

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

WRIT PETITION NO.9018 OF 2018

1. Sindkheda Taluqa Education Trust,
Sindkheda, Through its Chairman
Ramesh Shivdas Desale,
Age : 64 years, Occ : Social Work,
R/o Sindkheda, Tq. Sindkheda,
Dist. Dhule.
2. Smt. Surekha Daulat Thakur
Age : 56 years, Occ : Headmistress,
Smt. Meerabai Fulchanddas Shah
Girl's High School, Sindkheda,
R/o Sindkheda, Tq. Sindkheda,
Dist. Dhule.

PETITIONERS

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary),
Zilla Parishad, Dhule.
3. Shri Rajayasingh Dhansingh Rajput
Age : 56 years, Occ : Assistant Teacher,
Mulla Haidar Ali Shaikh Shamshoddin
High School, Sindkheda,
Tq. Sindkheda, Dist. Dhule.

RESPONDENTS

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Mr. V.D. Sapkal, Advocate for the petitioners
Mr. K.N. Lokhande, A.G.P. Respondent Nos.1 and 2.
Mr. Amol S. Sawant, Advocate for Respondent No.3

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**CORAM: S.S.SHINDE &
K.K. SONAWANE, JJ.**

**RESERVED ON : 27.11.2018
PRONOUNCED ON: 20.12.2018**

JUDGMENT (Per S.S.Shinde, J.):

Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition is filed with the following prayer :-

"B) To quash and set aside order dated 26-07-2018 issued by Education officer authorizing respondent No.3 to look after administration of Smt. Meerabai Fulchanddas Shah Girl's High School, Sindkheda, cancelling approval dated 24-07-2018 in favour of petitioner No.2, (Exhibits-G), by issuing appropriate writ, order or direction in the nature of writ or as the case may be."

3. It is the case of the petitioners that petitioner no.1 Sindkheda Taluqa Education Trust, Sindkheda (hereinafter referred to as "the petitioner - trust") is an educational institution registered under the Bombay Public Trusts Act, 1950 and Societies Registration Act, 1860. The petitioner - trust is running three Secondary Schools, viz:- Smt. Meerabai Fulchanddas Shah Girl's High School, Sindkheda, Anglo Urdu High School, Sindkheda and Mulla Haidar Ali Shaikh Shamshoddin High School, Sindkheda and is maintaining the common seniority list of all the employees working in said three schools.

4. It is the case of petitioners that petitioner no.2 is a lady teacher, belonging to Scheduled tribe category. Petitioner no.2 was possessing SSC D.Ed. qualification

therefore, she came to be appointed on permanent vacant post of assistant teacher on 30th September, 1982. So also petitioner no.2 completed her B.Ed.

5. It is the case of the petitioners that in the year 2016-2017, the common seniority list was prepared by petitioner - trust, showing petitioner no.2 at serial No.19. The said seniority list later on corrected as petitioner's seniority was countered from 2000. Thereafter petitioner No.2 was promoted as Headmistress and was posted at Anglo Urdu High School. Petitioner no.2 was thereafter transferred on 1st June, 2017 to Girls' High School from Anglo Urdu High School, as the post of Headmistress was fallen vacant due to retirement of Smt.Jyoti Shah. The Education Officer has granted approval to the services of petitioner No.2

as Headmistress on 24th July, 2018.

6. It is the further case of the petitioners that the Education Officer, all of sudden on 26th July, 2018, withdrawn the approval granted in favour of petitioner no.2 and appointed Respondent No.3 and granted authorization in his favour to make signatures and to look after the affairs of the said school. Hence this Writ Petition challenging the order dated 26th July, 2018 passed by Education Officer.

7. Learned counsel appearing for the petitioners submits that petitioner no.2 has been appointed as Headmistress on 1st June, 2017 in Anglo Urdu High School, Shindkheda run by petitioner no.1. Thereafter the Education Officer granted approval to the post of petitioner as Headmistress.

Thereafter one post of Headmistress has been fallen vacant in Smt. Meerabai Fulchanddas Shah Girl's High School Sindkheda and present petitioner no.2 was only senior-most lady teacher, therefore, she was transferred in the aforementioned school as Headmistress on 1st November, 2017. Thereafter, the Management forwarded the proposal for approval of appointment of petitioner no.2 as Headmistress. The Education Officer approved the services of petitioner no.2 as Headmistress on 24th July, 2018. However, all of a sudden the Education Officer illegally and malafide by order dated 26th July, 2018 cancelled the earlier order dated 24th July, 2018 and appointed Respondent No.3 as Incharge Headmaster for the purpose of administration and signature.

8. Learned counsel submits that

petitioner no.2 is continuously working as Headmistress of the said school. Even otherwise there is no senior most lady teacher available in the School except petitioner no.2. Learned counsel submits that in view of sub-rule (4) of Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (Hereinafter referred to as "the Rules of 1981"), it is mandatory in case of girl secondary school or junior college, senior-most lady teacher should be appointed, and in the present case, petitioner no.2 being the senior-most lady teacher, came to be appointed as Headmistress. The approval to her appointment as Headmistress was also granted by the Education Officer. However, suddenly the said approval granted by the Education Officer has been cancelled and Respondent No.3 has been appointed as

Incharge Headmaster. Learned counsel further submits that, while passing the said impugned order, the Education Officer has not recorded any reasons for cancelling the earlier order.

9. Learned counsel submits that the Education Officer has passed the impugned order dated 26th July, 2018 without issuing any show-cause notice or without hearing the petitioners. It is submitted that on permanent vacant post, it is necessary to have permanent full time Headmaster. It is also submitted that, sub-rule (3) of Rule 3 clearly mandates that, neither the Management nor the Education Officer shall continue the person as Headmaster/Headmistress on adhoc basis. However, in the present case, petitioner no.2 is appointed as permanent Headmistress and now she is transferred to other school and without considering the said

fact, the Education Officer has illegally and malafide revoked the earlier order contrary to the provisions of Rule 3 of the Rules 1981.

10. Learned counsel submits that, it is the prerogative of the Management to appoint suitable person as Headmaster/Headmistress, and in the present case petitioner no.2 being suitable lady, initially appointed as Headmistress in Anglo Urdu High School and thereafter she was transferred to Girls Secondary School in view of rule 3(4) of the Rules of 1981. However, Education Officer without there being any authority has cancelled the approval dated 24th July, 2018 and given authorization to Respondent No.3 to look after the affairs and administration of the said school for a period of six months. Learned counsel further submits that the

impugned order passed by the Education Officer is nothing but reviewing the earlier order granting approval to the petitioner as Headmistress. In support of his contentions, learned counsel relied upon the judgment in the case of Ashok Yashwant Nikam V/s Chatrapati Shivaji Vidya Prasarak Mandal, Nasik and others¹. Therefore, learned counsel appearing for the petitioners submits that the Petition may be allowed.

11. Learned A.G.P. appearing for the respondent/State and learned counsel appearing for respondent No.3, relying upon the affidavit in replies filed on behalf of respective respondents, submits that the impugned order passed by Respondent No.2 is legal and proper. They submit that there is dispute between the Management and the same is pending before the Assistant Charity

¹ 2009(3) Bom.C.R. 19

Commissioner, Dhule. It is submitted that petitioner no.1 has no authority to make appointments, prepare seniority list, promotions and to administer the day to day business of the petitioner - trust, and therefore, the appointment of petitioner no.2 as Headmistress made by petitioner no.1 is not legal and proper.

12. We have heard learned counsel appearing for the petitioners, learned A.G.P. appearing for the respondent/State and learned counsel appearing for respondent No.3. We have carefully perused the pleadings in the Petition, grounds taken therein and replies filed by the respective respondents.

13. Upon careful perusal of the documents placed on record, it appears that petitioner no.1 - trust is running three

different secondary schools in Sindkheda and is maintaining the common seniority list of all the employees working in three secondary schools. As per the provisions of sub-rule (3) of rule 3 of the Rules of 1981, it is mandatory on the part of the Management to appoint the senior-most teacher on the post of Headmaster/Headmistress. Therefore, petitioner no.1 Management after following due procedure of law, has appointed petitioner no.2 as Headmistress of the said secondary school being the senior-most lady teacher and the Education Officer has also granted the approval to her services as Headmistress on 24th July, 2018. Thereafter, petitioner no.2 was transferred from one secondary school to another secondary school run by the petitioner no.1- Management. Respondent No.2 – Education Officer without giving proper opportunity of hearing to the

petitioners has passed the impugned order dated 26th July, 2018 thereby cancelling the earlier order dated 24th July, 2018.

14. Sub-rule (4) of Rule 3 of the Rules of 1981 specifically provides that in girls secondary school or Junior College of Education for Women, the senior-most lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service, shall be appointed as the Head of that school irrespective of her seniority vis-a-vis the male teachers. In the present case, petitioner no.2 is senior-most lady teacher and is appointed as Headmistress of the Girls Secondary school. So also the Education Officer has granted approval to her appointment as Headmistress. Therefore, there was no reason for the Education Officer to

cancel the earlier order granting approval by passing the fresh impugned order that too without hearing the Management and appointing new part time Headmaster.

15. It is also necessary to mention here that it is the prerogative of the Management to appoint suitable person as Headmaster/Headmistress and in the present case, the Management has appointed petitioner no.2 being suitable lady as Headmistress of the said school, who is senior-most lady teacher. So also the approval is granted by the Education Officer to her appointment as Headmistress.

16. In the light of discussion made herein-above, we pass the following order :-

ORDER

(i) An appointment of Respondent No.3 Rajayasingh Dhansingh Rajput, by the impugned order as Incharge Headmaster for six months w.e.f. 26th July, 2018, will come to an end on expiry of the said period. No fresh appointment or extension be granted to Respondent No.3.

(ii) We direct petitioner no.1 Management to send fresh proposal for approval to the appointment of petitioner no.2 as Headmistress of Smt. Meerabai Fulchanddas Shah Girl's High School, Sindkheda. After receipt of such proposal, Respondent No.2 – Education Officer to consider the said proposal of petitioner no.1 – Trust, and take decision as expeditiously as possible and preferably within one month from receipt of such proposal and submit the report to this Court.

(iii) Needless to observe that Respondent No.2 while taking such decision shall adhere to the relevant procedure as contemplated under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules made thereunder and shall decide the same, in accordance with law.

(iv) The Education Officer shall give opportunity of hearing to the petitioners and other affected party while deciding such proposal.

(v) Rule made absolute in above terms. Writ Petition stands disposed of accordingly.

List on 18th February, 2019, under caption "For Compliance" of the directions issued hereinabove.

(K.K. SONAWANE, J)

(S.S.SHINDE, J)