

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

WRIT PETITION NO.11125 OF 2016

Shri.Gopalrao s/o.Narsingrao Hallale,
Age: 45 Years, Occu.Service as Head-master
of Balram Vidyalaya Hangarga (Ku),
Ta.Udgir, Dist. Latur
R/o. Hangarga (Ku), Ta.Udgir,
Dist.Latur.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Social Welfare and Special
Assistance Department,
Mantralaya, Mumbai-32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Latur.
4. Kai. Anusayabai Sikshan Sanstha
Hangarga (Ku) Ta. Udgdir,
Dist. Latur
Through its President/Secretary
5. Shri. Balaji s/o. Sitaram Tekale,
Age.50 years, Occu.Service as Teacher,
R/o. C/o.Balram Vidyalaya
Hangarga (Ku), Ta. Udgir,
Dist. Latur.

RESPONDENTS

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Mr.V.D.Salunke, Advocate for the petitioner
Mr.S.S.Dande, AGP for the respondent/State
Mr.V.D.Gunale, Advocate for respondent no.4.
Mr.D.S.Mali, Advocate for respondent no.5.

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**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 06.02.2018
Pronounced on : 26.02.2018

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

1] This Petition is filed with the
following prayer:

*B) By issuing appropriate writ, order
or directions the impugned order
dated 28/10/2016 issued by the
respondent no.3 – Education Officer
(Secondary) Zilla Parishad, Latur
thereby granting approval in favour
of the respondent no.5 for the post
of headmaster of Balram Vidyalaya
Hangarga (ku) Ta. Udgir, Dist. Latur
be quashed and set aside.
Consequently the petitioner be
allowed to work on the post of*

headmaster of Balram Vidyalaya Hangarga (ku) Ta. Udgir, Dist. Latur as per order dated 1/8/2016 passed by the respondent no. 3 and for that purpose necessary direction be issued.

2] Brief facts stated in the Petition are as under:

It is the case of the petitioner that the action of respondent no.3 granting approval in favour of respondent no.5 employee is illegal and *mala fide*. Respondent no.5 is admittedly junior than the petitioner. The approval to the appointment of respondent no.5 on the post of Headmaster has been granted, without canceling approval of the petitioner on the post of Headmaster, and without hearing the petitioner in view of the earlier order dated 1st August, 2006, issued by respondent no.3-Education Officer. Respondent no.3 without hearing the

petitioner and ignoring the order dated 1st August, 2016, which was also passed by respondent no.3, has passed the impugned order dated 28th October, 2016. The petitioner possesses required qualification for the post of Headmaster of the Secondary School. Being eligible and qualified, the petitioner came to be appointed as an Incharge Headmaster in Balram Vidyalaya Hangarga (Ku), Taluka Udgir, District Latur, run by respondent no.4 society. The selection of the petitioner on the post of Incharge Headmaster was made pursuant to the requisition made by respondent no.4. The petitioner came to be appointed on the post of permanent Headmaster as per the merit in the year 1999. Pursuant to the appointment of the petitioner on the post of Headmaster, he was granted approval on the said post by the concerned Education Officer. The petitioner has placed on record copy of the letter granting approval to the

appointment of the petitioner on the post of Headmaster.

3] It is further the case of the petitioner that since his initial date of appointment, he is discharging his duties sincerely and honestly to the satisfaction of respondent no.4 society. However, since last 2-3 years, there is dispute in the management of respondent no.4 society, wherein the President and Secretary i.e. daughter and father respectively, claim to be in the management. The petitioner is nothing to do with the internal dispute in the management. The Secretary, namely, Ramrao Shankarrao Bhosle, has indulged in committing illegalities and irregularities in the affairs of the management, and since the petitioner is opposed such illegality and irregular activities, and kept away himself from indulging in such activities of illegality and irregularity at the behest of

said Ramrao, and because of the same, the Secretary is annoyed with the petitioner. In the month of March, 2015, the Secretary of respondent no.4-society had decided to transfer the school in favour of some other society by taking some amount illegally. The petitioner opposed such transfer and because of intervention of the petitioner, the Secretary could not succeed in his attempt to transfer the school by accepting the amount illegally. As a result, the Secretary started harassing the petitioner by issuing false and frivolous notices. The petitioner relied those notices.

4] It is further the case of the petitioner that the Secretary, on 20th July, 2016, had submitted a proposal with respondent no.3-Education Officer stating therein that respondent no.4-society has reverted the petitioner from the post of Headmaster and has appointed respondent no.5

on the said post. After submitting such proposal, the President of the said society i.e. respondent no.4 had submitted application / representation with respondent no.3 – Education Officer stating therein that there is no Resolution passed by respondent no.4 society thereby reverting the petitioner from the post of Headmaster and for promoting respondent no.5 on the said post. Accordingly, the concerned Education Officer, upon hearing the Secretary, President and all concerned including the petitioner, passed the order on 1st August, 2016, observing that the proposal submitted by respondent no.4 society for approval on the post of Headmaster in favour of respondent no.5 cannot be granted in view of the contrary stand taken by the President and the Secretary, and in view of the fact that while reverting the petitioner, no action is taken as per the provisions of the Maharashtra

Employees of Private Schools [Conditions of Service] Regulation Act, 1977 ['Act of 1977' for short], and the Rules framed there under, 1981. The petitioner has placed on record copy of the order dated 1st August, 2016 passed / issued by respondent no.3—Education Officer. The petitioner has placed on record a letter written by the President of respondent no.4—institution. It is the case of the petitioner that the contents of the said letter would make it clear that the discussion in respect of the appointment of respondent no.5 on the post of Headmaster had never taken place before the Managing Committee. The Resolution taken by the said Secretary for appointment of respondent no.5 on the post of Headmaster and proposal prepared on the basis of the said Resolution, is with the forged signatures of the President. The order dated 28th October, 2016 impugned in this Petition is an outcome of

the *mala fide* exercise on behalf of the Secretary of respondent no.4—institution. The alleged appointment of respondent no.5 is illegal, arbitrary and in breach of principles of natural justice and ignoring the fact that the petitioner is senior most teacher, who has been appointed on the post of Headmaster in the year 1999. Since then, the petitioner is rendering continuous and satisfactory service as Headmaster.

5] Learned counsel appearing for the petitioner invites our attention to the pleadings in the Petition, annexures thereto, and also synopsis/written notes of argument, and submits that the order impugned in this Petition is passed without following the principles of natural justice and without canceling appointment of the petitioner as Headmaster, and therefore, on this ground alone the Petition deserves to be allowed.

6] At the cost of repetition, learned counsel for the petitioner invites our attention to the pleadings and grounds taken in the Petition and submits that, the Petition deserves to be allowed. Learned counsel appearing for the petitioner relying upon the exposition of law by the Supreme Court in the case of *Rajendra Vs. State of Maharashtra & others*¹ submits that in the facts of that case the Supreme Court held that abruptly canceling approval even without hearing concerned employees cannot be countenanced.

7] Respondent no.4 has filed affidavit-in-reply. It is stated in the said affidavit in reply that the petitioner, who is working as Headmaster of the School, has not been reverted from the post of Headmaster at any point of time. However, the Secretary of the society in his personal capacity has taken

1 2008 [11] SCC 90

so-called decision of reverting the petitioner and promoting respondent no.5 on the post of Headmaster. It is stated that there is no Resolution passed by the society under the signature of the President, so as to revert the petitioner and to submit the proposal in respect of appointment of respondent no.5 on the post of Headmaster. Considering this aspect of the matter, the concerned Education Officer, by order dated 1st August, 2016, has rejected the proposal submitted by the Secretary for seeking approval in favour of respondent no.5 instead of petitioner for the post of Headmaster. It is further stated that the Secretary of the society, namely, Ramrao Shankarrao Bhosle, who is interested to transfer the school in favour of some other institution, does not want the petitioner to work as Headmaster of the school, on account of his personal grudge. As such, the Secretary, without any

valid and proper resolution of the Managing Committee of the society, has submitted the proposal of respondent no.5 for approval which came to be sanctioned by the concerned Education Officer, without issuing any notice and affording an opportunity of hearing to the President, the petitioner and other concerned. The said act of Education Officer is absolutely illegal and improper in the light of his own order dated 01.08.2016, thereby rejecting the proposal of respondent no.5 and directing the petitioner to work on the post of Headmaster.

8] It is further stated that so-called Resolution alleged to have been passed by the society for seeking approval in favour of respondent no.5 in place of petitioner, is a fabricated resolution, as the signature appearing upon the said resolution is false and fabricated. However, without considering the said fact and without issuing any notice

to respondent no.4, the concerned Education Officer surprisingly proceeded to pass the impugned order, granting approval to respondent no.5, although the petitioner is already working on the said post, and he has not been reverted from the said post by the said society. The petitioner is admittedly the senior most teacher and as such, he is working on the said post since the year 1993, initially as Incharge Headmaster and from the year 1999 as permanent Headmaster. The work of the petitioner on the post of Headmaster is quite satisfactory and note worthy. In that view of the matter, there is no reason for the society to take any action against him. However, the Secretary of the society, in his personal capacity, is trying to harass the petitioner with an *ulterior motive* as he is opposing the act of Secretary to transfer the school in favour of some other institution, by accepting amount illegally.

Respondent no.4, in her capacity as President of the society, is always interested and concerned with the welfare and proper functioning of the school and she is also against the decision of the Secretary to transfer the school in favour of other institution by accepting the amount illegally. The petitioner is sincerely working on the post of Headmaster since his appointment on the said post. There are no complaints against him, however, the Secretary, who is having personal grudge against the petitioner, is trying to show that, some action is taken against them. The said action taken against the petitioner by the Secretary is in his personal capacity and the same has not been taken by the society by passing the appropriate Resolution. Moreover, respondent no.4, in her capacity of President of the society, pointed out to the Education Officer as well as the concerned

authorities that whatever action taken by the Secretary against the petitioner is illegal, and the same has not been taken by the society. Therefore, it was requested to ignore the said action and the petitioner be continued on the post of Headmaster, however, the concerned Education Officer, without calling upon the society, particularly the President of the society, proceeded to grant approval in favour of respondent no.5 without canceling the approval of the petitioner, which is highly illegal and improper.

9] Another affidavit in reply has been filed on behalf of respondent no.4 by one Shri Ramrao Shankarrao Bhosle, the Secretary of Kai. Anusayabai Shikshan Sanstha, Hangarga (Kh), Taluka Udgir, District Latur. It is stated in the said affidavit in reply that the Writ Petition filed by the petitioner is not maintainable. The petitioner has indulged in the several illegal activities, and due to

his act of gross misconduct, the management decided to hold an enquiry as he was found guilty on the grounds specified in sub-rule 5 of Rule 28 of the Maharashtra Employees of Private Schools Rules, and after completing the enquiry he was reverted from the post of Headmaster and continued him as an Assistant Teacher in the said school. The petitioner has not challenged the said order of reversion before the appropriate Forum and directly approached the High Court. Respondent no.5 is appointed as Headmaster. The proposal for approval was submitted to the Education Officer initially on 20.07.2016. It is stated that the petitioner misrepresented the Education Officer by placing so-called communication of the President of the management dated 20th July, 2016, and therefore, the Education Officer refused to grant approval to the promotion of respondent no.5, vide order dated 1st August,

2016. It is stated that so-called communication of the President dated 20th July, 2016, was never issued by the President, and the same is not signed by her. The signature of the President has been manipulated. The management submitted fresh proposal on 19th September, 2016, seeking approval to the appointment of respondent no.5 as Headmaster, and the said proposal was duly signed by the President as well as the Secretary of the said trust. The certificate duly signed by the Vice-President and Secretary of the said trust was also submitted to the Education Officer stating that there is no dispute in the management. After considering the said proposal and the certificate as mentioned above, the Education Officer has granted approval in favour of respondent no.5, vide order dated 28th October, 2016. It is stated in the said affidavit in reply that the petitioner, as a

Headmaster of the said school, misused the letter heads and stamp of the schools and by putting the fabricated signatures of the President, succeeded in getting rejected the earlier proposal submitted by the management on 20th July, 2016, for approval to the promotion of respondent no.5 due to reversion of the petitioner. The petitioner is reverted by the management, vide reversion order dated 8th July, 2016 from the post of Headmaster to the Assistant Teacher. His reversion was an outcome of the enquiry conducted against him for the various charges including the act of his misconduct, negligence of duties, misuse of powers, arrogant behaviour with the office bearers, act of disobedience, misappropriation of the amount and withdrawal of salary of the employees, who did not attend the duties and remain absent.

10] Learned counsel appearing for respondent nos.4 and 5 relying upon the

affidavit in reply filed by the Secretary submit that the petitioner has been reverted after enquiry of charges leveled against him, which were duly proved in the enquiry. The Enquiry Committee completed the enquiry and considering serious act of misconduct on the part of the petitioner and taking lenient view instead of dismissing him, the petitioner is reverted back to his original post of Assistant Teacher. Respondent no.5 is the senior most teacher, and therefore, in accordance with the sub-rule 4 of Rule 3 of the MEPS Rules, his proposal for appointment on the post of Headmaster was submitted to the Education Officer on 20th July, 2016. It is submitted that the Education Officer, after realizing that the proposal submitted by respondent no.4 for appointment of respondent no.5 was duly signed by the President and Secretary, granted approval to the appointment of respondent no.5 on the

post of Headmaster by the impugned order dated 28th October, 2016. Learned counsel submits that the complaints were received against the petitioner from the villagers and the various show cause notices were issued to the petitioner for his misconduct. Such notices were issued on 08.12.2015, 15.02.2016, 29.01.2016, 13.04.2016 and 25.04.2016. It is submitted that the petitioner submitted false documents by using letter heads and stamp of the President of respondent no.4 and submitted letter to the Education Officer that the Resolution to appoint respondent no.5 on the post of Headmaster was not discussed and to that effect no resolution was passed by the Managing Committee. In fact, the signature of the President on the said letter is forged, respondent no.5 was promoted on 11th July, 2016 and on the very same day he has taken charge of the post of Headmaster. The

petitioner is not attending the school, and has taken away the entire record of the school and not returning the said record to the school.

11] We have heard learned counsel appearing for the parties at length. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, rejoinder affidavit filed by the petitioner, and all other documents placed on record, and also affidavit in replies filed by the respective respondents and annexures thereto. The pleadings in the Petition and relief claimed would indicate that by the impugned order dated 28th October, 2016, respondent no.3 has granted approval in favour of respondent no.5 for his appointment on the post of Headmaster of Balram Vidyalaya Hangarga (Ku), Taluka Udgir, District Latur. Therefore, it is abundantly clear that the post of Headmaster which was occupied by the

petitioner, on the said post respondent no.5 has been appointed by respondent management as a Headmaster and approval is granted to his appointment. We have carefully perused the pleadings and grounds taken in the Petition and the documents placed on record by the petitioner, which would give rise to the disputed questions of fact. There is also dispute about whether respondent no.4 had signed certain documents or otherwise and whether his signatures on such documents are forged or otherwise. Apart from it, respondent no.4 has filed two affidavits and during the course of arguments, it is brought to the notice that enquiry was initiated against the petitioner and after enquiry the petitioner has been reverted back. When the petition gives rise to the disputed questions of facts, it is not desirable for the High Court to undertake exercise of adjudication of the disputed questions of facts and

further to appreciate the documents brought on record by the parties and then draw inferences or find out the evidentiary value of such documents. We find considerable force in the argument advanced by the learned counsel appearing for respondent no.4 that the petitioner has efficacious and alternate remedy of filing appeal before the Tribunal taking recourse to Section 9 of the Maharashtra Employees of Private Schools [Conditions of Service] Regulation Act, 1977. Section 9 of the Act of 1977 reads as under:

9. Right of appeal to Tribunal to employees of private schools.-

(1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school -

(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or

(b) who is superseded by the Management while making an appointment to any post by promotion, and who is aggrieved, shall have a right of appeal and may appeal against any such order or supersession to the Tribunal constituted under section 8] :

Provided that no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of service or reduction in rank, as the case may be :

Provided that, where such order was made before the appointed date, such appeal may be made within sixty days from the said date.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty or sixty days as the case may be, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of [five hundred] rupees, which shall not be refunded and shall be credited to the Consolidated Fund of the State.

[underlines added]

12] In the present case, upon careful perusal of the material brought on record and the order impugned in the Petition would *prima facie* show that the petitioner is

reverted back from the post of Headmaster to Assistant Teacher. In that view of the matter, it would be appropriate for the petitioner to avail of an appropriate remedy of filing an appeal before the School Tribunal.

13] In the light of above, the Petition stands rejected, with liberty to the petitioner to avail of an appropriate remedy as available in law. Needless to observe that the time spent in prosecuting this Petition, shall be taken into consideration by the Tribunal, in case there is delay in presenting appeal and while considering the prayer for condonation of delay in filing the appeal, if any.

14] In view of rejection of the Writ Petition, Civil Application No.3138 of 2017 and Civil Application No.11253 of 2017 do not survive, and the same stand disposed of.

15] We make it clear that observations made herein before in the foregoing paragraphs are *prima facie* in nature and confined to the adjudication of the present Writ Petition only. Neither petitioner nor respondents would be entitled to derive benefit out of said observations. In case of presenting an appeal, the School Tribunal shall decide the same on its own merits and in accordance with law without being influenced by the observations made in this judgment.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC