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

WRIT PETITION NO. 3107 OF 2017

1. Sanjay Govindrao Ghodke,
Age: 34 years, Occ: Service,
as Shikshan Sevak,
R/o. Lohara, Tal. Lohara,
Dist. Osmanabad.
 2. Smt. Sarika d/o Suryakant Patil,
Age: 31 years, Occ: Service
as Shikshan Sevak,
R/o. Lohra, Tal. Lohara,
Dist. Osmanabad.
 3. Satish Tamanappa Jatte,
Age: 31 years, Occ: Service,
as Shikshan Sevak,
R/o. Lohara, Tal. Lahora,
Dist. Osmanabad.
 4. Shivraj Suresh Shidore,
Age: 30 years, Occ: Service
as Shikshan Sevak,
R/o. Jewali, Tal. Lohara,
Dist. Osmanabad.
- ..PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya, Mumbai.
2. The Education Officer (Secondary)
Zilla Parishad, Osmanabad.
Dist. Osmanabad.
3. High School, Lohara,
Lohara, Tal. Lohara,
Dist. Osmanabad

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Through its Secretary,
Shri. Suresh Kishanrao Sutar,
Age: 60 years, Occ: Social Worker,
R/o. Lohara, Tal. Lohara,
Dist. Osmanabad.

4. High School, Lohara,
Lohara, Tal. Lohara,
Dist. Osmanabad
Through its Headmaster. ..RESPONDENTS

Mr V.D. Gunale, Advocate for petitioners;
Mr S.S. Dande, A.G.P. for respondent Nos.1 & 2;
Mr A.N. Sabnis, Advocate for respondent Nos.3 & 4

**CORAM : PRASANNA B. VARALE &
MANISH PITALE, JJ.**

DATE : 3rd OCTOBER, 2018

ORAL ORDER :

Heard Mr. Gunale, learned Counsel
appearing for the petitioners.

2. By way of present petition, the
petitioners challenged the communication dated 31st
January, 2017 issued by the Education Officer
(Secondary), Zilla Parishad, Osmanabad thereby
rejecting the proposal for grant of approval to the
appointment of these petitioners on the post of
Assistant Teacher.

3. Mr. Gunale, learned Counsel appearing for the petitioners, in his detailed submissions before us, submitted that the order impugned in the petition is unsustainable on more than one grounds and the Education Officer (Secondary) passed the order on wholly erroneous grounds and only on assumptions rejected the approval. It was also submitted by Mr. Gunale, learned Counsel for the petitioner that because of non application of mind of the Education Officer (Secondary), the petitioners are required to approach this Court time and again and this petition is second round of litigation of the petitioners to approach this Court for their rightful claim. He further submitted that the petitioners who possess requisite academic qualification for the consideration to the post of Assistant Teachers as the posts were available in the respondent management school at Lohara, Taluka Lohara, District Osmanabad. On 8th February, 2013 Secretary of the Education Committee forwarded a proposal to

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the Education Officer (Secondary) for filling up the posts of non teaching and teaching staff. The copy of the said proposal is placed on record at Exhibit-C.

4. Perusal of the above referred communication clearly shows that certain posts were falling vacant due to retirement of earlier employees and in view of ban imposed by the State Government, there were no appointments made and the students were sufferer. It is stated in the proposal that the management be permitted to fill up these posts as early as possible. It is also stated in the proposal that the Education Officer (Secondary) may also inform about surplus employees either teaching or non teaching and permit the institution to fill up the posts in view of Maharashtra Employees Private Schools Act, more particularly Section 5(1) of the said Act. As there was no reply from the Education Officer (Secondary), the institute is left with no choice but to publish an advertisement in local newspaper

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namely "Daily Bandhuprem" on 15th March, 2013.

5. In response to the advertisement, the petitioners appeared before the committee for interview and they were selected by the Committee as suitable candidates to be appointed. Resolution is passed on 30th March, 2013 by the school committee approving appointment of these petitioners. Petitioner Sanjay Ghodke was appointed to teach History and Hindi subjects, petitioner Smt. Sarika Patil was appointed to teach Geography and English subjects, whereas petitioner Sadashiv Bachate was appointed to teach Mathematics and Science subjects, petitioner Shrikant Ghuge was appointed to teach all subjects, as well as petitioner Satish Jatte was appointed in primary section for teaching all subjects. These persons were appointed on probation and have completed their probation period. The appointment letters are also placed on record collectively at Exhibit-F.

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6. The Education Officer (Secondary) was again informed about these appointments on 14th April, 2013 and it is stated in the communication, which is placed on record at Exhibit-G that as there was no reply to the communication dated 8th February, 2013, management by complying all the requisite procedure appointed these petitioners. The said communication is received by the Education Officer (Secondary) on the next day i.e. on 15th April, 2013. The communication dated 8th February, 2013 was received by the Education Officer (Secondary) on the very day i.e. on 8th February, 2013 and there is an endorsement of receiving letter by the office of the Education Officer (Secondary), Zilla Parishad, Osmanabad. The management then submitted proposal for approval to the appointment of these petitioners. The said proposal was rejected by communication dated 12th August, 2014. The reasons assigned for rejection were, no prior permission of the department was sought for, there is dispute in the management, appointment orders are passed by unauthorized

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person and there is reference made to Government Resolution No.6th February, 2001.

7. Being aggrieved by the rejection, the petitioners were before this Court in Writ Petition No. 9604 of 2015. Reply was filed to the petition on behalf of respondent Nos. 1 and 2. In the reply, only grounds for rejection are reiterated and nothing more than is stated in the reply.

8. Considering rival submissions, the Division Bench of this Court disposed of the above referred writ petition on 19th September, 2016. The Division Bench, by assigning reasons in the order observed in paragraph Nos.5 and 6 as follows :

“5. Though the affidavit gives some reason, the order impugned is bereft of any such details, except that prior permission is not taken, the same is violative of Government Resolution of 6th February, 2012 and dispute amongst the Management Committee and also the appointment order being signed by

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unauthorized person. The education officer ought to have given details as to how the person who has signed the appointment order was not an authorized person; whether he had authority to issue appointment order. No doubt, the Education Officer has to consider whether the selection process has been properly followed and the authorized person has conducted the selection process so also the bar of Government Resolution dated 6th February, 2012.

6. The petitioner claims to have been appointed as Shikshan Sevak on 30.03.2013 on probation. The Education Officer is also required to consider, whether any application was given seeking permission to fill in the posts and after considering all these aspects, has to decide the question of granting approval or not."

9. The Education Officer was directed to consider the proposal and pass orders afresh. As there were claims of groups claiming membership of the managing committee, the parties were permitted to submit their representation to the Education

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Officer and the Education Officer was directed to pass orders within stipulated period of six months from the date of order. At page No.183 (Exhibit-N) of the petition, Secretary submitted a detailed representation giving all the detailed factual aspects, such as, appointment of the petitioners, administrative committee being appointed to take care of the affairs of the management. There is also reference made to dismissal of one headmaster Jadhav. Then there is also reference made to the proceedings namely Trust Suit No. 1 of 2009 instituted on behalf of Rajendra Kadam and others and the decision in the suit by the competent judicial forum.

10. The Education Officer (Secondary) on 31st January, 2017 by assigning four reasons rejected the proposal. The first reason assigned by the Education Officer is, the appointment orders of the petitioners are signed by the person who was not authorized by the Education Department is worked as headmaster, as such, these appointment orders are

issued by unauthorized person and are invalid.

11. Now, there are sufficient documents placed on record to show that as earlier headmaster was dismissed, the management appointed Mr. Panchal, as headmaster, being senior most teacher so as to meet the situation and to take care of aspect that the teaching and non teaching employees are not suffered because of non availability of headmaster. Though for some time, Mr. Panchal worked as headmaster, subsequently expressed his inability to work as headmaster and resigned, the management appointed one Mr. Potdar, who was second senior most teacher in the school. The Education Officer on his own appointed Mr. Rathod as headmaster who was at Serial No.4 in the list of senior teachers.

12. It seems that Mr. Rathod also filed writ petition in this Court, that was Writ Petition No.6073 of 2013 and the school was also before this Court by filing Writ Petition No.8721 of 2013. While deciding both these petitions by the common

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judgment dated 13th March, 2014, the Division Bench of this Court could not find any justifiable reason for action taken by the Education Officer i.e. appointing Mr. Rathod as headmaster. The Division Bench was pleased to observe in the order dated 13th March, 2014 in the following words.

“ Therefore, upon reading the order in W.P.No. 4998/12, there is no any observation or direction by this Court which would have enabled the Education Officer (Secondary) Zilla Parishad, Osmanabad to appoint the petitioner i.e. Shri. Vasant Rathod, as Head Master so as to look into the day to day affairs and administration of the school. As already observed, the learned A.G.P. has not brought any legal provisions to our notice which enables the Education Officer (Secondary), Zilla Parishad, Osmanabad to make such appointment.”

13. Meantime, Mr. Panchal expressed his willingness to work as headmaster and he was party to the petition as respondent No. 7. The Division Bench accepted this position and permitted Mr.

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Panchal i.e. respondent No. 7 to sign and forward salary bills of teaching and non teaching staff to the Education Officer. Thus, Mr. Gunale, learned Counsel for the petitioner was justified in submitting that the first reason assigned in the rejection order is only on assumptions and presumptions of the Education Officer and is not in consonance with the record, as such, this reason is unsustainable.

14. Then second reason assigned in the order is, that the Charity Commissioner was unable to give opinion on the aspect of the valid managing committee as certain certain proceedings were pending. Now, this ground is also not sustainable for the reason that in the first round itself it was brought to the notice of this Court that there is dispute in the managing committee and administrative body was appointed to take care of routine affairs of the society.

15. It would be useful to refer to the

judgment of the Division Bench of this Court in Writ Petition Nos.1647 of 2014 and 1675 of 2014, as identical issue was before this Court for consideration. It was submitted before this Court that even if objection is raised about body which was in power at the relevant time, certain acts done by the body in lawful manner cannot be held to be illegal merely because there is some dispute. Reliance was placed on the judgment of Apex Court in the matter of **Gokaraju Rangaraju vs State of Andhra Pradesh**, reported in **1981 (3) SCC 132**. The observations of the Apex Court are quoted in the order and we reproduce the same as follows:

“ What would be the effect of the declaration of the Supreme Court that the appointment of the Sessions Judge is invalid on the judgments pronounced by the said Judge prior to such declaration.” While answering the issue so raised, the Hon'ble Apex Court interpreted the de-facto doctrine and held that, even if the appointment of a Judge is found to be invalid, the judgments, decrees or orders made by the

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said Judge would continue to be valid and effective."

16. The Division Bench of this Court in the judgment in Writ Petition Nos.1647 of 2014 and 1675 of 2014 further observed that in the instant case also, even if it is assumed that the body which made the appointments of Respondent No. 4 in Writ Petition No.1647/2014 and Respondents No. 4 and 5 in Writ Petition No. 1675/2014 was illegally in power, the appointments made by them by following due process of law and which are otherwise held to be valid by the competent authority would continue to be valid and effective. (emphasis supplied)

17. At the cost of repetition, we state that in the present matter, the appointments of the petitioners were made by following due procedure, such as, seeking approval from the Education Officer apprising the Education Officer availability of posts, also informed the Education Officer that if there is any surplus employee, the information ought to have been provided to the

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management. As there was no response from the Education Officer, advertisement was issued and in the interviews conducted by the school committee, the petitioners were appointed. Thus, the second ground assigned by the Education Officer is also clearly unsustainable.

18. The third ground in the order reads that by letter dated 8th February, 2013 then Secretary without seeking any permission from the Education Department appointed the petitioners, as such, these appointments are without permission from the concerned department. Even the third ground is not sustainable for the reason referred by us namely communication dated 8th February, 2013 itself is a communication seeking permission from the Education Officer giving all the details and again on 14th April, 2013 the Education Officer is informed about the appointment of the petitioners with reference that there was no reply from the office of the Education Officer to communication dated 8th February, 2013, as such, management was left with

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no choice to complete procedure and appoint these petitioners. Therefore, Mr. Gunale, learned Counsel was justified in submitting that this objection is raised only for sake of objection without there being any application of mind and this ground is in total contrast to the record.

19. The other ground is that appointments are not in consonance with Government Resolution dated 6th December, 2012. Now, this issue is dealt in detail in the judgment decided at the Principal Seat in ***Writ Petition No.8587 of 2016 (Smt. Munoli Rajashri Karabasappa vs State of Maharashtra through Secretary and others)*** with other connected matters, decided on 10th July, 2017 (Coram: B.R. Gawai and Riyaz I. Chagla, JJ.). Oft quoted ground namely the appointments are in a ban period and in spite of availability of excess teachers is dealt in by this Court and in the present matter, the appointments were with following due procedure and not only this, the petitioners specifically stated in the petition that in the year 2015 when the

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Education Officer sent one surplus teacher to respondent Nos. 3 and 4 for absorption i.e. Shri. V.S. Nagne in their school. As such, whenever the Education Officer provided information of the excess teacher, the management absorbed excess teacher by following direction of the Education Officer but at the relevant time, when these petitioners were appointed, there was not such information provided by the Education Officer in spite of communication order was forwarded to the Education Officer on 8th February, 2013. Thus, even this fourth ground is unsustainable.

20. Considering all these aspects, as there is no valid reasons assigned in the order impugned in the petition and reasons assigned in the rejected order are clearly unsustainable. The petition deserves to be allowed. Resultantly, the petition is allowed in terms of prayer clause (C).

21. In view of disposal of the writ petition, no orders are required to be passed on the

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application being Civil Application No.7462 of
2017 filed for seeking intervention.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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