

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12442 OF 2017

Gulab Tukaram More

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

WITH
CIVIL APPLICATION NO. 449 OF 2018

Shri Santosh S. Jadhavar, Advocate for the Petitioner.

Mrs. M. A. Deshpande, A.G.P. for Respondent No. 1.

Respondent No. 2 served.

Shri V. S. Bedre, Advocate for Respondent No. 3.

Shri P. S. Dighe h/f Shri V. R. Dhorde, Advocate for the Intervenor.

CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.

DATE : 8th February, 2018

PER COURT :

1. The petitioner assails the order dated 14.7.2017 passed by respondent No. 2, thereby cancelling the order dated 3.1.2012 passed by the Education Officer granting approval to the appointment of petitioner as a Headmaster.

2. Mr. Jadhavar, learned advocate for the petitioner submits

that the other senior teachers of the school at the relevant time had refused to accept the post of Headmaster. Thereafter, on 31.1.2011 the petitioner was appointed / promoted as a Headmaster by respondent No. 3. On 3.1.2012, the appointment of the petitioner as a Headmaster was approved by the Education officer. The petitioner since the date of his promotion as a Headmaster is functioning as a Headmaster and performing his duties as Headmaster. The learned counsel submits that upon the complaint of one person the Education Officer cancelled the approval granted by him on 3.1.2012 under order dated 14.7.2017. The learned advocate submits that the Education Officer does not have power to cancel the approval granted by him. It is the choice of the management to appoint / promote a particular person as a Headmaster and if any person is aggrieved the aggrieved person has to approach the School Tribunal

3. Mr. Dighe, learned advocate appears for the intervenor and submits that in the seniority list maintained by the Institution the intervenor is a seniormost teacher. The seniormost teacher has to be appointed as a Headmaster. The same is a mandate of

Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 (*hereinafter referred to 'MEPS Rules'*). Further under Sub-Rule 6 of Rule 3 of the MEPS Rules, the Education Officer has the power to direct the management to cancel the appointment made without following the procedure laid down in Rule 3 of the MEPS Rules. The intervenor was terminated in the year 1998, as such, had filed an appeal before the School Tribunal. The appeal filed by the intervenor before the School Tribunal came to be allowed on 11.1.2013. The School Tribunal directed the Institution to reinstate the intervenor with continuity in service. In view of that, the intervenor being the seniormost teacher had a right to be appointed as a Headmaster and the same has been considered by the Education Officer by resorting to Sub-Rule 6 of Rule 3 of the MEPS Rules.

4. Mr. Bedre, learned advocate for the institution submits that after the order impugned was passed by the Education Officer, the institution has issued an appointment order to the intervenor to officiate as a Headmaster. The said order was also

not accepted by the intervenor and even the salary bills are not submitted by intervenor.

5. In the present writ petition, we are only required to consider the legality of the impugned order passed by the Education Officer cancelling the approval granted to the appointment of the petitioner as a Headmaster on 3.1.2012.

6. The following facts are undisputed-

I] The petitioner was appointed / promoted to the post of Headmaster on 31.1.2011.

II] The appointment of petitioner as a Headmaster is approved by the Education Officer on 3.1.2012.

III] No objection was raised to the appointment of the petitioner before the Education Officer when the appointment of the petitioner was approved on 3.1.2012.

IV] Pursuant to the appointment of petitioner as a Headmaster the petitioner was functioning as a Headmaster.

V] The intervenor was terminated from service in the

year 1998 and the appeal filed by the intervenor is allowed by the School Tribunal on 11.1.2013, directing reinstatement with continuity in service.

7. The question would be the powers of the Education Officer to cancel the approval granted to the petitioner as a Headmaster.

8. Rule 3 of the MEPS Rules, lays down the procedure for promoting a person as a Headmaster. Rule 3 of the MEPS Rules prescribes promotion of the seniormost eligible and qualified teacher to be promoted as a headmaster. Rule 3 Sub-Rule 3 of the MEPS Rules also speaks on the same lines. Sub Rule 6 of Rule 3 of the MEPS Rules gives power to the Education Officer to direct the management to cancel the appointments made without following the procedure laid down in the rule.

9. At the time the petitioner was appointed as a Headmaster and approval was granted to his appointment as a Headmaster, there is no grievance that the procedure as laid down in Rule 3 of the MEPS Rules was not followed. At the relevant time, the intervenor was under orders of termination and was not in

service. The appeal filed by the intervenor came to be allowed only on 11.1.2013. At that time, the petitioner was appointed as a Headmaster. The procedure it appears was followed. Sub-Rule 6 of rule 3 of the MEPS Rules would come into operation at the time of appointment of a person as a Headmaster. At the relevant time there is no dispute that the procedure was followed and intervenor could not have laid her claim to the post of Headmaster being under termination.

10. Subsequently, if the appeal of the intervenor is allowed, then it is for the intervenor to take steps in appropriate proceedings. However, that would not give right to the Education Officer to direct the management to cancel the appointment already made by following due procedure and so also cancel the approval.

11. In the light of above, the impugned order is quashed and set aside. The writ petition accordingly disposed of. No costs.

12. Apart from the legality of the order passed by the

Education officer, we have not considered any other aspect of the matter. The parties are at liberty to take recourse as is permissible in law. Our observations are limited to the legality of the order passed by the Education Officer.

13. In view of disposal of the writ petition, civil application also stands disposed of.

[A. M. DHAVAL, J.]

[S. V. GANGAPURWALA, J.]

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