

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7976 OF 2012

Adarsh Vidya Prasarak Mandal and Anr.	}	Petitioners
versus		
Adarsh Night Hindi High School and Ors.	}	Respondents

Mr. Mayuresh Lagu i/b. Ms. Deepali
Deherkar for the petitioners.

Ms. Sushma Bhende – AGP for respondent
nos. 2 and 3.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- FEBRUARY 9, 2017

P.C. :-

1. Heard. Rule. Respondents waive service. By consent, Rule is made returnable forthwith.

2. This writ petition challenges the order passed by the Education Inspector – respondent no. 2 dated 7th October, 2011, Exhibit 'J' at page 30 of the paper book. On 7th October, 2011, the proposal from petitioner no. 1 management dated 29th September, 2011, seeking approval for the appointment made of petitioner no. 2, as peon, with effect from 1st March, 2010, has been rejected.

3. Mr. Lagu learned counsel appearing for the petitioners would submit that the reason for rejection is patently erroneous and illegal. The rejection cannot be on the ground that a Government Resolution dated 10th June, 2010, which imposes a ban to appoint non-teaching staff in partly or fully aided recognised private school in the State of Maharashtra, has a retrospective effect. The ban must be operative when the appointment was made. In the instant case, the ban was not in force when the appointment was made.

4. It is on such an argument of Mr. Lagu and which was pressed throughout that we called upon the State to file an affidavit. The in-charge Deputy Education Inspector in the office of the Education Inspector (North), Mumbai Mr. Prakash P. Patil has filed an affidavit. The affidavit indicates that on 1st March, 2010 petitioner no. 2 was appointed and claims to be appointed by the first petitioner-management. However, the first petitioner-management does not have a cohesive or a complete set up. There are two groups and both claim to be in management. On account of the rivalry between two groups, the dispute between the trustees pending with the Deputy Charity Commissioner and which dispute is still pending that the approval was refused. However, Ms. Bhende appearing for respondent nos. 2 and 3

concedes that this ground is not to be found as assigned in the impugned order. Secondly, she maintains that the ban on recruitment and imposed on 10th June, 2010 would apply. Lastly and on instructions and without prejudice, she would submit that in the event the groups between the management have resolved their dispute or that there is no dispute existing or pending and the management is cohesive and together, then, irrespective of this ban, in the event the management makes a statement before the Education Inspector that it will bear the financial burden of paying salaries and other dues of petitioner no. 2, then, his appointment from 1st March, 2010 would be approved, but without the State being called upon to render any financial assistance or monetary aid.

5. In the light of these contentions, it is evident that the matter must go back to the Education Inspector and for a decision afresh on the approval of the appointment made. If indeed factual position is that there are two groups and there is rivalry amongst them, there are cases and matters pending with statutory authorities, then, the Education Inspector must place the entire record in relation thereto before the management at a hearing, which shall be conducted by him so as to resolve this matter of approval. The Education Inspector then shall take the

contentions of the petitioners on record and pass a reasoned order and duly communicate it to the petitioners.

6. In the event the issue of applicability of Government Resolution dated 10th June, 2010 is raised, then, the authority shall consider it only when there are no disputes within the management and that is cohesive and together. He should also decide whether this Government Resolution would apply to a prior appointment. He must also summon the record in relation to the prior appointment and factually ascertain as to whether this appointment is made prior to this Government Resolution and thereafter assign reasons as to whether the said Government Resolution would still apply or otherwise. We do not make any comment on the rival contentions before us.

7. In the light of the above and since there is a consent of the petitioner to go back to the Education Inspector and equally by the Education Inspector to consider the above issue, we quash and set aside the impugned order. We relegate the matter back to the Education Officer, who shall pass a fresh order uninfluenced by the earlier order within a period of two months from the date of receipt of a copy of this order.

8. The writ petition is allowed accordingly. Rule is made absolute in the aforesaid terms.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)