

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

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WRIT PETITION NO. 3026 of 2018
WITH
CIVIL APPLICATION No. 9500/2018
10 **WITH**
CIVIL APPLICATION No. 10555/2018
WITH
CIVIL APPLICATION No. 4994/2019
15 **WITH**
CIVIL APPLICATION No. 10519/2019

20 Dnyanganga Shikshan Sanstha,
Aurangabad,
through its Secretary, namely,
Yogesh Vinayakrao Patil
Plot No. 30, A-5/N-4, Parijat Nagar, Aurangabad
Taluka & District Aurangabad.

...Petitioner

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Versus

1. The State of Maharashtra
through its Secretary,
School Education & Sports Department,
30 Mantralaya, Mumbai-32
2. The Deputy Director of Education,
Aurangabad Region, Aurangabad
- 35 3. The Education Officer (Primary),
Zilla Parishad, Aurangabad
4. Anilkumar Sakdeo,
age major, occupation service-
40 Education Extension Officer,
Zilla Parishad, Aurangabad
5. The Superintendent
Pay Unit (Primary)
45 Chelipura Zilla Parishad High School,
Chelipura, Station Road, Aurangabad.

6. Smt. Sunita Laxmanrao Fuke,
age 42 years occupation nil
R/o B. D. Zamad, Plot No.10, Near S.B.O.A. School
Shiveshwar Colony, Jalgaon Road, Harsul,
Aurangabad

...Respondents.

Mr. A.N. Nagargoje, Advocate for petitioner

Mr. S.P. Sonpawale, Asstt. Govt. Pleader for Respts. No.1 and 2

Mrs.Vaishali A. Shinde (More), Advocate for Respt. No. 3

Mr. C. K. Shinde, Advocate for respondents No. 4

*Mr. V. D. Hon, Senior Counsel , instructed by Mr. Ashwin
Hon, Advocate for Respt. No.6*

Mr. V. D. Salunke, for applicant in C.A. No. 10555/2018

Mr. S. R. Kolhare, Adv. for applicant s in C.A. No.9500/2018

CORAM : PRASANNA B. VARALE &

AVINASH G. GHAROTE, JJ.

Reserved on : 11th October, 2019

Pronounced on : 19th December, 2019

J U D G M E N T : (PER : PRASANNA B. VARALE, J.)

1. The present petition was heard alongwith other connected petitions, however, for the sake of convenience, we are deciding the petition separately, though the facts and documents are common.

2. By the present writ petition, the petitioner challenges the order dated 26.12.2017 (Exh. 'N') passed by the respondent

No. 3 appointing respondent No. 4 to sign the salary and other bills of the teaching and non-teaching staff of Dyanganga Public School, Wadgaon-Kolhati, Tahsil & Distt. Aurangabad, with a further direction to the respondent Nos. 3 & 5 to accept the pay/salary bills submitted by the Headmistress, as appointed by the petitioner, namely, Mrs. Mangala Namdeo Nikam and accordingly to release the salary of the employees of the petitioner-school. Further relief has been sought of a direction to the respondent Nos. 1 to 3 to recover the salary paid to the respondent No. 6 from 12.06.2016 onwards and to take appropriate legal action against the concerned responsible person who has illegally disbursed the salary to respondent No.6.

3. The facts of the case are that the petitioner is an educational institution, registered under the Maharashtra Public Trusts Act and is running a school at village Wadgaon-Kolhati from Standards 1 to 7. It is submitted that on 16.05.2014, the petitioner had filed an application for transfer of the school, which was earlier named as, Indira Primary School, and was operating from Baijipura, Aurangabad to Wadgaon-Kolhati, to which proposal, respondent No. 6, who was then the Headmistress of the school, had given her consent in writing alongwith other teaching and non-teaching staff. Not only this, respondent No.6 had, in fact, actively participated in issuing the various consent

letters, certificates necessary to be annexed with the proposal. Respondent No. 6 is further said to have been instrumental in holding a parents meet, whereby the parents had granted consent for transfer of the school by way of a resolution, being assured that their wards would be accommodated in another school in the same locality by name, Amar High School, which had already given its consent for taking in the students of the petitioner-school. It is contended that the proposal as submitted by the petitioner school, was verified by the respondent No.3/E.O., who then forwarded the same to the respondent No.2 vide his letter / report dated 07.06.2014. The respondent No.2, in turn, vide its letter dated 11.07.2014 forwarded the petitioner's proposal to the State Government with a positive recommendation, consequent to which the State Government vide order dated 19.03.2015 granted permission to transfer the school, which was informed by the respondent No.2, vide his letter dated 22.05.2015 to the respondent No.3/Education Officer (Primary), whereupon the respondent No. 3/Education Officer, vide order dated 03.09.2015 granted permission to transfer the school from Baijipura to Wadgaon-Kolhati, as a result of which, the school which was originally running at Baijipura, Aurangabad, was transferred to Wadgaon-Kolhati from the academic year 2015-2016, since which period the petitioner is running the school at Wadgaon-Kolhati. It is further submitted that respondent No.6, who had earlier

consented in writing to the transfer, and in fact, was instrumental in preparing the documents necessary for such proposal, who had in fact worked as a Headmistress at the transferred place, suddenly turned around and had challenged the transfer of the school. This challenge has been made in Writ Petition No. 5706/2016, which we have decided today by a separate judgment. It is then submitted that respondent No.6, who was the Headmistress at the relevant time, was found to have committed various illegalities, as a result of which, vide letter dated 25.01.2016 the petitioner sought permission of the Education Officer to put respondent No.6 under suspension, however, no action was taken. Thereafter, vide letter dated 08.02.2016 the petitioner had intimated the respondent No. 3 that since proposal seeking permission to place respondent No.6 under suspension was already sent to the respondent No. 3, upon which no action was taken and if no action is taken till 15.02.2016, then the petitioner would presume, that respondent No. 6 was put under suspension with effect from 15.02.2016 and in her place, one Smt. P. S. Ajmera would be the in-charge Headmistress. It is in pursuance to this that approval was granted vide order dated 29.04.2016 by respondent No. 3/E.O.(Pri) with effect from 22.02.2016 to the suspension of respondent No.6 with a direction to complete the inquiry within a period of four months as per Rule 33 of the M.E.P.S. Rules, 1981.

4. Respondent No.6 being aggrieved by the suspension order dated 19.02.2016 and the transfer order dated 09.03.2015 had filed W.P. No. 5706/2016, challenging the both, however, as in the meantime her services were terminated vide order dated 12.06.2016, the challenge to the order of suspension was given up, which is recorded by this Court in its order dated 24.10.2016 in W.P. No.5706/2016 and any challenge to the adverse order of termination issued by the Management at the behest of respondent No.6 was kept open. It is stated that till date, the order of termination of respondent No. 6 dated 12.06.2016 has not been challenged by her, by filing an appeal as required under the provisions of Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, and as such, the termination of respondent No. 6 has attained finality.

5. It is submitted that inspite of there being no challenge to the order of termination of respondent No.6 dated 12.06.2016, at the behest of respondent No.6, the respondent No.2/Dy. Director of Education, vide letter dated 29.08.2016 directed the respondent No.3/Education Officer, to reinstate respondent No.6 in the school and take action for release of her salary from January 2016, in pursuance to which respondent No. 3/E.O. vide letter dated 27.10.2016, directed the Education Extension Officer to take steps for joining respondent No.6 in the school. The letters

dated 29.08.2016 and 27.10.2016 are the subject matter of the challenge in Writ Petition No. 11370/2016 before this Court in which, after issuing notice on 08.03.2017, an order of status-quo was passed.

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6. It is then submitted that, as the respondent Nos. 2 & 3 realized that their letters dated 29.08.2016 and 27.10.2016 were not correct as respondent No. 6 already stood terminated and this Court had granted liberty to file appropriate proceedings against the said order, the respondent Nos. 2 and 3, therefore, vide their letters dated 24.05.2017 and 09.06.2017 have canceled their earlier letters dated 29.08.2016 and 27.10.2016 which are at Exh. 'J'.

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7. It is then submitted that consequent to the termination of the services of respondent No.6 on 12.06.2016, the post of Headmistress became vacant and one Smt. Mangala Namdeo Nikam, being senior most teacher, was appointed as Headmistress, vide order dated 08.11.2016 and the proposal in this regard dated 10.11.2016 was accordingly forwarded to the respondent No.3 for approval. Thereafter, vide order dated 01-02.12.2016 Smt. Mangala N. Nikam was appointed to do the administrative work for the purpose of submitting the salary bills.

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8. It is further submitted that without any authority and

jurisdiction, the respondent No. 3 again vide order dated 18/22.03.2017 held that the termination of respondent No. 6 was illegal and directed her reinstatement on original post, which order has been challenged by the petitioner vide Writ Petition No. 5900/2017 as well as by the said Mangala Nikam by way of Writ Petition No.5792/2017, in which she has also prayed for direction to the respondent No. 3 to decide the proposal dated 10.11.2016 for getting approval to her appointment as Headmistress. In Writ Petition No. 5792/2017 this Court on 27.04.2017 issued a notice and granted status quo, as a result of which, the orders passed by the respondent Nos. 2 & 3 asking to join respondent No. 6 and make payment to her, have not been implemented till date.

9. It is submitted that the termination of respondent No. 6 has been done by following due process of law, which in absence of any challenge u/s. 9 of the M.E.P.S. Act, 1977 has become final and, thus, consequent to the vacancy arisen, the appointment of Smt. Mangala N. Nikam in her place as Headmistress and further authorization to her to administer the work of the school and submit the pay bills of the employees, was legal.

10. It is submitted that, vide orders dated 09.10.2017, 10.11.2017 and 13.11.2017, the respondent No.3 appointed one V. M. Komatwar (Education Extension Officer) for the purpose of submitting the pay bills of the employees of the school run by the

petitioner. Upon acquiring knowledge of this, the petitioner has sent legal notice on 16.11.2017 to the concerned officers objecting to the said action. It is further submitted that vide letter dated 15.12.2017, the Education Extension Officer had informed the Education Officer (Primary) to withdraw the work allotted to him regarding submission of the pay bills of the employees of the school run by the petitioner. It is further submitted that considering the objection raised by the petitioner, the earlier orders of appointing the Education Extension Officer to submit the pay bills of the employees of the school run by the petitioner, were withdrawn, however, again, vide order dated 26.12.2017 the respondent No.3/Education Officer appointed respondent No.4 to submit the pay bills of the employees of the school run by the petitioner, which is claimed to be without jurisdiction, as the authority to do so, vests with the Headmistress, duly appointed by the petitioner, who in the present case, is Smt. Mangala Nikam

11. It is submitted that the respondent Nos. 2 to 5 are in collusion with respondent No.6, whose services stand terminated and have been making every attempt to reinstate her in service inspite of she having not raised any challenge to her termination u/s. 9 of the M.E.P.S. Act, 1977. It is submitted that, though respondent No.6 stood terminated as on 12.06.2016, however, the respondent Nos. 2 to 5 in collusion with respondent No.6 have

permitted her to withdraw her salary for the months of December 2017 and January 2018, inspite of objection by the petitioner. It is, thus, submitted that the order dated 26.12.2017 appointing respondent No.4 as a Special Officer for the purpose of submitting the salary bills, is without jurisdiction and is required to be quashed and set aside.

12. The respondent No.3/Education Officer has filed his reply on 04/07/2018 and has contended as under:

(i) Office of the Charity Commissioner by its letter dated 23.11.2017 has communicated that it is not clear who is the president, secretary of the institution, therefore, the contention of the petitioner that it is running the school as a management committee, is false and incorrect.

(ii) On 02.01.2017 respondent No. 6 had submitted an application to the respondent No.3/E.O. praying to resume her to the post of Headmistress and to make payment of arrears of salary from 2016 as the petitioner did not have any power to take any action against the employees and the petitioner had indulged in preparation of concocted resolutions/ proposals/ letters/ inquiry report / charge sheet and action be taken against them.

(iii) A hearing was taken of all the parties on the application of respondent No. 6 and upon perusal of schedule I, which was called from the office of the Assistant Charity Commissioner, Aurangabad, whereupon it was found that the management of the petitioner institution was for the period of 2012-2015 and the Change Report submitted in the year 2012 was rejected by Shri V. R. Sonune, Asstt. Charity Commissioner, Aurangabad, due to which the action of dismissal of respondent No.6 is taken by the management which was not in existence and therefore, the order of dismissal of respondent No. 6 dated 12.06.2016 was canceled by the Respondent No.3/Education Officer, vide order dated 06.03.2017 communicated vide letter dated 18/22.03.2017, which is the subject matter of challenge in W.P. No. 11370/2016 in which reply was already filed by the present respondent No.3/Education Officer stating that the order of dismissal of respondent No.6 was canceled, which was so recorded in the proceedings dated 06.03.2017.

(iv) The proposal dated 19.09.2016, as forwarded by the petitioner to accord approval to Mrs. Mangala Nikam as Headmistress and for signing the bills and other administrative purposes was sanctioned by the

respondent No.3/Education Officer on Adhoc basis for the period 20.09.2016 to 31.12.2016, which was communicated on 01.12.2016.

5 (v) Respondent No.6 has preferred appeal to the office of respondent No. 3/Education Officer against the dismissal order to reinstate her on the post of Headmistress and after hearing the parties, the order of dismissal was set aside vide order dated 06.03.2017 as communicated by letter dated 18.03.2017, which is the
10 subject matter of Writ Petition No.5900/2017.

(vi) As dispute is pending regarding management before the Assistant Charity Commissioner, therefore, respondent No.3/Education Officer appointed V.M. Komatwar (Education Extension Officer) for submitting
15 pay bills of the employees. As V. M. Komatwar expressed his inability to discharge the said function and requested for relieving him from the said additional charge, the respondent No.3 vide order dated 26.12.2017 appointed respondent No.4.

20 (vii) As Writ Petition No.5792/2017 filed by Mangala Nikam is pending, her proposal cannot be accepted.

(viii) As on date (a) Smt Sunita L. Fuke/respondent No.6 (b) Mangala N. Nikam (c) Vidya Rangnath Pathalwarkar (d) S. L. Muthe are working in the school, however, as

names of (b) to (d) are not included in *Shalarth* Bill Portal, the salary is not granted to these persons. However, the proposal submitted for including their names in *Shalarth* Bill Portal is pending.

5 (ix) Salary of respondent No.6 has been issued till February 2018, however, in view of interim relief dated 22.03.2018, salary of respondent No.6 has not been paid from March 2018.

10 (x) As there is dispute regarding the management and various petitions are pending regarding the posts of Headmistress, the respondent No.4 has been appointed for submitting the pay bills of the employees by the impugned order, which is correct.

15 13. The respondent No.4 has also filed his reply on 16.07.2018 and submitted that he was appointed by the respondent No.3 for submitting the salary bills of teaching and non-teaching staff actually working in the school as there was dispute in the management of the school. He further submitted that in pursuance
20 to the order dated 26.12.2017, he had personally visited the school on 06.02.2018 and verified the attendance of the school and non-teaching staff and found that respondent No.6 was present in the cabin of the Headmistress and the muster-roll also recorded her presence. Respondent no.4, also submitted an inspection report dt.

18/6/18 (276), in which it is stated that in pursuance to the order dated 28/12/2017, passed by the respondent No.3/Education Officer (Primary), he had visited the Dnyanganga Public School at Wadgaon Kolhati on which visit he found that the respondent No.6/Smt. Fuke was occupying the chair of the Headmaster and on an inspection of the muster roll, he found that Smt. Mangala Nikam had neither signed the muster roll nor was present in the school. He further stated that the school is running in an area of 6000 square feet at Wadgaon Kolhati. It is pertinent to note that this affidavit is dated 16/07/2018.

14. Rejoinder was filed by the petitioner, alongwith which documents relating to the participation of respondent No.6 for transfer of the school from Baijipura, Aurangabad, to Wadgaon Kolhati, were filed. So also, the documents in relation to the termination of services of respondent No.6, were also filed, which indicated that respondent No.6 had participated in the inquiry. Surprisingly, in her reply dated 29/01/2016 to the show cause notice, respondent No.6 expressed ignorance about the transfer of the school from Baijipura to Aurangabad, rather, on the contrary, she contended that the school continued to run and function at Baijipura, Aurangabad, in which the students had been admitted and the report regarding the same is also claimed to have been sent, where it is claimed that respondent No.6 is maintaining the muster

roll as well as the service books of the employees. The sum and substance of the reply was that the Indira Primary School, Baijipura, Aurangabad, inspite of its transfer to Wadgaon Kolhati, was in fact, being run and functioning at Baijipura, Aurangabad, itself, in which
5 respondent No.6 claimed to be the Headmistress. The report of the Enquiry Committee dated 31/05/2016 and the recommendation for termination of her services were also filed on record. The documents with the rejoinder point out that the change report of the petitioner-trust for the earlier period as well as for the period
10 2012 to 2015 has been accepted and approved by the office of the Charity Commissioner and due entries have been taken in that regard in Schedule-I. So also, the change report for the period subsequent to 2015 is pending in the office of the Dy. Charity Commissioner. The delay in submitting the Audit Reports of the
15 trust for the period 2009 to 2016 has been condoned, vide order dated 02/03/2017 and inquiry in that regard being Miscellaneous Enquiry No. 1087/2017 is pending. It was, thus, submitted that there was no question of any dispute as being sought to be portrayed, however, the entire dispute was the creation of
20 respondent No.6, who finding that she had been terminated for her illegal action, has taken respondents No.3 & 4 with her and has indulged in creation of records taking advantage of the fact that the entire records for the earlier period were at the earlier school premises at Baijipura, Aurangabad. It was, thus, Submitted that the

actions of respondents in passing the impugned order dated 26/12/2017, was purely illegal and was required to be quashed and set aside, and so also, the other reliefs, as prayed in the petition, were required to be granted.

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15. We have heard the learned Counsel for the respective parties and their arguments are in consonance with their respective pleadings, replies and the applications.

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16. At the outset, it is material to note that it is undisputed that the original "*Indira Prathmik Shala*" was renamed as "Dnyanganga Public School". It is also undisputed that by an order dated 19/03/2015 the respondent No.1 granted permission to transfer the school, which accordingly came to be shifted to Wadgaon-Kolhati. We have while deciding Writ Petition No. 5706/2016, recorded how present respondent No.6 was instrumental in preparing documents/consent letters for preparation of the proposal for shifting of the school from Baijipura, Aurangabad, to Wadgaon-Kolhati as well as had also given her personal consent for transfer of the school. Once the school stood transferred to Wadgaon-Kolhati and had started functioning there, which respondent No.4, in fact, also claims to have verified from his report dated 18/06/2018, it is inconceivable as to how respondent No.4 in his report could have found respondent No.6 to be occupying the chair of the Headmistress, when even according to respondent No.6,

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her services were terminated by the petitioner on 12/06/2016, which was a position on the record. This clearly indicates that respondent No. 4 was not acting independently but was in cahoots with respondent No.6. In fact, respondent No.6 herself states in her reply to the show cause notice that she is running the school at the old place i.e. at Baijpura, Aurangabad, and is functioning as its Headmistress. Once the respondent No.1 by an order dated 19/03/2015 permitted the transfer of the school and the school in pursuance to the said order actually stood transferred and started functioning at the place of the transfer i.e. at Wadgaon Kolhati, it could not have continued functioning at the old place at Baijipura, Aurangabad. The very contention of respondent No.6 that the school is functioning at Baijipura, Aurangabad, in which she has admitted number of students, itself is an indication of the fact that she is indulging in illegal acts, contrary to the order passed by respondent No. 1 dated 19/03/2015. It is nobody's case that the order dated 19/03/2015 permitting transfer of the school has been stayed. It is in fact, also not the case of the respondents No. 3 & 4 that the school did not start functioning at the transferred place at Wadgaon-Kolhati, rather, on the contrary, they agreed to the position that the school, in pursuance to the order dated 19/03/2015 has indeed shifted to Wadgaon-Kolhati and has started functioning there. This being the situation, which was specifically within the knowledge of respondents No.3 & 4, the stand taken by them

indicating that respondent No.6 was running the school at Baijipura, Aurangabad, itself demonstrates their connivance with respondent No.6 as they being officials of the Education Department, were duly bound by the order dated 19/03/2015 and the consequent functioning of the school at Wadgaon-Kolhati. In fact, having acquired knowledge that respondent No.6 was claiming to be running the school at the old place at Baijipura, Aurangabad, it was necessary for them to immediately put a stop to such running of the school as obviously the same was illegal and was putting at risk the career of the students, who were claimed to have been admitted to the school at Baijipura, Aurangabad, which obviously did not have any recognition nor approval from any quarter whatsoever. In fact, the reports of respondent No.4 dated 28/11/2017 and 18/06/2016 are clearly untrustworthy as neither the affidavit-in-reply nor the report at Annexure R-1 discloses at which place the inspection was taken, Baijipura or Wadgaon-Kolhati. The order dt. 26/12/17 does not ask/direct him to make a spot inspection of the school, it says as per rules only. No rule pointed out that before signing salary bills, he has to personally inspect and verify the persons working in the school. In the inspection report dated 18/06/2018 the date of visit is conspicuously absent. That apart, these reports are totally contradictory to the stand of respondent No.6 as taken by her in the reply dated 27/02/2016 to a show cause notice issued by the petitioner, in which she categorically states that she is operating

the school even on the date of the reply i.e. as on 27/02/2016 at Indira Nagar, Baijipura, Aurangabad, in which students have been admitted and teachers are imparting education, at Indira Nagar, Baijipura, being the original place of approval of the school. The respondent No.4, however, as the record demonstrates has consistently ignored the position that once the transfer is approved and sanctioned by the State at the recommendations of the respondents No.2 and 3 and the shifting has already taken place, the school could not have been permitted to function or run at the old place, as obviously such running would be without approval altogether.

17. It is also pertinent to note that consequent to the proposal seeking permission to suspend respondent No.6 dated 25/01/2016, which permission was granted by the respondent No.3/Education Officer on 29/04/2016, the proposal of the petitioner for grant of approval as in-charge Headmistress to Mrs. Ajmera, was accepted and approved by respondent No.3/Education Officer on 04/05/2016. Thereafter on 19/09/2016 a proposal was submitted by the petitioner for grant of approval to Mrs. Mangala Nikam as Headmistress, and also to grant her authority to look after administrative work, which was approved by respondent No.3/E.O., vide his letter dated 01/12/2016. Thus, considering the suspension and consequent termination of respondent No.6, the respondent

No.3/E.O. in fact, had granted approval to Mrs. Mangala Nikam, to sign the pay bills of the employees and to perform other administrative works which was subject to the orders of the Court. The respondent No.3, in fact, earlier vide his letter dated 09/10/2017 on the ground that there was a dispute in the management, had appointed one Shri V.M. Komatwar, Education Extension Officer, Panchayat Samiti, Aurangabad, to sign the pay bills of the employees, upon receiving which information, the petitioner vide notice dated 16/11/2017 had questioned the same, in pursuance to which said Mr. V.M. Komatwar is said to have withdrawn, as a result of which the impugned order dated 26/12/2017 came to be passed. In light of this situation, if one reads the impugned order dated 26/12/2017, the same appears to be passed merely on a presumption that there is dispute between the management which is ignoring the position that respondent No.3 himself had approved the following proposals, as submitted by the petitioner, namely:

(a) proposal for placing respondent No.6 under suspension vide letter dated 29/06/2016;

(b) the proposal for appointing Mrs. Ajmera as in-charge Headmistress, vide letter dated 04/05/2016;

(c) the proposal for appointing Shri Sanjay Muthe as In-charge Headmaster vide letter dated 13/07/2016;

(d) proposal for according powers to Mrs. Mangala Nikam to look after the administrative works and sign the pay bills of

the employees, vide letter dated 01/12/2016; and

(e) pension proposal of Smt. Ajmera,

as against which, as disclosed in the impugned order, the
respondent No.3 did not have any information from the
office of the Charity Commissioner, Aurangabad, as on the
date of passing of the impugned order. Neither does the
impugned order disclose any information otherwise being
available to the respondent No.3/Education Officer
regarding any dispute between the management, which
could have formed the basis for such an observation.

18. In fact, till 26/12/2017 the only dispute, which was being
created was by respondent No.6, who having consented to the
proposal for transfer, had thereafter opened the school at Baijipura,
Aurangabad, and had started taking admissions from gullible
students, which was obviously without disclosing to them the fact
that the school already stood transferred to Wadgaon-Kolhati under
the orders, as passed by the respondent No.1.

19. The record demonstrates that vide judgment dated
23/05/2014 passed by the Assistant Charity Commissioner,
Aurangabad Region, Aurangabad, in Enquiry No. 178/2014, u/s. 22 of
the Maharashtra Public Trusts Act, 1950, in the matter of the trust,
“Dnyanganga Shikshan Sanstha, Indira Nagar, Aurangabad,” bearing

P.T.R. No. F-1196(Aurangabad) submitted by one Yogesh Vinayakrao Patil, who is shown to be the Secretary of the petitioner-trust in the present petition, the change report for the period 2009 to 2012 was accepted. Thereafter, in Enquiry No. 179/2014 of the petitioner-trust, the change occurred due for the subsequent period of 2012 to 2015 was also accepted vide judgment dated 23/05/2014. Thereafter for the subsequent period of 2015 to 2018, the change report has been submitted by the petitioner-trust to the office of the Charity Commissioner on 11/05/2017, in which Mr. Yogesh Vinayakrao Patil is shown to have been elected as the Secretary of the petitioner-trust in the meeting held on 23/08/2015, which change report enquiry is presently said to be pending in Enquiry No. 1746/2017. So also, the change report for the subsequent term from 2018 to 2021 for the election held on 22/08/2018, has also been submitted by the petitioner-trust with the office of the Charity Commissioner, Aurangabad, which has been registered as Enquiry No. 914/2018 and the same is still pending for consideration.

20. As against this, our attention has been invited to a Misc. Application No. 1697/2017 filed by one Mr. Magan Mohan Sarsande by the learned Counsel for respondent No.6 to contend that there was fraud practised in the issue of submission of change report, as a result of which, an application u/s. 314 of Cr.P.C. was filed. It is however, pertinent to note that Misc. Enquiry Application No.

1697/2017 came to be rejected by the Dy. Charity Commissioner, Aurangabad Region, Aurangabad, by his order dated 05/04/2018. It is pertinent to note that the applicant in Misc. Enquiry Appln. No. 1697/2017 Mr. Magan Mohan Sarsande was at one point of time a Vice President of the petitioner-trust for the period 2006 to 2009, however, the schedule-1 on record thereafter does not depict his name as holder of any post whatsoever.

21. In this context, it is pertinent to note that in Writ Petition No. 11370/2016, an application for condonation of delay in filing an application u/s. 22 of the Mah. Public Trusts Act dated 24/07/2017 in respect of elections to the managing committee of the petitioner-trust for the period 2015 to 2018, has been placed on record, which application is claimed to have been submitted by Shri Magan Mohan Sarsande and others on 24/07/2017 which is at Exh. A-31. In a separate copy placed on record therein a Form in schedule 3 under Rule 13 of the Rules framed under the Mah. Public Trusts Act, is annexed to the same. A perusal of this application and the form annexed thereto makes a very interesting reading. This application dated 24/07/2017 is signed at serial No. 9 by Sunita Bhagwan Zumbad, which upon a query being made by the Court, is admitted to be the maiden name of respondent No.6 Mrs. Sunita Laxman Fuke. The application is further signed at serial No.11 by Bhagwan Dajirao Zumbad, who is stated to be father of respondent No.6. The

application is further signed at serial No.12 by one Dwarkabai Laxman Fuke, who is said to be the relative of respondent No.6. The said application is also signed by one Balasaheb Vinayak Kadam, who is said to have been declared as a surplus teacher by the petitioner-trust. The form annexed to the application in schedule 3 shows the respondent No.6/Sunita Fuke, her father Bhagwan Dajirao Zumbad, to have been elected to the managing committee of the trust for the period 04/09/2015 to 04/09/2018, as members. The form further shows the said Balasaheb Vinayak Kadam to have been elected as the treasurer; Magan Mohan Sarsande as the President and Balaram Bhaurao Kale as its Secretary. The admitted position on record was that respondent No.6 was never a member of the petitioner-trust nor was holding any post in its managing committee at any point of time whatsoever. This clearly demonstrates that respondent No.6 in collusion with Magan Mohan Sarsande, who at one point of time was in the managing committee of the trust, sometime in the year 2009, alongwith other persons named in the application, have joined hands to create a parallel body in order to create a semblance of a dispute in the managing committee. This application for condonation of delay came to be registered as Misc. Application No. 1891/2017. Learned Counsel Mr. Nagargoje for the petitioner also invited our attention to an affidavit at Exh. 11 in Misc . Appln. No. 1891/2017 filed by Madan @ Magan Mohan Sarsande as filed in W.P. No. 11370/2016 in which in para 8 he has categorically

stated that the Misc. Appln. No. 1891/2017 filed for condonation of delay in filing the change report in the managing committee for the period 2015 to 2018 alongwith the change report have been filed by him under misunderstanding and both the application as well as the change report were being withdrawn by him. He has further made a statement in para 9 that he has no objection against the existing managing committee of the petitioner-trust and he accords his consent to all the applications filed by the existing managing committee for recording the change. This affidavit is dated 20/08/2018, the contents thereof have been further affirmed and verified by him on 01/02/2019 under his signature. This position has not been disputed by learned Counsel Mr. Patil, holding for Adv. Mr Barlinge. This clearly indicates that bogey of a dispute appears to be the creation of respondent No.6, to anyhow get back her earlier job of Headmistress at the institution run by the petitioner.

22. It is further pertinent to note that none of the persons, whose names figured in the Change Reports Enquiry No. 178/2014 and 179/2014 have raised any objection of any nature whatsoever regarding the functioning of the trust or in respect of the change report as submitted to the Asstt. Charity Commissioner for the period 2015 to 2018 or thereafter. This being the position, the observation of the respondent No.3 in the impugned order that there was a dispute in the management of the trust, is ill-founded and

does not appear to be based upon any data or material on record. In fact, this is so reflected from reading of the impugned order itself. It is a trite position that in absence of any dispute, it is permissible for the management to nominate/appoint a person of its choice, for the purpose of the administrative works of the school as well as for signing of the salary/pay bills and other documents relating to the requirements of law as is necessary to be followed in due course of running of the institution and the school. In this view of the matter, as the record demonstrates that the respondent No.3 as well as respondent No.4 have played into the hands of respondent No.6, by permitting her to run a school at Baijipura, Aurangabad, inspite of same having been transferred to Wadgaon-Kolhati, the impugned order dated 26/12/2017 cannot be sustained and, thus, is required to be quashed and set aside and accordingly the same is hereby quashed and set aside. So also, the respondents No.3 & 5 are directed to accept the salary/pay bills submitted by Mrs. Mangala Nikam and to release the salary of the employees of Dnyanganga Public School, Wadgaon-Kolhati.

23. In so far as the relief in respect of prayer clause 'C' is concerned, the services of respondent No.6 having been terminated on 12/06/2016, which termination having not been challenged by her by filing proceedings u/s. 9 of the M.E.P.S. Act, it was not permissible for the respondents to pay any salary to her and any

such payment made to her would thus be illegal. The respondents are, therefore, directed to take appropriate steps for recovery of the same.

5 24. Rule is made absolute in the above terms.

25. Civil Application No. 4994/2019 and Civil Application No. 10519/2019 stand disposed off in light of the above judgment.

10 26. As we have considered in detail the arguments advanced on the so called dispute in the management of the petitioner-trust and the documents in relation thereto, the civil application No. 9500/2018 and 10555/2018 no longer survive for consideration and are accordingly disposed off.

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(AVINASH G. GHAROTE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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Madkar