

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

**WRIT PETITION NO.12370 OF 2016
WITH
CIVIL APPLICATION NO. 7078 OF 2018**

1. Rajendra Sahebrao Dongre
Age 33 years,
Occu: Assistant Teacher,
R/o Tagadgaon, Post: Raimoha
Tq. Shirur Kasar, Dist. Beed
2. Rekha Ramrao Sonwane,
Age 30 years, Occu: Service,
Assistant Teacher, R/o Padali,
Tq. Shirur Kasar, Dist. Beed
3. Shrimant s/o Gowardhan Chavan, ... **Petitioners**
Age 29 years, Occu: Nil
R/o Tagadgaon, Post: Raimoha
Tq. Shirur Kasar, Dist. Beed

VERSUS

1. The State of Maharashtra,
Through the Secretary,
Woman and Child Development
Department, Mantralaya, Mumbai
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad
3. The Education Officer (Secondary),
Education Department,
Zilla Parishad, dist. Beed

4. Kai. Subhadrabai Bahuuddeshiya
Mahila Sevabhavi Sanstha,
Through its Secretary namely
Sulochana w/o Sarjerao Sanap,
Tagadgaon, Tq. Shirur Kasar,
District Beed.
5. Sadguru Bhagwan Baba Yuvak ... Respondents
Kalyan Sanskrutik Vikas Pratisthan,
Pune, through its President,
Hanumant s/o Bhujangrao Sanap,
Age 50years, Occu: Presidentship,
R/o Flat No.7, B-3, Darshan
Nagari, Keshav Nagar,
Chinchwadgaon, Pune.

Mr. K. D. Khade and Mr. Sk. Ashraf Patel, Advocates for the petitioners,
Mr. S.S. Dande, A.G.P. for the respondents 1 to 3-State.
Mr. T.M. Tandale, Advocate for respondent No.4,
Mr. S.S. Thombre, Advocate for respondent No.5.

**CORAM : PRASANNA B. VARALE
AND
ANIL S. KILOR, JJ.**

DATE: : 26th November, 2019

JUDGMENT (Per Anil S. Kilor, J.)

1. On 25.11.2019, when the matter was heard at length, learned counsel for the petitioners Mr. Khade requested to adjourn the matter for a day so as to enable him to take instructions in the matter relating to withdrawal of the present petition and to avail alternate remedy in the matter. Accordingly, the petition was adjourned to 26.11.2019, however, on 26.11.2019, Mr. Ashraf Patel

appeared in the matter and requested to allow him to argue the matter. Since the matter was heard at length and the arguments of learned counsel Mr. Khade was concluded, request of Advocate Mr. Patel is rejected.

2. Rule. Rule made returnable forthwith. By consent of the parties, the petition is taken up for final disposal.

3. Petitioners are claiming to be employees of respondent no.4 management which has been transferred to respondent No.5 society vide order dated 27.06.2017 by the State of Maharashtra. The said order of transfer of management is under challenge in the present petition.

4. Brief facts which are leading to the present petition are as follows:

(1) Respondent No.4 Education Society was running school Late Subhadrabai Secondary School, Tagadgaon District Beed. Petitioners No. 1 and 2 are claiming that they were appointed as Assistant Teacher, initially on probation and on successfully completing the probation, they got conformed in the employment as Assistant Teacher. Petitioner No.3 claimed to be

appointed in the said school as Sevak, however, according to him, he was subsequently terminated and an appeal before the School Tribunal was filed.

(2) In 2012, respondent No.4 society passed resolution for transfer of management in view of its inability to run the school for various reasons. In the said resolution, list of names of employees working on the date of resolution i.e. on 01.07.2012 are mentioned. In the said list, names of the present petitioners do not appear.

(3) Respondent No.4 accordingly submitted a proposal with all the requisite documents and after due procedure was followed, including proclamation published in the newspaper calling objection and suggestion, other necessary formalities were stated to have completed.

(4) The said proposal, thereafter considered by the Education Department. On the basis of recommendations and after following due procedure, vide order dated 27.06.2017, permission for transfer of

the management of Respondent No.4 to respondent No.5 has been granted.

- (5) Initially, when the petition was filed, the proposal forwarded by respondent No.4 for transfer of management to respondent No.5 had been challenged. During pendency of the petition, the impugned order dated 27.06.2017 was passed and accordingly, the petition was amended and challenge to the order dated 27.06.2017 was raised by amending prayer clause.

5. Heard Mr. K. D. Khade, learned counsel for the petitioners, Mr. S.S. Dande, learned A.G.P. for the respondents No.1 to 3-State, Mr. T.M. Tandale, learned counsel for respondent No.4 and Mr. S.S. Thombre, learned counsel for respondent No.5.

6. Mr K. D. Khade, learned counsel for the petitioners submits that petitioner Nos.1 and 2 were working with respondent No.4 and after transfer of management, they are working with respondent No.5 in view of the interim order passed by this Court dated 16.2.2016, whereby, the

school management was directed not to take any coercive action against the petitioners. The learned counsel further submits that respondent No.3 was not in service on the date of filing of the petition and his appeal before the School tribunal was pending. He points out that petitioner No.1, on completion of his probation in the year 2010, confirmed and he is continuously working. According to the learned counsel for the petitioners, petitioner No.2 completed her probation in the year 2011 and she is also in service. He further points out that the Education Officer had given approval to the appointment of the petitioners.

7. The challenge to the proposal for transfer of management initially and, subsequently, to the impugned order dated 26.07.2017 is on the ground that while submitting proposal, respondent No.4 forged the documents and also do not show the names of the petitioners in the list of the employees. According to the petitioners, it is mandatory as per Transfer of Management Rules to absorb the services of the employees working with old management by the new management. The

learned counsel for petitioners submits that the documents were prepared in back dates and thereby fabricated documents were filed along-with the proposal for transfer of management. The learned counsel for the petitioners further points out that it is mandatory to issue advertisement calling suggestions and objections from the interested persons, however, in the present matter, advertisement was never issued and the objections and suggestions were never called. He further urged that it was mandatory for respondent Nos. 4 and 5 to follow the procedure as prescribed in the judgment in the case of **Jijau Shikshan Sanstha Vs. State of Maharashtra**, reported in **2011 (4) Mh.L.J.352**. Thus according to the learned counsel for the petitioners, the proposal submitted by respondent No.4 for transfer of management to respondent No.5 is not as per the Rules and therefore, the same ought to have been rejected by the State Government and therefore, the impugned order dated 27.06.2017 allowing respondent No.4 to transfer management of the school to respondent No.5 is illegal and the same needs to be quashed and set aside.

8. Per contra, Mr.Thombre, learned counsel for respondent No.5, to whom the management of respondent No.4 has been transferred, submits that in the resolution passed by respondent No.4 for transfer of management, the names of the petitioners were not there. Mr. Thombre, learned counsel, further submits that the petitioners are not working with respondent No.5 and the procedure for transfer of management was scrupulously followed and after considering the proposal in its entirety, since the proposal was complete in all respect, the State of Maharashtra granted permission for transfer of management from respondent No.4 to respondent No.5 of the school in question.

9. Mr. S.S.Dande, learned A.G.P. supports the impugned order dated 27.06.2017 and submits that after following due procedure and on proper verification, required to be made before grant of permission to transfer of management, permission was granted and there is no illegality committed by the State of Maharashtra in granting the said permission. Learned A.G.P. therefore prays for dismissal of the present petition.

10. To consider and appreciate the rival contentions of the respective parties, we have gone through record.

11. On perusal of the resolution dated 01.07.2012 passed by respondent No.4 for transfer of management of school in question to respondent No.5, names of the employees are mentioned in the said list in which names of the petitioners do not appear, whereas, the petitioners have filed their appointment orders on record to show that the petitioners were appointed in the school run by respondent No.4 namely Late Subhadrabai Secondary School. On the other hand, respondent No. 5 urged that the petitioners are not working in its school. When a specific query was put to the learned counsel for the petitioners about the present status of the petitioners, he points out that in view of the interim order dated 16.12.2016 which shows that school of management shall not take any coercive action against the petitioners and other teachers, the petitioners are continuously working. However, after the said interim order, affidavit is filed by respondent No.5 pointing out that the petitioners are not working in the school run by respondent No.5. The petitioners have not filed any affidavit or any document on

record to establish the fact that petitioners No. 1 and 2 are working. Petitioner No.3 has also not brought anything on record to show that the appeal filed by him before the school tribunal challenging his termination as Sevak is decided finally or what is the status of the said appeal. In absence of anything on record to show that petitioners No.1 and 2 are working presently in the school run by respondent No.5 or petitioner No.3 is reinstated in service on succeeding in the appeal before the School Tribunal, this Court finds it difficult to hold that the petitioners are in service of respondent No.5.

12. Moreover, whether on the date of transfer of management or even on the date of resolution passed by respondent No.4 management, wherein, respondent No.4 did not mention names of the petitioners in the list of the employees given in the resolution, the petitioners were working, this question has become disputed question of facts which will require to lead evidence in this regard. Thus, this Court cannot go into the said disputed question of facts in absence of any sufficient material on record.

13. If we see pleadings of the petitioners, except in title clause, there is no mention that petitioners were appointed as Assistant Teacher. In the title clause, occupation of petitioner Nos. 1 and 2 is shown as Assistant Teachers. The petitioners have not brought on record the subsequent facts about their continuation of service. Thus, the pleadings in respect of continuation of service are lacking. In the said backdrop, we are unable to hold that the petitioners are the employees of respondent No.5 after transfer of the management from respondent No.4.

14. Rule 8 of the Transfer of Management Rules mandates that new management shall absorb the staff of the old management. Thus, it is mandatory for respondent No.5 to absorb the employees who were working in respondent No.4 management. However, respondent No.5 has come up with a plea that in the resolution dated 01.07.2012 passed by respondent No.4 management, the names of the petitioners were not appearing and therefore, respondent No.5 has not absorbed them in the service, whereas the names which were there in the resolution, the said employees were absorbed and they are working.

15. The petitioners in the present petition are challenging the impugned order dated 27.06.2017. One of the ground of challenge is that their names were not shown in the list of employees by respondent no.4 while forwarding proposal for grant of permission to transfer management of the school from respondent No.4 to respondent No.5. The said fact shows that respondent no.4 had not treated the petitioners as its employees. In the said backdrop, if the petitioners are claiming to be employees of respondent No.4 and they were working in the school when respondent No.4 was managing the said school, the petitioners ought to have filed appropriate proceedings against otherwise termination of the petitioners. However, though the resolution was passed by respondent No.4 on 01.07.2012, the petition came to be filed in the month of October, 2016 challenging the proposal submitted by respondent no.4 for transfer of school to respondent No.5. In fact, the alternate remedy by way of an appeal before the school tribunal against the otherwise termination was available to the petitioners, however, without availing the same, the petitioners had approached this Court. In the light of the said fact, this

Court cannot give any finding about the applicability of Rule 8 of the Transfer of Management Rules.

16. The petitioners are challenging the impugned order dated 27.06.2017 on the ground that the documents were prepared in back dates, the documents were fabricated and many other allegations are levelled against respondent Nos. 4 and 5 relating to transfer of management. In absence of any material establishing the said fact, on the basis of assumption and presumption of the petitioners, this Court cannot go into all sorts of question of facts raised by the petitioners. In the circumstance, we are of the opinion that the allegations are made without any material available on record and without establishing the same, prayer is made to set aside the impugned order of transfer of management dated 26.07.2017.

17. As far as judgment of the court in the case of **Jijau Shikshan Sanstha** (supra) is concerned, the letter of the Education Officer recommending proposal of transfer of management dated 25.09.2013 shows that advertisement was issued and suggestions and objections were called. It appears from the record that, that procedure was also

followed and on following due procedure, permission was granted. Thus, the contention of the petitioners that the procedure laid down in the case of Jijau Shikshan Sanstha has not been followed is contrary to the record and the same cannot be accepted.

18. In the light of above observations and findings, there is no hesitation for us to hold that the present petition is meritless and the same is liable to be dismissed and accordingly the same is dismissed, however with liberty to the petitioners to file appropriate proceedings, if it is so desired, challenging their otherwise termination. In case, any such case is filed, the period spent by the petitioners in pursuing the present may not be considered as delay caused in filing such proceeding.

19. Writ petition is accordingly disposed of. No order as to costs. Civil application also stands disposed of.

20. Rule discharged.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

JPC