

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1840 OF 2016

[The St. Francis D'Sales Junior College, Seminary Hills, Nagpur .vs. The Deputy Director of Education,
Nagpur Division, Nagpur and others]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.S. Sanyal, counsel for the petitioner,
Miss. N.P. Mehta, A.G.P. for respondent nos.1 and 3,
Shri Akhtar Ansari, counsel for respondent no.2,
Shri N.B. Bargat, counsel for respondent no.4.

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CORAM : SMT. VASANTI A. NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATED : JUNE 23, 2016.

By this writ petition, the petitioner-college challenges the order of the Deputy Director of Education, Nagpur Division, Nagpur, dated 15.12.2015 asking the petitioner-management to permit the respondent no.2 to take classes/lectures in Environmental Science in addition to the lectures conducted by the respondent no.2 in Hindi or else action would be initiated against the petitioner-management for cancelling the recognition to the school and/or deducting the amount towards grant-in-aid. By the impugned order dated 29.2.2016, the grants have been deducted to the extent of Rs.50,000/-.

The respondent no.2 is working as a part time Hindi teacher in the petitioner-society. According to the respondent no.2, though she was earlier permitted to take up the classes in the subject of Environmental Science, the petitioner-management withdrew the said permission and asked her to take the classes for Hindi subject only. The respondent no.2 made a complaint to the Guardian Minister and it is the case of the petitioner-management that the officer on special duty to the Minister for

Energy, who is also the Guardian Minister, wrote to the Deputy Director of Education to look into the grievance and pass an appropriate order. It is the case of the petitioner that in pursuance of the dictates of the Guardian Minister, the Deputy Director of Education has passed the impugned order.

Shri Sanyal, the learned counsel for the petitioner-management submits that the Deputy Director of Education did not have jurisdiction to hear and decide the complaint filed by the respondent no.2 on the dictates of the Guardian Minister and/or his Personal Assistant-officer on special duty. It is submitted that when the management had not sent the proposal in respect of workload granted to the respondent no.2 to the Deputy Director of Education, the Deputy Director of Education could not have assumed jurisdiction and decided the issue only on the communication of the Personal Assistant of the Guardian Minister. It is submitted that the Guardian Minister does not have any role to play in the matter of administration of the school and/or the conduct of the classes and the Guardian Minister could not have directed the Deputy Director of Education through his Personal Assistant to decide the issue. It is submitted that the impugned order is illegal and is liable to be set aside.

Miss. Mehta, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 and 3 submitted, by referring to the affidavit-in-reply filed on behalf of the Deputy Director of Education, that the power under Rule 97.2 of the Secondary School Code has been invoked by the Deputy Director of Education by resorting to the provisions of Clause 3.2 (13) of the Code. It is stated that the petitioner-management has an alternate remedy of filing an appeal before the Director of Education and in stead of availing the said remedy, the petitioner-management has approached this court.

Shri Ansari, the learned counsel for the respondent no.2 submits that on the Lokshahi Din, the respondent no.2 had submitted the complaint in respect of the withdrawal of the classes in Environmental Science by the management and the Deputy Director of Education has rightly looked into the matter after he was directed by the Guardian Minister to decide the same.

The learned counsel for the respondent no.4 states that since the people approach the Guardian Minister with their grievances, the Guardian Minister thought it fit to ensure that the grievance of the people like the respondent no.2 is redressed. It is stated that merely asking the Deputy Director of Education to decide the matter, would not amount to exerting pressure.

On hearing the learned counsel for the parties, we find that the impugned orders are passed by the Deputy Director of Education without any authority of law. Clause 3.2 (13) of the Secondary Schools Code on which the Deputy Director of Education has relied on, for passing the impugned orders, reads thus :

3.2 A school seeking recognition of the Department shall satisfy it as regards the following conditions :

(13) The school undertakes to make provisions, to the satisfaction of the Department, that the general rules of discipline as laid down by Government from time to time are duly observed by the school employees as well as by the pupils;

On a reading of Clause 3.2 (13) of the Secondary Schools Code, it is clear that the Deputy Director of Education could not have passed the impugned orders under Clause 3.2 (13) of the Code. The grievance of the respondent no.2 was in respect of the withdrawal of lectures in the subject of Environmental Science by the petitioner-management and the said grievance could not have been considered by the Deputy Director of Education by

resorting to clause 3.2 (13). The said provision is not applicable to the facts of the case. No other provision of law is brought to the notice of this court by the learned Assistant Government Pleader for pointing out that if not under the provisions of Clause 3.2 (13) of the Code, the authority had jurisdiction to pass the impugned order under some other provision of law. We find that the impugned order suffers from jurisdictional error and the same cannot be sustained.

We also find that the respondent no.2 had wrongly approached the Guardian Minister in the matter of withdrawal of lectures in the subject of Environmental Science by the management of the school. If there is a dispute between the management on one hand and a teacher on the other, the said dispute cannot be redressed by the Guardian Minister, unless he/she is empowered by any law to do so. The Guardian Minister cannot refer the said dispute to any authority, he/she likes, without there being any jurisdiction in the authority to decide the dispute. It would not be proper for the Guardian Minister to issue such direction to a authority, even if the authority has jurisdiction to decide the dispute, as some pressure may be exerted on the authority to decide the matter on the dictates of the Guardian Minister or for that matter any other Minister. Even if the parties approach the Guardian Minister or any other Minister in respect of such grievance, it would be for the Guardian Minister to ask them to approach the appropriate court or tribunal. A direction cannot be issued like the one in this case to a particular authority to decide the matter, though the authority may or may not have the jurisdiction to decide the same.

We find that the respondent no.2 also committed an error in approaching the Guardian Minister in stead of approaching the appropriate forum. Even if the respondent no.2 was aggrieved

by the action of the petitioner-management, the respondent no.2 could not have approached the guardian minister in respect of a matter like the one in hand when the guardian minister is not empowered in law, to entertain the same.

In view of the aforesaid, the writ petition is allowed, with costs. The impugned orders are quashed and set aside. Order accordingly.

JUDGE

JUDGE

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