

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

WRIT PETITION NO.9019 OF 2018

Sindkheda Taluqa Education Trust,
Sindkheda, Through its Chairman
Ramesh Shivdas Desale,
Age : 64 years, Occ : Social Work,
R/o Sindkheda, Tq. Sindkheda,
Dist. Dhule.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-32.
2. The Education Officer (Secondary),
Zilla Parishad, Dhule.
3. Shri Dilip Chandrasingh Girase
Age : 56 years, Occ : Assistant Teacher,
R/o Adarsh Colony, Near Girl's High
School, Sindkheda, Tq. Sindkheda,
Dist. Dhule.
4. Shri Mahendra Jatansingh Raul,
Age : 57 yeas, Occ : Assistant Teacher,
R/o Near Nagar Parishad Chowk,
Sindkheda, Tq. Sindkheda,
Dist. Dhule.
5. Shri Ashok Harilal Gujrathi
Age : 70 years, Occ : Advocate,
6. Shri Vivekanand Pundlikrao Bhambre
Age : 63 years, Occ : Advocate,

7. Shri Rajesh Ishwarlal Shah
Age : 62 years, Occ : Business,

R.Nos. 5 to 7 All R/o Sindkheda,
Tq. Sindkheda, Dist. Dhule.

RESPONDENTS

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Mr. V.D. Sapkal, Advocate for the petitioner
Mr. K.N. Lokhande, A.G.P. Respondent Nos.1 and 2.
Mr. Amol S. Sawant, Advocate for Respondent Nos.3 and 4
Mr. M.S. Kulkarni, Advocate for Respondent Nos.5 to 7.

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**CORAM: S.S.SHINDE &
K.K. SONAWANE, JJ.**

**RESERVED ON : 27.11.2018
PRONOUNCED ON: 08.01.2019**

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

Rule. Rule made returnable forthwith and
heard finally with the consent of the learned
counsel appearing for the parties.

2. This Petition is filed with the
following prayers :-

"B) To quash and set aside order dated
24-07-2018 and 26-07-2018 issued by
Education Officer, (Exhibits-F and G),
by issuing appropriate writ, order or

direction in the nature of writ or as the case may be.

C) To direct respondent – Education Officer to modify his order dated 24-07-2018 directing him to grant permanent approval as Head Masters in favour of Mr.C.D. Daga and Mr.S.S. Shaikh instead of approving their services as temporary Head masters by issuing appropriate writ, order or direction in the nature of writ or as the case may be.”

3. It is the case of the petitioner that petitioner Sindkheda Taluqa Education Trust, Sindkheda (hereinafter referred to as “the petitioner – trust”) is an educational institution registered under the Bombay Public Trusts Act, 1950 and Societies Registration Act, 1860. The petitioner – trust is running three Secondary Schools, viz:- Smt. Meerabai Fulchanddas Shah Girl's High School, Sindkheda, Anglo Urdu High

School, Sindkheda and Mulla Haidar Ali Shaikh Shamshoddin High School, Sindkheda and is maintaining the common seniority list of all the employees working in said three schools.

4. It is the case of the petitioner that as per the Government Resolution dated 14th November, 2017, the petitioner Management prepared the seniority list for the year 2018-2019. Initially on the basis of earlier seniority list, pending final decision in respect of appointment of Headmasters, the temporary appointments of Respondent Nos.3 and 4 were made. Respondent No.3 was appointed as In-charge Headmaster in Smt.Meerabai Fulchanddas Shah Girl's High School, Sindkheda and respondent No.4 was appointed as In-charge Headmaster in Anglo Urdu High School. The Education Officer has approved the said appointments of In-charge

headmasters on 6th March, 2018.

5. It is the case of the petitioner that since the posts of headmasters in three secondary schools run by the petitioner - Trust were vacant, therefore, the petitioner - Trust promoted the senior-most teachers namely, Mr.C.D. Daga, Mr.S.S. Shaikh and Smt. Surekha Dault Thakur, on the post of Headmasters in respective secondary schools. Accordingly, the Education Officer has also granted approval to their services as In-charge Headmasters on 24th July, 2018 for a period of six months w.e.f. 1st July, 2018 and has given authority to them to look after the affairs and to sign the pay bills. It is the further case of the petitioner that the Education Officer, all of sudden on 26th July, 2018 withdrawn the approval granted in favour of Mr.C.D. Daga and Mr.S.S. Shaikh and

appointed Respondent Nos.3 and 4 as In-charge Headmasters for a period of six months and granted authorization in their favour to make signatures and to look after the affairs of the said school. Hence this Writ Petition challenging the orders dated 24th July, 2018 and 26th July, 2018 passed by Education Officer.

6. Learned counsel appearing for the petitioner submits that the petitioner – Management is running three secondary schools in Sindkheda and is maintaining the common seniority list of all the employees. As there were vacant posts of the Headmasters in all three schools, therefore, the petitioner Management has promoted Mr.C.D. Daga and Mr.S.S. Shaikh and Smt.Surekha Daulat Thakur, who were according to the petitioner senior-most teachers, on the post of

Headmasters. Thereafter, the petitioner – Management has submitted proposal to Respondent No.2, for grant of approval to their services as Headmasters. However, Respondent No.2 without granting permanent approval to their services, has erroneously granted approval for a period of six months as In-charge Headmasters, and also granted authorization to sign the bills and to look after the affairs of the schools. It is submitted that, other two teachers, who were seniors to Mr.C.D. Daga, are not inclined to work as Headmaster and they have refused for their appointment on the post of Headmasters, and has also given no objection to appoint Mr.C.D. Daga as Headmaster. Therefore, the petitioner – Management has promoted Mr.C.D. Daga as Headmaster of the said school. In these circumstances, it is boundant duty of the Education Officer to grant permanent

approval to the services of Mr.C.D. Daga and Mr.S.S. Shaikh. However, Education Officer without considering factual aspects, has erroneously granted temporary approval to them for a period of six months. Therefore, the order dated 24th July, 2018 passed by the Education Officer is illegal, erroneous and is liable to be quashed and set aside, and it is necessary to grant permanent approval to Mr.C.D. Daga and Mr.S.S. Shaikh as Headmasters.

7. It is also submitted that all of sudden Respondent No.2 on his own has passed the order dated 26th July, 2018, thereby withdrawing the earlier order dated 24th July, 2018 issued by him, and appointing Respondent Nos.3 and 4 as Incharge-Headmasters and granting them authorization to sign the pay bills and to look after the affairs of the

schools.

8. Learned counsel submits that while passing the impugned order dated 26th July, 2018, the Education Officer has not given any opportunity of hearing and has erroneously passed the impugned order. It is also submitted that the impugned order is passed without hearing the petitioner and other affected parties, therefore, the said order is illegal, erroneous and is liable to be quashed and set aside. Learned counsel further submits that, while passing the impugned order, the Education Officer has not recorded any reasons for cancelling the earlier order passed on 24th July, 2018.

9. It is further submitted that, when there are permanent vacant posts of the Headmasters, it is necessary to make

appointments on regular and permanent basis. Learned counsel invites our attention to sub-rule (3) of Rule 3 of Rules of 1981, and submits that the said rule clearly mandates that, neither the Management nor the Education Officer shall continue the teacher as Headmaster/Headmistress on adhoc basis. In the present case, Mr.C.D. Daga and Mr.S.S. Shaikh have been promoted as Headmasters on permanent vacant posts by the petitioner and without considering the said fact, the Education Officer has erroneously granted approval to their services for a period of only six months, and thereafter, within three days, the Education Officer on his own has recalled/revoked the earlier order dated 24th July, 2018, contrary to the provisions of Rule 3 of the Rules 1981, and that too appointed Respondent Nos.3 and 4 on adhoc basis.

10. Learned counsel submits that, it is the prerogative of the Management to appoint suitable person as Headmaster/Headmistress, and in the present case Mr.C.D. Daga and Mr.S.S. Shaikh being suitable persons, are appointed as Headmasters of the schools run by the petitioner – Trust on clear vacant and permanent posts. However, Education Officer without hearing the petitioner and without issuing any show-cause notice to the affected parties, have passed the impugned order dated 26th July, 2018. Therefore, learned counsel appearing for the petitioner submits that the Petition may be allowed.

11. Learned counsel appearing for respondent Nos.3 and 4, relying upon the affidavit in reply, submits that the impugned order passed by Respondent No.2 is legal and

proper. It is submitted that there is dispute between the Management and the same is pending before the Assistant Charity Commissioner, Dhule. It is submitted that petitioner has no authority to make appointments, prepare seniority list, give promotions and to administer the day to day business of the petitioner - trust, and therefore, the appointments of Mr.C.D. Daga and Mr.S.S. Shaikh as Headmasters made by petitioner - trust are not legal and proper.

12. We have heard learned counsel appearing for the petitioner, learned A.G.P. appearing for the respondent/State, learned counsel appearing for respondent Nos.3 and 4 and learned counsel appearing for respondent Nos.5 to 7. We have carefully perused the pleadings in the Petition, grounds taken therein and reply filed on behalf of

respondent Nos.3 and 4.

13. Upon careful perusal of the documents placed on record, it appears that petitioner – trust is running three different secondary schools in Sindkheda and is maintaining the common seniority list of all the employees working in three secondary schools. As per the provisions of sub-rule (3) of rule 3 of the Rules of 1981, it is mandatory on the part of the Management to appoint the senior-most teacher/teachers on the post of Headmaster/Headmistress.

14. We have carefully perused the list of teachers showing their dates of appointment and also length of service rendered by them. In the affidavit filed by respondent nos.3 and 4, it is stated that there is dispute in the Management and said

dispute is pending before the Assistant Charity Commissioner, at Dhule. In that view of the matter, it may not be appropriate to issue mandatory directions to respondent No.2. However, we direct respondent No.2 Education Officer to keep in view provisions of Rule 3(3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1977, and take an appropriate decision, for appointment of suitable teacher as headmaster, as per seniority and also keeping in view service record of such teacher, as expeditiously as possible and preferably within one month from today. The Education Officer shall give opportunity of hearing to the petitioner and all other affected parties while deciding the issue of an appointment of suitable teacher/teachers on the post of Headmaster.

Till the decision is taken by

respondent No.2, senior-most teacher/teachers may be appointed to look after routine functions of post of Headmaster.

Rule made absolute in above terms. Writ Petition stands disposed of accordingly.

List on 18th February, 2019, under caption "For Compliance" of the directions issued hereinabove.

(K.K. SONAWANE, J)

(S.S.SHINDE, J)

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