

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

29 WRIT PETITION NO. 362 OF 2004

**EKNATH DATTARAM DIDSHERE
VERSUS
STATE OF MAHA & ORS**

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Advocate for Petitioner : Mr. R. J. Godbole
AGP for Respondents : Mrs. M.A.Deshpande.
Advocate for Respondent No.2 : Mr. B.A. Dhengle

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**CORAM : R.D.DHANUKA, AND
SUNIL K. KOTWAL,JJ.**

DATED : 11th September, 2017

PER COURT :-

1. By this Writ Petition filed under Article 226 of the Constitution Act the petitioners seeks Writ of Mandamus for quashing and setting aside the order dated 10th June 2003, passed by the respondent No. 2/Management, appointing Respondent No.3 as Headmaster of Madhyamik Ashram Shala, Kuntur Tanda, Taluka and District Nanded, and seeks further declaration that Respondent No. 3 was ineligible to be appointed as Headmaster in secondary school run by respondent No.2. He further prays for setting aside the order dated 18th June 2003, passed by Respondent No. 4 according permanent approval to the transfer order dated 18th June 2003

and the appointment of respondent No. 3 as Headmaster in Madhyamik Ashram Shala Kuntur Tanda, Taluka Naigaon, District Nanded.

2. The petitioner was appointed as Headmaster in Madhyamik Ashram Shala, Kuntur Tanda on 10th June, 1992 and was confirmed as Headmaster in the said School. In so far as respondent No.3 is concerned, the respondent No. 2 appointed the respondent No. 3 as Headmaster in Primary Ashram School, Aurangabad on 10th June 1993. On 12th August-1997, Respondent No. 4 was accorded approval to the appointment of the petitioner as Headmaster in Madhyamik Ashram Shala Kuntur Tanda.

3. In 10th June, 2003, the respondent No. 2 appointed respondent No. 3 as Headmaster of Madhyamik (Secondary) Ashram School, Kuntur Tanda and reverted the petitioner to the post of Headmaster. The respondent No. 2 forwarded proposal for according approval to the appointment of respondent No. 3 as Headmaster in Secondary School namely Madhyamik Ashram School, Kuntur Tanda which approval was

granted by the respondent No.4.

4. The petitioner filed this Writ Petition and prayed for various reliefs. In so far as the reversion is concerned, the petitioner filed an appeal under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Act 1977 before the School Tribunal, Aurangabad vide Appeal No. 70 of 2003 praying for setting aside the order of reversion issued by the Management, order according approval by the Education Officer, to the appointment of respondent No. 3 on the post of Headmaster in place of the petitioner. The School Tribunal allowed the said appeal No. 32 of 2006 filed by the petitioner herein and has set aside the order of respondent No. 3 to the post of Headmaster in place of petitioner and setting aside the order of reversion passed by the Management. In so far as order in favour of the petitioner is concerned, the Management filed a Writ Petition No. 2623 of 2007 and respondent No. 3 filed Writ Petition 4706 of 2007. By an order dated 2nd January 2010, the learned Single Judge passed a detailed Judgment and was pleased to dismiss both the Writ Petitions i.e. filed by the Management as well as respondent No. 3 and

confirmed the order passed by the School Tribunal. The Management did not impugn the said Judgment and order dated 2nd January 2010 passed by this Court before the Supreme Court of India.

5. Mr. Godbole, learned counsel for the petitioner invited our attention to various annexures to the petition and also to the Judgment and order dated 22nd January 2010 passed by this Court in Writ Petition No. 4706 of 2007 and Writ Petition 2623 of 2007 and would submit that, in view of the said order the petitioner was restored back to the post of Headmaster and is in employment on the post of Headmaster.

6. We have perused the Writ Petition and also the Judgment and order dated 22nd January, 2010 passed by this Court in Writ Petition No. 4706 of 2007 and Writ Petition 2623 of 2007. The order of reversion issued by the Management against the petitioner from the post of Headmaster to Assistant Teacher is set aside by the School Tribunal and upheld by this Court. By the said order the promotion of respondent No. 3 on the post of Headmaster also is simultaneously set aside which

order has attained finality. In view of the Judgment and order dated 22nd January 2010 passed by this Court in Writ Petition No.4706 of 2007 and Writ Petition No. 2623 of 2007, this petition deserves to be allowed.

7. We are of the view that the respondent No. 3 was not eligible to the post of Headmaster in the secondary school run by respondent No. 2 and the approval granted by the respondent No. 4 to the transfer order and appointment of respondent No. 3 as Headmaster in place of the petitioner is illegal. None appeared for the respondent No. 3 though served. We, therefore pass the following order :

ORDER

1. Writ Petition No. 362 of 2004 is allowed in terms of prayer Clause (B) and (C).
2. Rule is made absolute in aforesaid terms and order.
3. No order as to costs.

Sd/-

(SUNIL K. KOTWAL, J.)

sd/-

(R.D.DHANUKA, J.)

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shp/-