

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

CRIMINAL WRIT PETITION No.168 of 2018

* Asha B. Garud,
Age 42 years,
Occupation : Service,
R/o Gajanan Nagar Compound,
Near Ughada Mahadev Temple,
Modha, Karegon, Parbhani,
District Parbhani. **.. Petitioner.**

Versus

- 1) The State of Maharashtra,
Through P.I. Parbhani,
District Parbhani.
- 2) Yashoda Uttamrao Rathod,
Age 53 years,
Occupation: Service & Social
Work, President of
Prerna Bahuuddeshiya Shikshan
Prasarak Mandal,
R/o Vasantrya Naik Nagar,
Parbhani, District Parbhani. **.. Respondent.**

Shri. Chandrakant Thombre, Advocate, for petitioner.

Shri. S.B. Yawalkar, Additional Public Prosecutor, for
respondent No.1.

Shri. V.D. Salunke, Advocate, holding for Shri. Arun Rakh,
Advocate, for respondent No.2.

**Coram: T.V. NALAWADE &
MANGESH S PATIL, JJ.**

Date: 20 MARCH 2019

JUDGMENT (Per T.V. Nalawade, J.):

1) Rule, rule made returnable forthwith. By consent, heard both sides for final disposal.

2) The petition is filed for relief of quashing of F.I.R.No.105/2017 registered with New Mondha Police Station on 19-3-2017 for offences punishable under sections 420, 406, 465, 471, 34 etc. of Indian Penal Code. The crime is registered on the basis of direction given by learned Judicial Magistrate, First Class, under section 156(3) of the Code of Criminal Procedure in a private complaint which was filed by present respondent No.2 in the Court of 3rd Judicial Magistrate First Class Parbhani.

3) The present petitioner has been working as Education Officer (Primary), Zilla Parishad, Parbhani. The complainant is the President of one educational institution which runs Chhatrapati Shivaji Prathmik Vidyalaya at Naiknagar, Basmat Road, Parbhani. One Nivrutti Khade was in-charge headmaster from June 2006 to 2010. One Smt. Rasave was appointed as in-charge headmistress for the period from 1-5-2010 to 30-4-2012 by this institution

and, according to the complainant, approval was given to this appointment by the Education Department. The institution had then appointed one Smt. Kadam for the period from 1-5-2012 to 31-10-2013 as in-charge headmistress and approval was given in respect of that appointment also. It is contended that one Shri. Kapil Uttamrao Rathod was appointed as in-charge headmaster by the institution for the period from 1-11-2013 to 30-11-2015 and his appointment was also approved.

4) It is the contention of the complainant that on 1-6-2015 resolution was passed by this institution and promotion was given to Kapil Uttamrao Rathod to the post of headmaster and proposal was sent for approval of this appointment to the Education Officer (Primary). It is contended that when such proposal was submitted approval was not given to that appointment. It is contended that on 29-3-2016 the Education Officer (Primary) wrote a letter to inform that Sheetal Ramkrushna Abhyankar was appointed as in-charge headmistress for the period from 1-12-2016 to 31-5-2017. It is contended that even when proposal was not made to

appoint this lady as in-charge headmistress, the Education Officer, present petitioner, misused her post and issued order in favour of Smt. Abhyankar. Smt. Abhyankar was made accused No.1 in the private complaint. It is contended that to enable Smt. Abhyankar to prepare and get passed bills such step was taken by the present petitioner and that way the school is deceived. It is contended that by misusing the post said Abhyankar prepared bills and even when the treasury had returned the bills steps were taken by the present petitioner to see that the bills are passed. It is contended that the amount of more than Rs. four lakhs was disbursed during the tenure of Smt. Abhyankar and that way Government money has been misappropriated.

5) The learned counsel for the petitioner took this Court through the decision given by this Court in Criminal Writ Petition No.471/2017 decided on 13-9-2017. Said proceeding was filed by aforesaid Smt. Abhyankar. The entire record was made available on that occasion to this Court and the Court had considered the record of even seniority of the teaching staff. This Court observed that

the dispute was of civil nature and there was dispute to get the post of headmaster. Some teachers had declined to accept this post of the headmaster and Smt. Abhyankar who was appointed as teacher on 15-2-2006 was appointed in-charge headmistress by the Education Officer. Aforesaid Kapil Uttam Rathod is a son of the original complainant, the President of the institution and his date of appointment was 26-6-2010. Thus, apparently Smt. Abhyankar was senior-most teacher. In ordinary course she was entitled to get the post of headmistress. Though the other teachers had declined to accept the post, Smt. Abhyankar remained firm and due to that there was dispute. She had filed application to the Education Officer and then guidance of the Deputy Director of Education was sought. As no resolution was there, on 9-3-2016 as per seniority, Smt. Abhyankar was appointed as in-charge headmistress. Such appointment was necessary for signing the bills and for payment of income tax etc. The Deputy Director of Education Aurangabad by communication dated 16-3-2016 had advised to see that the senior-most teacher was appointed as headmaster. As the proposal was not made by the institution to give the

post as per the seniority and there was dispute of aforesaid nature, present petitioner had issued letter of appointment of Smt. Abhyankar as in-charge headmistress for the aforesaid period. The amount of Rs.4.62 lakh which was shown to be disbursed during tenure of in-charge headmaster is of the same bills which were submitted by Rathod but for technical reasons the bills were returned. Thus, it cannot be said that only to get some amount Smt. Abhyankar had joined hands with the petitioner and she misappropriated any amount. In ordinary course also the Education Officer needs to ascertain the seniority and she has the power to appoint in-charge headmaster as aforesaid routine steps need to be taken and if steps are not taken the staff do not get salary and day-to-day expenses cannot be made. While granting relief to Smt. Abhyankar this Court had observed that allowing the continuation of the proceeding will be abuse of process of law. As the employee who got the amount about which there is grievance got the relief from this Court and there are aforesaid circumstances, this Court holds that relief needs to be granted to the present petitioner, Education Officer. In the result, following order.

6) The petition is allowed. Relief is granted in terms of prayer clause (B). The FIR No.105/2017 registered with New Mondha Police Station Parbhani for offences punishable under sections 406, 420, 465, 471, 34 etc. of Indian Penal Code against the petitioner is hereby quashed and set aside. Rule made absolute in those terms.

Sd/-
(MANGESH S PATIL, J.)

Sd/-
(T.V. NALAWADE, J.)

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