

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1847 OF 2012

Narsinha Shikshan Prasarak Mandal
and Others

...Petitioners

vs.

Education Officer (Secondary)
Zilla Parishad, Kolhapur and Others

...Respondents

Mr. C.G. Patil, for the Petitioner

Mr. S.B. Kalel, AGP for the Respondents-State.

CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.

DATE : **DECEMBER 16, 2016**

P.C.:

- . Parties through their counsel.
2. Challenging the communication dated January, 2012 (Exhibit H) received from the Education Officer (Secondary), Zilla Parishad, Kolhapur whereby the Education Officer has declined to decide the proposal sent by the Petitioner No. 1 in regard to appointment of the Petitioner No. 3 on the post of “Head Master”, on the ground that there are various orders passed by the Charity Commissioner, Kolhapur in regard to the dispute between the Management and therefore the said proposal cannot be considered.

3. Learned counsel for the Petitioners has placed reliance on the judgment passed by the Division Bench of this Court in the case of **Dr. Ishrat Ullah Khan vs. The State of Maharashtra and Others in Writ Petition No. 4474 of 2012 decided on 13th February, 2013.** In para 10 of the said order, the Division Bench while deciding the controversy has observed thus :

10. The facts clearly show that Respondent No. 4 has appointed the Petitioner as a Head Master. Respondent No. 5 as also proposed intervenor are opposing that appointment. Even the application under Section 41A of the Bombay Public Trust Act filed before the Assistant Charity Commissioner shows the said fact. It is therefore, obvious that persons at the helm of affairs have appointed the Petitioner as Head Master. The Education Officer while considering the issue of approval here is not required to go into the dispute inter se between the management and he has only to see whether a person functioning as Head Master has been appointed in accordance with law or not. In present case, he need not go into the dispute whether the appointment made is by a competent authority or legally recognized body. That issue can be looked into by the Joint Charity Commissioner or Assistant Charity Commissioner under Bombay Public Trust Act.”

4. In view of the aforesaid order passed by the Division Bench, we are of the view that the Education Officer was not required to go into the inter se dispute between the Management and he was required to see as to whether Petitioner No. 3 was entitled for grant of approval or not. In the circumstances, we set aside the impugned

order and remand the matter back to Respondent No. 1 – Education Officer who shall decide the matter of approval of the appointment of the Petitioner No. 3 afresh. However, it is brought to our notice that during the pendency of the Petition, the Petitioner No. 3 has retired. Be that as it may, the consequences shall follow. The appropriate order is required to be passed by the Education Officer.

5. The decision as aforesaid be taken by Respondent No. 1 within three months from the date of receipt of copy of this order.

6. The Petition stands disposed of as such.

(PRAKASH D. NAIK, J.)

(SHANTANU S. KEMKAR, J.)