

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5044 OF 2017

MAROTRAO NAGORAO SHINDE
VERSUS
ABDUL RAFIQ BANEMIYA KAZI AND ORS

...
Advocate for Petitioner : Shri Patil N.P. Jamalpurkar
Advocate for Respondent 1 : Shri Gadhe Ganesh A.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: September 19, 2017
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PER COURT :-

1. The petitioner is aggrieved by the order dated 23.12.2016, passed below Exhibit 17, by which, the following directions have been issued:-

"1. The application is partly allowed.

2. The Education Officer Zilla Parishad, Nanded is directed not to take any decision on the proposal of Shri Suhas Marotrao Shinde being recommended as Headmaster of Aadarsh Vidyalaya Shikshan Samitee, Manatha, Tq. Hadgaon, Dist. Nanded till the decision of this appeal.

3. The Education Officer is directed to appoint a senior teacher of the school as officiating Headmaster till the decision of this appeal.

4. Copy of this order be sent to concerned Education Officer, Zilla Parishad, Nanded for compliance."

2. The learned counsel for the petitioner has strenuously criticized the impugned order on the following grounds:-

(a) The faction led by the petitioner was elected in the elections held on 1.3.2013.

(b) Respondent No.1 leads another faction which tried to capture power on the ground that they constitute the outgoing committee and until the change report is accepted, they would continue to officiate.

(c) The petitioner carried the matter in Writ Petition No.11297 of 2013 before the learned Division Bench and by order dated 8.4.2015, it has been concluded that the elected committee assumes authority after its election and the pendency of the change report will not permit the outgoing body to continue and function, considering the law laid down by this Court in Janata Shikshan Prasarak Mandal Vs. State of Maharashtra - Writ Petition No.7073

of 2005, dated 22.9.2006.

(d) The petitioner was elected as the Chairman and he appointed his son Suhas Marotrao Shinde as the Head Master of the Adarsh Vidhyalaya Shikshan Samiti, Mantha, Taluka Hadgaon, District Nanded.

(e) All 21 Senior Teachers, tendered their unwillingness to become the Head Master, before the Education Officer and hence the son of the petitioner / Chairman, who tendered his willingness, was so appointed.

(f) The change report submitted by the petitioner has been rejected and the Appeal No. 46 of 2016, filed before the Joint Charity Commissioner, Aurangabad has also been dismissed by judgment dated 19.3.2016.

(g) Misc. Civil RJE No. 133 of 2016, filed by the petitioner under Section 72 of the Maharashtra Public Trusts Act, 1950 is pending hearing and now is stated to be at the stage of advancing final arguments by the litigating sides.

(h) The learned District Judge could not have directed the Education Officer not to consider the proposal of the son of the petitioner and further could not have directed the appointment of a Senior Teacher as an officiating Head Master in the light of Rule 3(1) and (3) with the explanation thereunder of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules" for short).

(i) The impugned order is without jurisdiction as an Education Officer cannot appoint a Head Master, it being the sole prerogative of the Governing Body of the educational institution.

(j) None of the elected trustees have raised any objection to the appointment of the son of the petitioner / Chairman as a Head Master.

(k) It is only the faction led by respondent No.1, who have lost the elections, that are opposing such appointment.

(l) An order passed without jurisdiction is unsustainable in law.

3. Learned counsel for respondent No.1 submits on instructions, that as the proceedings before the learned District Judge are at a final stage, rather than considering this petition, the said proceedings could be finally adjudicated. He further submits that the respondents have come up with the case that the petitioner had lost the election and a bogus election is shown to have taken place in which they are elected. It is in this backdrop, that the Assistant Charity Commissioner, as well as the Joint Charity Commissioner have rejected the change report of the petitioner.

4. He further submits that the respondents have been elected. They have made allegations of nepotism against the petitioner / Chairman since his one son Sandeep, who is an Advocate, claims to be the General Secretary of the trust, the petitioner father claims to be the Chairman and another son by name Suhas is now being appointed as the Head Master. He, therefore, submits that the impugned order is an equitable order and unless it appears to be perverse and erroneous, this Court cannot interfere with such interlocutory order.

5. Considering that RJE No.133 of 2016 is at the stage of final hearing before the learned District Judge, Nanded, I am not adverting to the entire contentions of all the sides. However, before commencement of the dictation of this order in the open Court, I preempted the petitioner that if I am to decide this petition by considering his contentions, I would have to make certain observations with regard to the contentions of both the sides and such observations may create an obstacle for either of the sides. Learned Advocate for the petitioner has categorically stated that this petition may be heard and decided.

6. This is yet one more case before this Court wherein family members are operating the educational society as if it is a family undertaking. Presently, the Chairman is Marotrao Nagorao Shinde. His one son Sandeep is the General Secretary of the society and one son Suhas is installed as the Head Master of the School. It is disturbing that merely because there is no bar under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("the MEPS Act" for short) or the MEPS Rules, 1981 for appointing kith and kin on the trust / society, that family members are being accommodated in various capacities.

7. In the above backdrop, the respondents have filed Exhibit 17 before the learned District Judge, raising an objection that 21 senior teachers are being ignored and the son of the Chairman is appointed as the Head Master. There can be no dispute that the elected trustees assume charge after they are elected, subject to the result in the change report enquiry. The change report filed by the petitioner has been rejected by the Assistant Charity Commissioner and in further proceedings, the Joint Charity Commissioner has dismissed the Appeal. In this backdrop, the Chairman has sought to appoint his son Suhas as the Head Master.

8. I find that there are 21 senior teachers to the son of the Chairman. It cannot be a co-incidence, ex-facie, that all the 21 senior teachers have declined to be the Head-Master and the junior-most teacher amongst them, i.e. the son of the Chairman expresses his willingness and is appointed as a Head Master. Rule 3(1)(2) and (3) and explanation there below read as under:-

"3. Qualifications and appointment of Head.

(1) A person to be appointed as the Head -

(a) (i) of a primary school having an enrollment of students above 200 or having Standards I to VII shall be the senior most trained teacher who has put in not less than five years' service: and

(ii) of any other primary school shall be the Senior-most trained teacher in the School;

(b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognized by Government as equivalent thereto and possessing not less than five years', total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education:

Provided that, in the case of a person to be appointed as the Head of a night secondary school –

(i) he shall not be the one who is holding the post of Head or Assistant Head of a day school, and

(ii) the experience laid down in clause (b) of sub-rule(1) may be as a part time teacher.

(2) In the case of appointment to the post of Head of a secondary school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in Clause (b) of Sub-rule (1) available on the staff of the school or if the qualified persons, though

available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in Clause (b) of Sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director.

Note : *In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963, the Deputy Director shall relax the requisite qualifications for appointment of such teacher as a Head.*

(3) *The Management of a school including a night school shall fill up the post of the Head by appointing the senior-most member of the teaching staff (in accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfills the conditions laid down in sub- rule(1) and who has a satisfactory record of service.*

Explanation. - *For the purpose of this rule, the Management shall communicate the occurrence of vacancy of the Head to the senior-most qualified teacher having satisfactory record of service and ask him to submit his*

willingness for appointment to the post within a period of fifteen days from the date of receipt of the communication. The claim of the senior-most qualified teacher having satisfactory record of service, for appointment to the post of Head, may be disregarded only if he, of his own free will, gives a statement in writing to the Education Officer that he has voluntarily relinquished his claim to the post. This shall not debar him 166.15WP from being considered for subsequent vacancies as and when they occur. Such a teacher shall record his statement in his own handwriting before the Education Officer within a period of fifteen days from the date of receipt of the communication as aforesaid and the Education Officer shall endorse it as having been recorded in his presence. A statement once duly made by such teacher before the Education Officer shall not be allowed to be withdrawn. In the event of the teacher failing to submit his willingness for appointment to the post or to give a statement to the Education Officer within a period fifteen days, it shall be assumed that he has relinquished his claim on the said post.

Provided that, where an unforeseen vacancy of Head occurs owing to reasons like resignation without giving due notice death, termination of services, reduction in rank or otherwise, the senior-most teacher desirous of relinquishing his claim for appointment to the post shall, within seven days from the date of receipt of a communication by him of occurrence of such vacancy from the Management, communicate to the Management in writing about the same so as to enable the 166.15WP Management to finalise the appointment. Such a teacher shall thereafter as soon as

possible and in any case within a period of fifteen days from the date of receipt of the communication as aforesaid record his final statement, or as the case may be, to disapprove the appointment if such teacher states in his statement before the Education Officer that the communication sent by him in writing to the Management was obtained from him by the Management under duress. In the event of the teacher failing to record a final statement within a period of fifteen days as aforesaid, it shall be assumed that he has relinquished his claim on the said post."

9. It is thus apparent that when the senior-most teacher makes a statement in writing to the Education Officer that he has voluntarily relinquished his claim, the next senior-most teacher, subject to the eligibility under Rule 3(1), is then to be considered. If he, as well, declines, then the next senior-most teacher is to be considered. The contention of the Chairman before this Court is that 21 senior teachers were before the Education Officer and all of them declined to be the Head Master and hence the son of the Chairman was appointed. If it so happens that these 21 persons were pressurized to express their unwillingness / disinclination to be the Head Master, the petitioner / Chairman would make a mockery of Rule 3 of the MEPS Rules.

10. It is in the above backdrop and considering the contention of these respondents that 21 senior teachers were pressurized and on fearing a backlash from the Chairman and Secretary of the Society, they have expressed their disinclination, that the learned District Judge has passed the impugned order.

11. Since by concurrent judgments, the Change Report has been rejected and yet the Chairman desires to install his son as a Head Master and acquire approval from the Education Officer, I do not find that the impugned order could be termed as being perverse or erroneous. This petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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