages.

22. This petition is, therefore, partly allowed and Rule is made partly absolute in the above terms.

23. Before parting with this judgment, I am constrained to observe on

the tendency of the Management of private Educational Institutions appointing their close relatives in the same institution and terminating inservice teachers on frivolous grounds only to pave way for recruiting their kith and kin. It is in several cases that this Court has noted various types of disputes between employees of the institution and the Managements, which are illustrated as follows :-

- [a] Existing Management appoints its kith and kin as employees of the same Institution by terminating an inservice candidate.
- [b] Succeeding Management terminates the said appointees appointed by the earlier Management on the ground that they are the kith and kin of the earlier Management and were illegally appointed.
- [c] Terminating employees, who have been working as permanent employees for 5 years, 10 years and even 15 years (See judgment of this Court dated 29.7.2015 in the matter of Balasaheb Ramchandra Burke Vs. The President, Bahujan Samaj Prabodhan Shikshan Sanstha and others, WP No.485/2015 and connected group of matters), so as to accommodate the kith and kin of the Management.
- [d] Appointing sons, daughters, son-in-law, daughter-in-law, brother, sister etc. of the President or Secretary of the Educational Institution, in the same institution.

24. This Court has dealt with several matters of the kinds mentioned above, which has led to a spate of service disputes. The instant case is also one example of such kind. Recently, this Court has dealt with a similar case in the matter of the Head Master, Vivekvardhini Madhyamik Vidyalaya Vs. Alka Namdeo Khalekar and others, WP No.4999/2016 with WP No.5826/2016, decided on 29/08/2016.

25. It, therefore, appears that in several cases, the members of the Managing Committee and especially the President or the Secretary of the Management, have gone out of the way and orchestrated the appointment of their kith and kin in the same institution. It is noticed in several cases that existing teachers, who have settled in employment, have been terminated after several years of permanent service on the ground that their initial appointment, made 10 to 15 years ago, was illegal. After terminating their services, the kith and kin of the Management are appointed in their place. The proviso to Section 5(1) of the MEPS Act, 1977 is blatantly violated. In a recent judgment delivered by this Court in the matter of Vasant Shikshan Prasarak Mandal through its President and others Vs. The State of Maharashtra and others in WP No.9076/2016 decided on 31/08/2016, this Court has directed the Principal Secretary, Department of School Education and Sports, State of Maharashtra, Mantralaya, Mumbai-32 to ensure the scrupulous compliance of the proviso to Section 5(1) and thereby mandate the private schools to absorb the eligible surplus teachers from the list maintained by the Zilla Parishad.

26. The Kerala Education Rules, 1959, which are in vogue in the State of Kerala have created an embargo on the recruitment of persons connected with the Management. Rule 2(8) of the Kerala Education Rules, 1959 defines “*Management*” as *Management shall have the meaning as 'Manager'*.

27. Rule 3 of the Kerala Education Rules, 1959 pertaining to the “Management”, reads as under :-

“Management to be vested in a Manager :-

- (1) The Management of every aided school may be vested by the Educational Agency in a person who shall be referred to as the Manager and who shall be responsible to the department for the Management of the institution.*
- (2) In the case of aided institutions under individual management, the individual proprietor may be the Manager.*
- (3) In the case of aided institutions under Corporate management, the proprietary body may choose the Manager in accordance with the rules in that behalf referred to in Rule 2.*
- (4) The Educational Agency shall be bound by the acts of the Manager.”*

28. Rule 8 of the Kerala Education Rules, 1959 reads as under :-

“8. Persons connected with Management not to be appointed in schools -

- (1) No person who is a manager or member or other office bearer of the Managing body, if any referred to in Rule 2, shall be eligible for any appointment in that school or any other school under the same Educational Agency :*

Provided that Managers or members, or other office-bearers of the Managing body working as teachers including Headmasters when these Rules come into force, may continue to do so :

Provided further that the sub-rule (1) does not apply to a staff or Teacher's Committee wherein the members of the staff or teacher's of a school including the Headmaster are members.

- (2) No employee of the Government or of a local body or of an undertaking, Company or Corporation owned or controlled by the Government shall be the manager or a member or other office bearer of the managing body, if any, of a school unless it is in ex-officio capacity. [Provided that this sub-rule shall not apply to part*

time Government servants other than those employed in schools.]

(3) *A student in an institution shall not be permitted to be the manager or a member, or an office bearer of the managing body, if any, of that institution.*

[(3A) *No person who is convicted by a court for an offence involving moral turpitude shall be eligible for appointment as manager or a member of the managing body.]*

(4) *The Manager of an aided school shall be literate, solvent and interested in educational progress. The Educational Agency of a recognized school shall be solvent and shall also be interested in educational progress.”*

29. Considering the overall situation in the light of the cases dealt with by this Court under the MEPS Act and the Rules, the time has come for the State of Maharashtra to create some embargo or restriction on the private managements of the school and educational institutions from recruiting their kith and kin in the same school. The urge and the desire to appoint kith and kin in the same institution appears to be a major cause of litigation in service matters under the MEPS Act.

30. This Court is aware that the Courts cannot legislate. In this backdrop, I deem it proper to recommend to the State of Maharashtra through its Secretary, Department of School Education and Sports, State of Maharashtra, Mantralaya, Mumbai-32 to consider the disturbing prevailing situation in the light of the observations of this Court in this matter as well as in WP No.4999/2016 decided on 29/08/2016 and contemplate by introducing through an amendment, such a provision in the MEPS Act, 1977 and MEPS Rules, 1981, which would create some restraint on the

managements of private educational institutions from appointing their kith and kin. I am of the view that this would prevent nepotism in appointments.

31. The Registrar, (Judicial) of this Court is therefore directed to place the copy of this judgment before the Principal Secretary, Department of School Education and Sports, State of Maharashtra, Mantralaya, Mumbai-32 for its perusal and consideration, within three weeks from today.

(RAVINDRA V. GHUGE, J.)

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