

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

**Writ Petition No. 2868 of 2009
With
Civil Application No.10048 of 2016**

* Sugandha Dashrath Nikwade,
Age 44 years,
Occupation : Service,
R/o Plot No.38, "Indranil",
New Swami Vivekanand Colony,
Nakane Road, Deopur, Dhule,
District Dhule. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Nashik Division, Nashik.
- 3) The Education Officer (Primary)
Zilla Parishad, Dhule.
- 4) The Administrative Officer,
Municipal School Board,
Municipal Corporation Dhule.
- 5) The Head Mistress,
Shri. Chhatrapati Agrasen
Prathmik Vidya Mandir, Dhule,
District Dhule.
- 6) The Chairman,
Agrasenji Maharaj Shaikshnik
Trust, Dhule, District Dhule. **.. Respondents.**

Shri. A.D. Magar, Advocate, for petitioner.

Shri. Y.G. Gujrathi, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. D.S. Bagul, Advocate for respondent No.3.

Shri. P.S. Patil, Advocate, for respondent No.4.

Shri. V.D. Sapkal, Advocate, for respondent No.5.

Shri. M.B. Kolpe, Advocate, for respondent No.6.

With

Writ Petition No. 1068 of 2009

* Ratnaprabha Ajay Patil,
Age 40 years,
Occupation : Service,
working as Head Mistress in
Shri. Chhatrapati Agrasen Prathmik
Vidya Mandir, Dhule,
R/o Dhule, District Dhule. .. **Petitioner.**

Versus

- 1) The State of Maharashtra,
Through Secretary,
Education Department,
Mantralaya, Mumbai.
- 2) The Deputy Director of Education,
Nashik Division, Nashik.
- 3) The Education Officer (Primary)
Zilla Parishad, Dhule.
- 4) The Administrative Officer,
Municipal Corporation
Education Board,
Dhule, District Dhule.

- 5) Shri. Agrasen Maharaj Education Trust, Dhule, Sakri Road, Dhule,
Through its President. .. **Respondents.**

Shri. V.D. Sapkal, Advocate, for petitioner.

Shri. Y.G. Gujrathi, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. D.S. Bagul, Advocate for respondent No.3.

Shri. P.S. Patil, Advocate, for respondent No.4.

Shri. S.R. Barlinge, Advocate, for respondent No.5.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date: 5 APRIL 2018

JUDGMENT (Per T.V. Nalawade, J.):

1) Writ Petition No.2868/2009 is filed by one employee, Assistant teacher of respondent Nos.4 to 6 institution and relief is claimed under Article 226 of the Constitution of India of setting aside the order dated 21-1-2009 passed by learned Deputy Director of Education Nashik. By this order, the Deputy Director has held that to the school of the respondents only 18 divisions were sanctioned and by creating false record, 19 divisions were

shown and staff was appointed. Due to this order, the petitioner, who is junior most teaching staff is declared as illegally appointed staff.

2) Writ Petition No.1068/2009 is filed by the Headmistress of the same school to challenge the same order dated 21-1-2009. Due to this order, action is taken by the school authority, local body against this petitioner and she is directed to pay the amount of salary in respect of the excess staff. It is held by the local body that mischief was played by the Headmistress, petitioner from Writ Petition No.1068/2009, and she had shown that 19 divisions were sanctioned when in fact 18 divisions were sanctioned to the school.

3) The correspondence produced on the record and the submissions made show that in the past, there were six divisions sanctioned to the school. First time in the year 1996 the divisions were increased. The correspondence with a table in that regard is produced and it shows that for 1st to 5th Standards second and third divisions were sanctioned. For 6th Standard there

were 1st and 2nd divisions sanctioned. For 7th standard for the first time one division was sanctioned. For 6th Standard there was already one division in existence. In column No.5 of the table there is a mention that to 1st and 4th Standards, two divisions each were sanctioned. To 5th Standard two divisions were sanctioned. To 6th Standard 2 divisions were sanctioned and to 7th Standard one division was sanctioned. Column Nos.6 and 7 need to be read together and they are very clear on the point of sanction of additional divisions and from this table it could not have been presumed that in the year 1996 there was sanction of third division for 6th Standard. It is not disputed that after sanction of the divisions, staff was also sanctioned by the Government and the staff was created only for 12 divisions and not for 13th division.

4) The submissions made show that the Administrative Officer of the School Board of the local body was not drafting the correspondence and it is the Headmistress who was drafting the correspondence and with the Education Department correspondence was required to be made through the Administrative Officer.

The record and the submissions show that from prior to 1996 the petitioner from Writ Petition No.1068/2009 was in charge Headmistress and she was regularised on the said post when she completed 5 years of service on the post of teacher and during her tenure there was the aforesaid increase of the divisions. Learned counsel for the Headmistress tried to submit that this Headmistress was not responsible for manipulation if at all manipulation was done to appoint the petitioner from the first proceeding. The submissions made and the record show that even prior to 1996 the petitioner from Writ Petition No.2868/2009 was working in the school run by local body and there was no sanctioned post for her appointment. These circumstances cannot be ignored as the procedure required for appointment of this petitioner was not followed and it can be said that by creating such post in the record of the local body she was shown to be appointed against that post.

5) The aforesaid mischief came to be detected when on 18-8-2006 a letter was given by the Deputy Director of Education Nashik that in fact only 20 posts

were sanctioned and there was no sanction to other posts. Due to that order, the petitioner from the first proceeding, Writ Petition No.2868/2009 being junior most could not get salary after the letter of the Deputy Director of Education. The record shows that in Writ Petition Nos. 4158/2008 and 4470/2008 some directions were given by this Court to the Deputy Director of Education to make detail inquiry as the petitioners from these proceedings and even the local body were contending that in the year 1996, 13 divisions were sanctioned and due to that total 19 divisions were available and it was contended for the State that only 12 divisions were sanctioned in the year 1996 and total 18 divisions were sanctioned. The learned Deputy Director made inquiry and during inquiry he went through Government record and he gave hearing to all the concerned. Before the Deputy Director it was submitted for the petitioners that they had not manipulated the record and probably during typing, the office of the Deputy Director had committed mistake and due to that the school went with the presumption that 19 divisions were sanctioned. The Deputy Director considered the initial record showing that prior to 1996 only six divisions

were sanctioned and in the year 1996 as per the sanction order there were only 2 divisions available for 6th Standard. The initial order available with the office of the Deputy Director was seen and this Court has also made observations with regard to that table already. The Deputy Director has observed that in the place which was available against the 6th Standard, the third division was shown subsequently. He declared that only 18 divisions were sanctioned by the Government. This report was submitted to this Court on 21-1-2009. This report is challenged in both the petitions.

6) In view of the record of the Government and the aforesaid circumstances and as there is no other record showing that there was sanction of third division for 6th standard it cannot be said that third division for 6th Standard was sanctioned in the year 1996. Only interested persons must have done the manipulation. By writing the third division in the correspondence made by the Education Department the petitioner from Writ Petition No.2868/2009 came to be appointed against that third division of 6th Standard. In any case, the

Government cannot be made liable to pay the grant in respect of third division of 6th Standard as it was not sanctioned in the year 1996. Due to that circumstance, the petitioner from Writ Petition No.2868/2009 cannot succeed against the Government. For the same reason, the report dated 21-1-2009 cannot be set aside and that needs to be acted upon.

7) The record of Writ Petition No.1068/2009 shows that when the Administrative Officer of the School Board of the local body realised that mischief was done he issued show cause notice to the Headmistress and asked her to deposit the amount of salary paid to the petitioner from other proceeding. He had fixed the responsibility on the basis of the record. The record also shows that she was senior most in the school and though in the year 1998 letter of confirmation on the post of Headmistress was given, the confirmation was with effect from 1-7-1997 and from prior to that date the petitioner Smt. Ratnaprabha was senior most and so she was working as in-charge Headmistress. There are two possibilities in respect of the conduct of the Administrative Officer of the School Board

of the local body. The first possibility is of his direct involvement in the mischief and the second possibility is of signing the correspondence prepared by the Headmistress blindly, without verification. In any case, the correspondence was required to be drafted and prepared by the Headmistress in view of the nature of duties of the Headmistress. In view of these circumstances, initially show cause notice was issued to the Headmistress and she was asked to explain as to why the amount already paid to the petitioner of other proceeding should not be recovered from her and action should not be taken against her. This show cause notice was replied by the Headmistress on 8-9-2006 and she only contended that whatever correspondence was made by her was made through the Administrative Officer. The Administrative Officer came to the conclusion that the Headmistress had intentionally included third division in the correspondence received from the Education Department and he fixed the responsibility on her in respect of the loss sustained by the school. Due to that she was directed to make good the loss, to make the payment of the said amount. Under service rules such order can be made and the amount,

which is lost due to the conduct of the employee, can be recovered from her. In that regard even directions were given by the Deputy Director to the school and action was advised against the Headmistress as she had deceived everybody. Direction was given to the school to deposit the amount which was already paid by the Government as against that post.

8) It appears that after making of the aforesaid orders by the Administrative Officer, the payment of salary to the Headmistress was stopped. Similarly, payment of salary to the petitioner from other proceeding was stopped. Due to interim orders made by this Court, the amount was paid to them. In view of the aforesaid circumstances this Court holds that fraud was played and by creating false record the Headmistress and the petitioner from other proceeding duped the Government. It is unfortunate that the Administrative Officer of the School Board was not vigilant. The other possibility is also there of the involvement of the Administrative Officer himself in the matter. This Court had opportunity to see the original record of correspondence showing that there

were only two divisions sanctioned for 6th Standard but in the record which was maintained by the school, the third division was added for 6th Standard. Due to these circumstances this Court holds that no relief can be granted to both the petitioners and the order made by the learned Deputy Director of Education cannot be set aside. In the result, both the petitions stand dismissed. Interim relief stands vacated. Rule stands discharged. Civil Application No.10048 of 2016 stands disposed of.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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