

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

WRIT PETITION NO. 2805 OF 2018

Milind Manohar Deshpande
Age : 58 years, occu.: service as Principal
P.E.S. Polytechnic, Aurangabad.
R/o 12, Tilak Nagar, Near Balaji Mandir,
Aurangabad.

Petitioner.

Versus

1. Trimbak Ashroba Kadam
Age : 48 yrs, occu.: service
as Lecturer in Computer Science
and Engineering in P.E.S. College
of Engineering, Aurangabad.
R/o Plot No.134, Pethe Nagar,
Near Triratna Chowk,
Bhavsingpura, Aurangabad.
2. The State of Maharashtra
Through the Commissioner of
Police, Aurangabad.
3. People's Education Society
Mumbai, Through its
Chairman, C/o Principal,
Ambedkar College, Wadala,
Mumbai.
4. People's Education Society
348, Anand Bhavan, D.N. Road,
Port, Mumbai 400 001.
Through its Secretary.

Respondents.

Mr. A.S. Deshpande, Advocate for the petitioner.
Mr. Mr. V.J. Dixit, Senior Counsel with
Mr. A.N. Nagargoje, Advocate for respondent No. 1.
Mr. N.T. Bhagat, A.G.P. for the respondent No.2.
Mr. N.S. Kadam, Advocate for respondent No.3.
Mr. V.D. Salunke & Mr. M.M. Ambhore, Adv. for respondent No.4

**CORAM : S.V. GANGAPURWALA &
SUNIL K.KOTWAL,JJ.**

Reserved on : 2nd August 2018.

Pronounced on : 5th September 2018.

JUDGMENT : (PER SUNIL K. KOTWAL, J.)

1. Rule. Rule is made returnable forthwith and with the consent of learned Counsel for the parties, the petition is taken up for final disposal.

2. This Writ Petition is filed claiming the relief against respondent No.1 to prohibit him from creating impediment in discharge of duty by the petitioner as Principal of P.E.S. Polytechnic College, Aurangabad, with declaration for the same.

3. Respondent No.2 is the State of Maharashtra, Respondent No.3 is the People's Education Society, Mumbai through its Chairman and respondent No.4 is also People's Education Society, Mumbai through its Secretary.

4. Heard strenuous arguments submitted by Mr. A.S. Deshpande, learned Counsel for petitioner, Senior Counsel Mr. V.J. Dixit for respondent No.1, learned Additional Government Pleader for respondent No.2, Mr. N.S. Kadam, learned Counsel for respondent No.3 and Mr. V.D. Salunke and Mr. M.M. Ambhore, learned Counsel for respondent No.4.

5. Learned Counsel for the petitioner submits that on 18.07.1994 petitioner was appointed as Assistant Professor in P.E.S. College of Engineering and after service tenure of seven years, he became Associate Professor. In the year 2010, permission was granted by A.I.C.T.E. to P.E.S. Institution, to establish Polytechnic College from the academic year 2010-2011. After establishment of P.E.S. Polytechnic College, the additional charge of In-charge Principal of P.E.S. Polytechnic College was entrusted with the petitioner, in addition to his regular in-chargeship as Principal of P.E.S. College of Engineering. On 10.06.2011, the petitioner was placed under suspension and in his place respondent No.1 was appointed as In-charge Principal of P.E.S. Polytechnic College. His further submission is that on 16.06.2011 the petitioner handed over his charge to respondent No.1. The petitioner challenged the order of suspension by filing Writ Petition No.949 of 2013 which was allowed on 04.08.2014 and suspension order of the petitioner was revoked. The petitioner was reinstated as In-charge Principal of P.E.S. Polytechnic College on 25.01.2017.

6. Learned Counsel for the petitioner submits that the order passed in Writ Petition No. 949 of 2013 was challenged by respondent No.3 in S.L.P.(C) No.30501 of 2014 which was subsequently disposed of as the statement was made on behalf of respondent No.3 before the Apex Court that the petitioner came to

be terminated by respondent No.3. The petitioner filed Writ Petition No.9301 of 2016 as well as Contempt Petition No.706 of 2016 in Writ Petition No.949 of 2013. The Management caused appearance in that proceeding and made statement before the Court that the petitioner may assume the charge as Principal of P.E.S. Polytechnic College and also assured to make payment of arrears of salary. Subsequently the petitioner was reinstated as In-charge Principal of P.E.S. Polytechnic College on 25.01.2017 as per the Resolution dated 23.01.2017 passed by Governing Body of the Institution. Accordingly the petitioner obtained charge of In-charge Principal of P.E.S. Polytechnic College. On 25.01.2017 respondent No.1, who was In-charge Principal of P.E.S. Polytechnic College, was placed under suspension as per the decision of Governing Body. He submits that on 14.01.2011 the petitioner was also appointed as Principal of P.E.S. Polytechnic College on Ad hoc basis. Till the date of filing of this petition, the petitioner was working as Principal of P.E.S. Polytechnic College. Respondent No.1 has no right to interfere with the functioning of the petitioner as Principal of P.E.S. Polytechnic College.

7. In reply, learned Senior Counsel Mr. V.J. Dixit submits that neither the petitioner nor respondent No.1 are appointed as the Principal of P.E.S. Polytechnic College by following due procedure by appropriate Selection Committee provided by Maharashtra State

Board of Technical Education. He submits that Mr. S.P. Gaikwad was the Chairman of the Governing Body who can run the Trust validly. His submission is that when the petitioner was terminated on 15.03.2015 by the Chairman, he has no authority to act as In-charge Principal of P.E.S. Polytechnic College. He submits that in accordance with the Memorandum of Association of People's Education Society, only Governing Body is the Appointing Authority. Therefore, Deputy Chairman cannot reinstate the petitioner. In fact, as per the Memorandum of Association of Society, no post of Deputy Chairman is provided. The sum and substance of the submission of learned Senior Counsel for respondent No.1 is that the petitioner has no right to claim prohibitory relief against respondent No.1, who is In-charge Principal of P.E.S. Polytechnic College, as his suspension is set aside by High Court on 21.02.2018 by passing order in Writ Petition No.9205 of 2017, and his position as In-charge Principal of P.E.S. Polytechnic College is restored.

8. After hearing learned Counsel for both the parties at length, certain facts are clear. Apparently till today the dispute in between the two rival groups in the Trust is pending before the Charity Commissioner as to who is the legally appointed Chairman of the Governing Body and who are the valid trustees of the Trust. As the dispute regarding the validity of the trustees of Trust and Chairman of the Governing Body is not yet decided by the Charity

Commissioner, in this Writ Petition we need not consider which one is the authorised Governing Body and who is the validly appointed Chairman of the Trust and whether the post of Deputy Chairman has any legal sanctity.

9. However, undisputedly on 18.07.1994 initially the petitioner was appointed as Assistant Professor who subsequently became Associate Professor and In-charge Principal of P.E.S. College of Engineering.

10. It is also not disputed that in the year 2010 permission was granted to start a Polytechnic College by A.I.C.T.E. and accordingly P.E.S. Polytechnic College was started and on 10.07.2010 additional charge of the Principal of Polytechnic College was given to the petitioner. Undisputedly, on 10.06.2011 the petitioner was placed under suspension and respondent No.1 was appointed as In-charge Principal of P.E.S. Polytechnic College. It is also not disputed that the petitioner handed over the charge of In-charge Principal of P.E.S. Polytechnic College to respondent No.1 on 16.06.2011. Subsequently the petitioner challenged his suspension order by filing Writ Petition No.949 of 2013 and by passing order dated 04.08.2014, this Court revoked the suspension order of the petitioner. During the interregnum period, Departmental Enquiry was initiated against the petitioner and he was terminated on 15.03.2015. However, by passing an order in Writ Petition

No.949 of 2013, this Court held that Enquiry Committee appointed by the Society is in breach of Rule 36 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 Rules. This Court also held that suspension order was passed without obtaining prior permission of the Authority and the period of enquiry was not extended with prior approval of Deputy Director of Competent Authority. In the result, this Court set aside the suspension order and Enquiry Committee constituted by the Society.

11. The record shows that the petitioner filed Writ Petition No.9301 of 2016 with Contempt Petition No.706 of 2016 in Writ Petition No.949 of 2013. In that proceeding on 09.02.2017, the People's Education Society made a statement before the Court that the petitioner can join duty on 20.02.2017 and there will not be any hurdle in that regard. The record further shows that on 25.01.2017 the petitioner was reinstated as In-charge Principal of P.E.S. Polytechnic College, in accordance with the Resolution dated 23.01.2017 passed by the Governing Body of the Society. Thus, the order of termination of petitioner has become non-est. The panchnama dated 22.03.2017 indicates that the petitioner obtained one-sided charge of the post of In-charge Principal of P.E.S. Polytechnic College though respondent No.1 was reluctant to hand over the charge. In fact, as per the Resolution of Governing Body dated 23.01.2017, the respondent No.1 was already placed under

suspension on 25.01.2017. Therefore, on 22.03.2017 i.e. on the date of taking charge of the post of In-charge Principal of P.E.S. Polytechnic College, the question of charge with respondent No.1 does not arise. From the record it also emerges that subsequently the suspension order of respondent No.1 was set aside by this Court by passing order in Writ Petition No.9205 of 2017 dated 21.02.2018. However, no substance is placed on record which indicates that after 21.02.2018 respondent No.1 has obtained charge of In-charge Principal of P.E.S. Polytechnic College from the petitioner. Thus, obviously on the date of filing of this petition, the petitioner had control over the P.E.S. Polytechnic College as an In-charge Principal.

12. Considering the rival contentions of respondent No.1 and respondent No.3, there is every possibility of interference by respondent No.1 in the functioning of petitioner as In-charge Principal of P.E.S. Polytechnic College. Therefore, only prohibitory order can be passed in favour of the petitioner. The respondent No.1 is prohibited from interfering the functioning of petitioner as In-charge Principal of P.E.S. Polytechnic College, till the dispute regarding validity of the post of Chairman, Trustees of the Trust and validity of Governing Body of the Society is finally adjudicated by the Competent Authority under Maharashtra Public Trust Act or a regular Principal is appointed by local Governing Body of the Trust

and the same is hereby passed.

13. Writ Petition is allowed. Rule is made absolute in aforesaid terms. No costs.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

14. At this stage, learned Senior Counsel appearing for respondent No.1 seeks stay of the present order for a period of eight weeks. Learned Counsel for the petitioner opposes the said request.

15. Considering the fact that respondent No.1 is prohibited under the present order, the operation of the present order is stayed for a period of three weeks from today.

16. Needless to state that on lapse of three weeks, the present order of stay would cease to operate.

(SUNIL K. KOTWAL)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

vdd/