

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 471 OF 2017

Sheetal d/o Ramkrushna Abhyankar,
Age 42 years, Occu. in charge Headmaster
R/o Rachana Nagar, Parbhani .. Petitioner

Versus

1. The State of Maharashtra,
through P.I. District Parbhani
2. Sou. Yashoda w/o Uttamrao Rathod,
Age 53 years, Occu. Service and
President, Prerna Bahu Uddeshiya
Shikshan Prasarak Mandal,
Sanchalika, Shivaji Prathamik
Vidyalaya, Parbhani .. Respondents

Mr C.V. Thombre, Advocate for petitioner
Mr S.D. Ghayal, A.P.P. for respondent no.1
Mr P.R. Katneshwarkar, Advocate h/f Mr Suvidh S. Kulkarni, Advocate
for petitioner

**CORAM : S.S. SHINDE AND
A.M. DHAVAL, JJ**

**DATE OF RESERVING
THE JUDGMENT : 01.09.2017**

**DATE OF PRONOUNCING
THE JUDGMENT : 13.09.2017**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule returnable forthwith. With the consent of parties, petition is heard finally at admission stage.
2. This is a petition under Article 226 of Constitution of India and Section 482 of Cr.P.C. for quashing of F.I.R. No.105/2017 as per order under Section 156 (3) of Cr.P.C. registered at Nava Mondha Police Station, Parbhani for the offences punishable under Sections 406, 420, 423, 465, 471, 472, 474 read with Sec.34 of Indian Penal Code.

3. The facts relevant for deciding this petition may be stated as follows :

4. Respondent no.2 Yashoda is President of Prerana Prerna Bahu Uddeshiya Shikshan Prasarak Mandal, Parbhani, an educational trust which is running the school by name Shivaji Prathamik Vidyalaya, Parbhani. The petitioner is serving there as a senior teacher. The dispute is about promotion to the post of Head Master among the petitioner and son of respondent no.2. One Nivrutti Raosaheb Khonde was the senior-most teacher. He went on earned leave on medical ground. According to respondent no.2, her son Kapil was diligent Assistant Teacher. Hence, on 1.6.2015, the management unanimously resolved to promote him as a Head Master. The resolution was forwarded to Education Officer on 28.8.2015 and it was followed up. Kapil Rathod was given authority as in-charge Head Master from 1.6.2015 to 30.11.2015. Since the arrears of payments were to be made, again correspondence was made on 11.1.2016, 25.2.2016, 8.3.2016 and 10.3.2016. Asha Garud who was Education Officer and is shown as accused no.2 sent a letter dated 19.3.2016 and refused to grant sanction to the promotion of Kapil Rathod. Accused no.1 Sheetal Abhyankar was authorised to sign as in-charge Head Master from 1.12.2016 to 31.5.2017. Thus, the Education Officer accused no.2 Asha Garud misused her position. Accused no.1 taking advantage of the same drew her own bill of arrears of Rs.4,62,458/- and thereby they have cheated the management and institution - school. The F.I.R. shows that the promotion to the post of Head Master is to be

made by the management and accused no.2 acted contrary to the provisions of law in appointing accused no.1, the petitioner as in-charge Head Master. Thus, they have committed offences punishable under Sections 406, 423, 465, 471, 472, 474 read with Sec.34 of Indian Penal Code. Under Secretary, Government of Maharashtra has also issued letter dated 19.5.2016 supporting the management. Hence, the application was filed in the Court of Judicial Magistrate, First Class, Parbhani on 27.2.2017 with a request to issue directions to the police to register the crime and investigate the same. The learned Magistrate by order dated 10.3.2017, issued the directions as prayed for and the F.I.R. came to be registered at Nawa Mondha Police Station, Parbhani at C.R. No.105/2017.

5. It is the case of the petitioner that she was senior-most Assistant Teacher working with the institution. The Education Officer, Zilla Parishad, Parbhani is required to grant approval for the promotion as Head Master as per the rules. The petitioner had filed Writ Petition No. 7017 of 2016 and by order dated 14.10.2016, direction was issued to consider her proposal for appointment of Head Master. The Deputy Director of Education, Aurangabad also directed the Education Officer to grant approval for appointment of the petitioner as Head Master, as the Education Officer is competent authority to decide the seniority and pass the appropriate orders. Still, the Education Officer has only granted authority to the petitioner to act as in-charge Head Master and no permanent appointment has been made. The bill of the petitioner for legal dues was submitted by Kapil Rathod himself when he was in-charge Head Master and the

same was returned on technical ground, which was signed by the petitioner and resubmitted. There is no cheating or misappropriation of the funds of the society and the school. Respondent no.2 has suppressed material facts regarding the orders passed by the Honourable High Court. The F.I.R. was registered that there was no sanction obtained for prosecuting accused no.2 who is a public servant. No enquiry was held and the process was issued. Education Officer has duly sanctioned the petitioner to work as in-charge Head Master. No offence has been committed by the accused persons and, therefore, the F.I.R. deserves to be quashed.

6. Respondent no.2 filed her reply, which is in tune with her F.I.R. It is claimed that the bill submitted by Kapil Rathod was rejected by pay unit. There was no direction by the Honourable High Court to appoint the petitioner as Head Master. The direction was only to take expeditious decision. Therefore, the learned Magistrate has rightly taken cognizance of the offences committed by the petitioner and Education Officer.

7. We have heard learned Counsel for the petitioner Mr C.V. Thombre and learned A.P.P. Mr S.D. Ghayal and learned Counsel for respondent no.2 Mr P.R. Katneshwarkar holding for Mr Suvidh Kulkarni. We have gone through the papers of investigation produced before us.

8. We find that this is a serious dispute of civil nature regarding grant of promotion to the post of Head Master in the school run by the

public trust of which respondent no.2 is a President. Nivrutti Raosaheb Khonde was appointed on 14.6.2004. Mrs Rasve and Mrs M.R. Kadam were appointed as teacher on 15.6.2004, while Mrs Garud was appointed on 16.6.2010. They have declined to accept the post of Head Master. Then, the petitioner Sheetal Abhyankar was appointed as teacher on 15.2.2006, whereas Kapil Rathod, son of respondent no.2 was appointed as teacher on 26.6.2010. Thus, there is no dispute that the petitioner was senior-most Assistant Teacher willing to act as Head Master. It is not disputed that the post of Head Master is to be filled up by promotion by the management as per seniority and which is to be approved by the Education Officer.

9. By resolution dated 30.9.2015, it was recorded that Smt. M.R. Kadam, Mr N.R. Khonde, Smt. A.S. Rasve and Smt. M.T. Garud who were senior to Kapil Rathod had declined to accept the responsibility of Head Master and, therefore, Kapil Rathod was appointed as Head Master on permanent basis. This resolution does not refer to the name of the petitioner Sheetal Abhyankar who is senior to Kapil Rathod and no ground has been given why she was side tracked for giving promotion to Kapil Rathod. It appears that it was done only with intention to promote Kapil Rathod, as he was son of President of the institution. The reasons why other four persons have declined to accept the post of Head Master are not known but the petitioner Sheetal Abhyankar decided to fight. She filed application to the Education Officer and the Education Officer wrote a letter to Deputy Director of Education, Aurangabad on 10.3.2016 soliciting guidance in the matter. On 9.3.2016, Education Officer noted that there was no

resolution by the management for appointment of Head Master and, therefore, as per seniority, either Sheetal Abhyankar or Kapil Rathod will have to be authorised for signing the bills and for payment of income tax. The Deputy Director of Education, Aurangabad, by letter dated 16.3.2016, informed the Education Officer that as per Maharashtra Employees of Private Schools (Condition of Services) Rules, 1981, senior-most teacher should be appointed as Head Master and if there was no proposal submitted by the institute as per the seniority, then the Education officer was authorised to decide the seniority of the teacher and to appoint the senior-most teacher as Head Master. As per the guidance received from the Deputy Director of Education, Aurangabad, the Education Officer, by letter dated 19.3.2016 issued directions to the President of the trust that the petitioner was appointed as in-charge Head master for the period of 1.12.2015 to 31.5.2016 subject to terms of Maharashtra Employees of Private Schools (Condition of Services) Rules, 1981 and Right to Free and Compulsory Education Act and directed the trust by letter dated 16.6.2016 to send the report for promotion of petitioner Sheetal Abhyankar to the post of permanent Head Master. This authority granted by the Education Officer to the petitioner was extended from 1.6.2016 to 30.11.2016 and again by letter dated 15.12.2016, from 1.12.2016 to 31.5.2017.

10. The bill of Rs.4,62,458/- is in respect of arrears of pay of the petitioner, but it was initially submitted when Kapil Rathod was in-charge Head Master and for technical reasons, it was returned.

11. The respondent no.2 has relied on letter dated 19.5.2016 whereby the Education Officer was informed by the Under Secretary, Government of Maharashtra that the request of the institute for appointment of Kapil Rathod as Head Master and cancellation of rights given to the petitioner to sign as in-charge Head Master should be reconsidered. The said request should be considered by him as per M.E.P.S. Rules, government resolutions. This letter does not say that the appointment of Kapil Rathod by completely ignoring the seniority of Sheetal Abhyankar should be made without any reason.

10. The petitioner herein has filed Contempt Petition No.194 of 2017 on 3.3.2017 for non-obedience of the directions of the High Court and the notices were issued to respondents no.3 and 4. Respondent no.2 suppressed the material facts about the seniority of the petitioner as well as about the petitions filed by her in the High Court. The Education Officer was a public servant and was discharging his duties. There was correspondence showing that he was authorised to fix the seniority of teachers and to grant approval to the post of Head Master. Grant of approval by him is not an empty formality. He has to see that resolution passed by the management is as per the provisions of law and refusal to grant approval by him is subject matter of criminal writ petition. Respondent no.2 has abused the process of law and by suppressing material facts, she has filed complaint only because the Education Officer (Primary), Zilla Parishad, Parbhani issued direction under provisions of the of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

11. We find that this is a purely civil dispute regarding promotion to the post of Head Master. There was no mens rea on the part of petitioner in acting as in-charge Head Master as per the directions of the Education Officer. The institute has not received any injury, harm or loss. The bill sanctioned was of the due amount and it was not case of false claim made. Investigation papers do not disclose about false claim. There was deliberate attempt to side track the seniority of the petitioner. Normally, the promotions are to be given as per seniority, but the management has right to refuse to appoint any person as Head Master even though he is a senior, but there should be special reasons for the same and those should be recorded in writing. We find that the continuation of this proceeding itself is abuse of process of Court. We find that the F.I.R. deserves to be quashed to the extent of petitioner (since the Education Officer is not a petitioner, we express no opinion regarding the maintainability of the F.I.R. against him).

12. In the result, Criminal Writ Petition is allowed. F.I.R. registered on at C.R.No. 105/2017 as per order under Section 156 (3) of Cr.P.C. registered at Nava Mondha Police Station, Parbhani for the offences punishable under Sections 406, 420, 423, 465, 471, 472, 474 read with Sec.34 of Indian Penal Code, is hereby quashed to the extent of petitioner herein.

13. Rule is made absolute in above terms. There shall be no order as to costs. It is clarified that the observations made are prima facie

in nature and are confined for deciding this application and should not be used elsewhere as deciding the merits involved in other matters.

(A.M. DHAVALÉ, J.)

(S.S. SHINDE, J.)

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