

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4273 OF 2016

1. Managing Committee,
Madarse Madinatul Uloom
Education Society, Nanded,
a duly registered Public Trust
through its Secretary
Shri Mohd. Bahauddin s/o
Ahmedoddin, Age : 68 years,
Occu. Legal Practice and
Secretary, R/o Nanded
2. Sayeda Akefa Begum d/o Shri Sayyed
Abdul Khadar, Age : Major,
occu. Service Head Mistress,
R/o Madarse Madinatul Uloom
Primary (Girilas) School, Mandhai,
Nanded, District Nanded
3. Mohmd. Akhilullah s/o Md. Sadiquallah,
Age : Major, Occu. Service
Head Master, R/o Madarse Madinatul
Uloom Primary (Boys) School,
Lalbada, Nanded

PETITIONERS

VERSUS

1. The State of Maharashtra,
through the Secretary,
Higher Education Department,
Mantralaya, Mumbai
2. The Education Officer (Primary),
Zilla Parishad, Nanded

RESPONDENTS

Mr. R.R. Mantri, Advocate for the Petitioners
Mrs. A.V. Gondhalekar, A.G.P. for the respondent/State
Smt. Y.M. Kshirsagar, Advocate for respondent No. 2

**CORAM : T.V. NALAWADE AND
SANGITRAO S. PATIL, JJ.**

DATE : 17th FEBRUARY, 2017

ORAL JUDGMENT (PER : T.V. NALAWADE, J.) :

Rule, returnable forthwith. With the consent of the learned counsel for the parties and the learned A.G.P., heard finally.

2. The petition is filed to challenge the communication dated 16th November, 2016, issued by the Education Officer (Primary), Zilla Parishad, Nanded, informing petitioner Nos. 2 and 3 that the proposal submitted for grant of approval to their appointment to the posts of Headmistress and Headmaster, respectively, cannot be approved as six enquiries are pending with the authorities in respect of the management over the Institution in which these petitioners are working.

3. The learned counsel for the petitioners took us through the order dated 5th February, 2014, passed by a Division Bench of this Court in ***Writ Petition Nos. 2689 of 2011 and 2690 of 2011 (Madarse Madinatul Ullum,***

Nanded Vs. The State of Maharashtra and others).

Paragraph No. 5 of the aforesaid order reads thus :

"Initially these writ petitions were placed before the learned Single Judge of this Court on 2nd May, 2011. After hearing both sides, the learned Single Judge passed the following order:-

"1. Learned AGP Mrs. V.A. Shinde, for Respondent Nos. 1 and 2, is seeking time till after vacation to file reply. Time granted.

2. However, Education Officer (Secondary), as well as, Education Officer (Primary) shall consider proposals for pension and other proposals for day-to-day affairs, if submitted by the petitioners, in accordance with expediency the same deserves. This will not cloth petitioner with any additional right either in law or in equity and shall also not affect the rights of opposite side, if any.

3. Adv. Mrs. Unnezza Khan Pathan waives notice for added respondent No. 3.

4. Put up on 7th June, 2011."

4. Thus, the persons, who were running the Management of petitioner No. 1 – Institution, were allowed to make proposals for approval to the

appointments.

5. The submissions advanced would show that petitioner Nos. 2 and 3 are the senior-most teachers in their respective schools and there are no other teachers claiming the aforesaid posts by way of seniority. In view of this, the Institution has promoted petitioner Nos. 2 and 3 and the proposals for grant of approval to their appointments as Headmistress and Headmaster, respectively are submitted to the Education Officer. Considering all the above circumstances, we are of the opinion that it was not proper on the part of the Education Officer to reject the proposals on the ground that there is dispute over the Management of the Institution.

6. In the result, the Writ Petition is allowed. Respondent No. 2 – Education Officer is directed to consider the proposals, seeking approval to the appointments of petitioner Nos. 2 and 3 on the posts of Headmistress and Headmaster, respectively, on their own merits and ignoring the dispute over the Management of the Institution and such decision shall be taken within

a period of forty five days from today. Rule is made absolute in those terms. The Writ Petition stands disposed of. No costs.

[SANGITRAO S. PATIL]
JUDGE

[T.V. NALAWADE]
JUDGE

npj/wp4273-2016