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

WRIT PETITION NO.11512 OF 2017

Saraswati Shikshan Sanstha
Gurdhal, Tal. Deoni, District Latur
through its President
Yunus Ali Mohd. Ali Patel ... PETITIONER

VERSUS

The State of Maharashtra & ors. ... RESPONDENTS

.....
Shri S.S. Thombre, Advocate for petitioner
Shri S.S. Dande, A.G.P. for State
Shri K.J. Ghote Patil, Advocate for respondent No.5
.....

CORAM: PRASANNA B. VARALE AND
MANISH PITALE, JJ.

DATED : 11th OCTOBER, 2018.

ORAL ORDER :

1. The petitioner is before this Court with the following prayers :

(B) By issuing writ of mandamus or any other writ, order or directions in the like nature, direct the respondent No.3 not to accept the pay bills of the respondent No.5 and not to release the salary of the respondent No.5 and for that purpose issue necessary orders;

(C) By issuing writ of mandamus or any other writ, order or directions in the like nature, the

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respondent No.3 may kindly be directed to grant approval to the Incharge Headmaster by namely, Shri Suryakant Dattatraya Yeole and for that purpose issue necessary orders;

2. The petitioner though claims to be the President and submits that he is prosecuting the petition on behalf of the petitioner Saraswati Shikshan Sanstha, Gurhal, Taluka Deoni, District Latur, no documents in the nature of any resolution passed by the institute authorising the petitioner as a President to prosecute the petition is placed on record. It seems that, on perusal of the documents placed on record, it reveals that, there was a chequered history of the petitioner himself approaching this Court time and again.

3. Learned counsel Mr. Thombre, by inviting our attention to certain documents, submitted before us that a change report is submitted to the competent authority on 19.12.2016. It is further submission before us by the counsel that, the change report is pending awaiting a decision of the competent authority and the elections were conducted and the new body was elected, and the petitioner is elected as a President. It is not in dispute that there is a change report making a rival submission that, another body is elected in the elections. It was the submission of Mr. Thombre that the respondent No.5 is working in dual capacity. She is working as the Head Mistress of the school and she is also one of the elected

member of the warring group. Now it is not very uncommon to state that most of the institutes suffer the curse of the warring group and this situation leading to series of litigations and then the attempts are made to show their power by each of the group. Be that as it may.

4. The learned counsel submitted that the respondent No.5 is acting in dual capacity i.e. Head Mistress of the school and alleged member of the another group.

5. Mr. Ghute, the learned counsel submitted that, the respondent No.5 is selected as Member subsequent to her appointment. Thus, there is again dispute on the factual position. The submission of the learned counsel is that, as the respondent No.5 is not the authorised person, directions be issued to the authorities namely the respondent No.3 not to accept the pay bills and not to release the salary of respondent No.5 and for that purpose issue necessary orders. Now this prayer would lead to nothing but a chaos. If these submissions are accepted, it will lead to a situation where, because of the fighting between the two groups, an attempt to take over the institute, the other teachers who are no way concerned with this fight between the two groups would be the sufferer as the whole exercise would be stalled if the submissions of the petitioner are accepted and the directions are issued to the authorities. This Court, in no case, can permit to lead to this effect on the backdrop of the disputed

questions of each and every fact of the petition.

6. It may not be out of place to state that, the petitioner had earlier approached this Court by filing Writ Petition No.6650/2007. The petitioner, at that point of time, submitted before this Court that he is the Secretary of the Institute. It would be necessary to refer to the observations of this Court on the backdrop of this fact :

“2. Since this petition did not disclose as to when the petitioner came to be elected as the Secretary and also as this petition did not disclose as to whether a resolution has been passed by the Trustees authorizing the petitioner to file a petition, this Court had solicited certain information from the learned counsel representing the petitioner. Accordingly matter came to be adjourned from time to time and learned counsel for the petitioner states that the petitioner who poses himself to be the Secretary today, had been elected as the Secretary of the Trust in the year 2000. Indisputedly the term of the office of the Secretary was for five years. It is further stated that change report bearing No.829 of 2000 pertaining to the election of the petitioner is pending consideration before the Assistant Charity Commissioner, Latur. Learned counsel for the petitioner was candid enough to admit that another change report bearing No.558 of 2006 is pending consideration before the Assistant Charity Commissioner, Latur wherein it is alleged that in the year 2006 elections were held in which the petitioner was not elected as the Secretary but was elected as a Member. At present therefore, some one else has been elected as Secretary and President and a

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change report in respect of that is pending.

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4. The petitioner has also not annexed along with this petition a copy of the resolution by which the trust had authorized the petitioner to file this petition. This is obviously a petition which is filed by a person who poses himself to be a Secretary and this is an exercise of witch hunt in respect of approval granted to respondent No.3. This Court cannot countenance such frivolous petition being filed. A request was made by learned counsel for the petitioner for permission to withdraw the petition, which we have refused. In the light of the fact that the petitioner has no locus standi to file the petition, we dismiss the petition with no order as to costs.

(Emphasis supplied).

7. Then again another petition was filed by the very petitioner namely, Writ Petition No.5894/2010 claiming himself to be the Secretary of Saraswati Shikshan Sanstha. Even the name of the petitioner is written in the order of this Court dated 30.6.2011 and the order of this Court, dated 30.6.2011 in Writ Petition No.5894/2010 reads thus :

“1. The petition has been filed by a person, who claims to be the Secretary of the Saraswati Shikshan Sanstha. Although he is not named in the cause title, the petition has been affirmed by Yunus Ali Mohammad Ali Patel, Secretary of the Saraswati Shikshan Sanstha.”

This Petition No.5894/2010 was rejected. Thus, it can safely be said that the petitioner is time and again approaching this Court claiming himself either to be the Secretary or the President without there being anything on record to show that he is an authorised person to file the petition before this Court.

8. It is submitted by the learned counsel Mr. Thombre for the petitioner that a request is made to the Education Officer by submitting a representation and the petitioner brings to the notice of the Education Officer, the credential of the respondent No.5. It is not in dispute that this application/ representation is pending before the Education Officer. We are of the opinion that as there are many disputed questions of facts raised in the petition, the petition cannot be entertained by this Court, but the direction can be issued to the Education Officer to decide the application dated 10.10.2016, if pending before him, as expeditiously as possible within ten weeks from the date of order of this Court. We further make it very clear that, the Education Officer is also at liberty even to consider the aspect that whether the application is presented by an authorised person. Thus, the order of this Court may not be treated as if we have accepted the submission of the petitioner that he is the only authorised person to make an application before the Education Officer being the President of institute. This issue is kept open for consideration of the Education Officer while deciding the application. We further

make it clear that the order of this Court should not be treated as any rider for the course which is being adopted for disbursement of salaries of the employees. If the salaries of the employees are being disbursed by any mode, the same mode would be in operation till the decision of the Education Officer and there should not be any attempt to create hurdle in that course of disbursement of the salaries of the employees by any of the parties. The Education Officer may even consider the observations of this Court in Writ Petition No.6650/2007 and Writ Petition No.5894/2010, referred to by us, while considering the applications.

9. The petition is accordingly disposed of with above directions.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-