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

WRIT PETITION NO. 14974 OF 2017

Shri. Chakradhar Shikshan and Samaj
Prabodhan Mandal, Pangari Road,
Beed, through its Secretary
Vivek s/o Mohanrao Sirsat,
Age: 27 years, R/o Chakradhar Nagar,
Beed, Tal & District Beed ..PETITIONER

VERSUS

1. The State of Maharashtra,
through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai
2. The Director of Education,
Maharashtra State, Pune
3. The Deputy Director of Education,
Aurangabad Division, Aurangabad
4. Govind s/o Bapurao Jotkar,
Age: 41 years, Occu: Nil,
R/o Gajanan Nagar,
Nalwani Road, Beed,
Tal. & District Beed ..RESPONDENTS

Mr S. S. Thombre, Advocate for petitioner;
Mr C.S. Kulkarni, A.G.P. for respondent Nos.1 to 3;
Mr S. S. Deshmukh, Advocate for respondent No.4

WITH

WRIT PETITION NO. 11753 OF 2017

Govind s/o Bapurao Jotkar,
Age: 37 years, Occu: Nil,

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R/o Gajanan Nagar,
Nalwani Road, Beed,
Tal. & District Beed

..PETITIONER

VERSUS

1. The State of Maharashtra,
through Deputy Director of
Education, Aurangabad Division,
Aurangabad
2. The Education Officer (Secondary),
Zilla Parishad, Beed
3. Chakradhar Shikshan Va Samaj
Prabodhan Mandal, Chakradhar Nagar,
Pangri Road, Beed – 431122
through its President
4. Shri Chakradhar Madhyamik Vidyalaya,
Beed, District Beed, Canal Road,
Beed 431122,
Through its head Master

..RESPONDENTS

Mr S. S. Deshmukh, Advocate for petitioner;
Mr C.S. Kulkarni, A.G.P. for respondent Nos.1 & 2;
Mr S. S. Thombre, Advocate for respondent Nos.3 & 4

**CORAM : PRASANNA B. VARALE &
S. M. GAVHANE,JJ.**

DATE : 31st JULY, 2018

ORAL ORDER :

The petitioner in Writ Petition No. 14974
of 2017 is an education institute and by way of
present petition, the petitioner challenges the

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order passed by the Deputy Director of Education, Aurangabad dated 22nd March, 2017.

2. Mr. Thombre, learned Counsel appearing for the petitioner submitted that respondent No.4 filed writ petition in this Court raising grievance about unpaid salary for work done by him in the school run by petitioner institution. Mr. Thombre, learned Counsel, by inviting our attention to the order passed by the Division Bench of this Court dated 2nd July, 2015, submitted that the claim of respondent No.4 who was petitioner in Writ Petition No.10025 of 2014 was contested and countered by the submissions that respondent No.4 was never appointed by the petitioner institute.

3. Mr. Thombre, learned Counsel appearing for the petitioner submitted that in view of the rival claims of the parties, Division Bench of this Court was pleased to dispose of the petition with directions to the Deputy Director of Education to pass appropriate orders on hearing the parties.

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The contentions raised by the parties were kept open. He then submits that the parties were relegated to the Deputy Director of Education to decide the matter within stipulated time frame i.e. six months from the date of the order of this Court.

4. Mr. Thombre, learned Counsel, by inviting our attention to the applications submitted by the Secretary and President of the petitioner institute, submitted that the Deputy Director of Education issued notice dated 9th March, 2017 intimating the parties date of hearing i.e. 17th March, 2017. He submitted that due to unavoidable circumstances, Secretary and President of the petitioner institute were unable to attend the hearing. He further submitted that the Secretary himself was not keeping good health, whereas the President was required to shift his mother to Pune for providing her medical treatment. A request was made for adjourning the matter. He then submitted that without passing order on the application

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seeking adjournment, Deputy Director of Education proceeded with the matter and hearing was taken on 17th March, 2017. The Deputy Director of Education passed the order on 22nd March, 2017. The Deputy Director of Education, in its operative order, held that the school being run by the petitioner institution namely Shri. Chakradhar Madhyamik Vidyalaya, Beed is a recognized private secondary school on non grant basis. The provisions of MEPS rules are applicable to the management. Respondent No.4 Govind s/o Bapurao Jotkar though was working in the school, there was no approval granted in favour of respondent No. 4 and as the school is running on non grant basis, the management to disburse the salary/payment to respondent No.4 for the period of 15th June, 2010 to 26th August, 2014.

5. Mr. Thombre, learned Counsel appearing for the petitioner, heavily attacking on the order impugned in the petition, submits that the order passed by the Deputy Director of Education is in clear defiance to the order of the Division Bench.

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He submits that the Deputy Director of Education proceeded to hear the matter referred the presence of the parties, namely, Education Officer, respondent No.4, head master Shri Bajrang Keshavrao Bangar, Deputy Director Shri Bhaskarrao Babar, as well as Deputy School Inspector Shri Devidas Borse. He then submits that Deputy Director of Education in its order specifically states that Secretary and President of the institution are absent. He then submitted that on a query put by the Deputy Director of Education, head master who was present as representative of the institution, only orally submitted and his submissions were countering the claim of respondent No.4.

6. Mr. Thombre, learned Counsel appearing for the petitioner submitted that the Division Bench of this Court, in its order dated 2nd July, 2016, in clear and unambiguous words observed that rival claims are made by the parties. The petitioner institution was one of the contesting party in Writ Petition No. 10025 of 2014. The Division Bench of

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this Court further observed that the dispute with regard to genuineness of attendance register inspection done and counter signature of head master will have to be tested and then Division Bench directed the Deputy Director of Education to pass orders by giving opportunity of hearing to the parties. He submits that the order passed by the Deputy Director of Education is without giving opportunity of hearing to the petitioner and as such, opportunity which is granted by this Court in the order dated 22nd July, 2016 ought to have been an opportunity in letter and spirit. Non grant of opportunity of hearing to the petitioner results in non observance of principle of natural justice and leads to make an order impugned unsustainable is the submission of Mr. Thombre, learned Counsel.

7. Per contra, Mr. Deshmukh, learned Counsel appearing for respondent No. 4 made an attempt to support the order of Deputy Director of Education. It was submission of Mr. Deshmukh, learned Counsel that the Deputy Director of Education was duty

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bound to decide the matter expeditiously as directed by this Court and as the representative of the petitioner institution was before the Deputy Director of Education and the Deputy Director of Education, upon hearing the head master passed order.

8. Learned A.G.P. also made an attempt to support the order passed by the Deputy Director of Education impugned in the petition by relying upon the affidavit filed on record.

9. Though Mr. Deshmukh, learned Counsel and learned A.G.P. made an attempt to support the order passed by Deputy Director of Education, we are unable to accept these submissions. On the contrary, we find considerable merit in the submissions of Mr. Thombre, learned Counsel appearing for the petitioner, as it is not in dispute that the Division Bench relegated the matter to the Deputy Director of Education directing him to take a decision and also make it

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clear that the parties must get an opportunity of hearing in view of rival claims made by the parties before this Court. Then it was necessary for the Deputy Director to give that opportunity and follow principle of natural justice in letter and spirit. The documents placed on record show that Secretary and President of the institution specifically submitted their applications seeking an adjournment on the personal difficulty of these persons.

10. Though it was submitted by Mr. Deshmukh, learned Counsel and learned A.G.P. that as a time frame was fixed by this Court, the Deputy Director of Education thought it fit to decide the matter expeditiously and as such order is passed, considering the factual aspects namely, Division Bench passed order on 2nd July, 2015 and directed the Deputy Director of Education to undertake exercise of passing orders within stipulated period of six months, Deputy Director of Education issued notice at belated stage i.e. on 9th March, 2017 and date of hearing was fixed on 17th March, 2017. In

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such a situation, Deputy Director of Education could not have taken a stand that as the matter was getting delayed and time frame fixed by this Court was getting exhausted, he was left no choice but to pass orders.

11. Considering above referred facts, we find considerable merit in the submissions of Mr. Thombre, learned Counsel appearing for the petitioner.

12. Resultantly, we quash and set aside the order impugned in the present petition, passed by the Deputy Director of Education, dated 22nd March, 2017. We direct the Deputy Director of Education to pass afresh order in view of the order of this Court dated 2nd July, 2015 before 1st September, 2018. We direct the parties to appear before the Deputy Director of Education on 13th August, 2018. Parties may submit their written submissions or material in support of their submissions before the Deputy Director of Education on the very day i.e.

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13th August, 2018. If the parties pray for personal hearing, the Deputy Director of Education may consider the request and if the Deputy Director of Education is of the opinion that opportunity of personal hearing be granted to the parties, he may grant one date for personal hearing after receipt of such request. We further make it clear that all this exercise is to be concluded within one month and the order be passed by the Deputy Director of Education before 1st September, 2018.

13. The petition is disposed of accordingly.

14. In view of order passed in Writ Petition No. 14974 of 2017, nothing survives in Writ Petition No.11753 of 2017.

15. Accordingly, both the writ petitions are disposed of.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE