

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

5

WRIT PETITION NO. 5900 of 2017

Dnyanganga Shikshan Sanstha,
Plot No. 30, N-4, Aurangabad,
through its Secretary Yogesh Vinayakrao Patil
age 41 years. ...Petitioner

VERSUS

1. The State of Maharashtra
through its Chief Secretary,
School Education Department,
Mantralaya, Mumbai- 32
2. The Dy. Director of Education,
Aurangabad Division, Aurangabad,
Taluka and Dist. Aurangabad
3. The Education Officer (Primary),
Zilla Parishad, Aurangabad
Taluka and Dist. Aurangabad.
4. Smt. Sunita Laxmanrao Fuke,
age 41 years occupation nil
R/o B.D. Zambad, Plot No. 10,
Near S.B.O. School, Shivajinagar,
T point, Jalna road, Aurangabad
Tal. & Dist. Aurangabad. ...Respondents

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WITH
WRIT PETITION NO. 5792 of 2017
WITH
CIVIL APPLICATION NO. 9143/2017
WITH
CIVIL APPLICATION NO. 6675 of 2019

40

Mangala Namdeorao Nikam
age 52 years occupation service as Headmistress
in Dnyanganga Public School, Wadgaon (Ko.)
Taluka and District Aurangabad. ...Petitioner

Versus

1. The State of Maharashtra
through its Chief Secretary,
School & Education & Sports Department,
Mantralaya, Mumbai- 400 001
- 5
2. The Education Officer (Primary),
Zilla Parishad, Aurangabad
- 10
3. Dnyanganga Shikshan Sanstha,
having its office at Plot No. 30, A-5, N-4,
Parijatnagar, near M.S. Public School
Taluka and Dist. Aurangabad
through its Secretary
- 15
4. Sunita Laxmanrao Fuke,
age 41 years occupation nil
R/o B.D. Zambad, Plot No. 10,
Near S.B.O. School, Shivajinagar,
T Point, Jalna road, Aurangabad
- 20
- Tal. & Dist. Aurangabad. ...Respondents.

WITH
WRIT PETITION No. 11370 of 2016
WITH
CIVIL APPLICATION No.8173/2017
WITH
CIVIL APPLICATION No. 13469/2017

- 30
- Dnyanganga Shikshan Sanstha,
through its Secretary Shri Yogesh Vinayakrao Patil.
age 40 years occupation service
R/o Plot No. 30, A-5/N-4, Parijatnagar, Aurangabad,
- 35
- ...Petitioner

VERSUS

1. The State of Maharashtra
through its Secretary,
School Education Department,
Mantralaya, Mumbai- 32
- 40
2. The Deputy Director of Education,
Aurangabad Division, Aurangabad
Taluka and Dist. Aurangabad
- 45
3. The Education Officer (Primary),
Zilla Parishad, Aurangabad

4. Smt. Sunita Laxmanrao Fuke,
age 40 years occupation nil
R/o B.D. Zambad, Plot No. 10,
Near S.B.O. School, Shivajinagar, T point, Jalna road,
Aurangabad Tal. & Dist. Aurangabad.

...Respondents

Mr. A.N. Nagargoje, Advocate for petitioners in W.P. No. 5900/2017, 11370/2016 and for respondent No.3 in W.P. No. 5792/2017

Mr. S.R. Kolhare, Adv. for petitioner in W.P. No. 5792/2017 and for applicant in C.A. No. 6675/2019 in W.P. No. 5792/2017

Mr. S.P. Sonpawale, Asstt. Govt. Pleader for Respts. No.1 & 2 in W.P. No. 5900/2017, Respt. No.1 in W.P. No. 5792/2017 and Respts. No. 1 & 2 in W.P. No. 11370/2016

Mr. Dileep Patil-Bankar, Adv. for Respt. No.3 in W.P. No. 5900/2017, Respt. No.2 in W.P. No. 5792/2017 & Respt. No.3 in W.P. No. 11370/2016

Mr. S.R. Barlinge, Adv. for Respt. No. 4 in W.P. Nos. 5900/2017, 5792/2017 & 11370/2016

Mr. V.B. Jadhav, Adv., h/f. Mr. A.V. Hon, Adv. for applicants in C.A. No. 9143/2017 in W.P. No. 5792/2017

Mr. A.D. Sonkawde, Adv., h/f. Mr. A.V. Hon, Adv. for applicants in C.A. No. 13469/2017 in W.P. No. 11370/2016

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 petitions were heard alongwith other

connected petitions, namely, Writ Petitions No. 5706/2016 and 3026/2018, however, for the sake of convenience, we have decided W.P. Nos. 5076/2016 and 3026/2018 by separate judgments, though the facts and documents are common.

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2. In Writ Petitions No. 5900/2017 and 5792/2017 a common challenge is raised to the order dated 18/22.03.2017 passed by the Education Officer (Primary), Z.P., Aurangabad. Writ Petition No. 5792/2017 in addition seeks further reliefs in the nature of grant of approval to the appointment of the petitioner therein namely, Smt. Mangala Nikam as a permanent Headmistress of Dnyanganga Public School, with effect from 08/11/2016 and the further direction to decide the proposal of the petitioner dated 10/11/2016 as expeditiously as possible.

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3. Writ Petition No. 11370/2016 challenges the order dated 29/08/2016 as passed by the Dy. Director (Education), Aurangabad Division, whereby he had directed to reinstate respondent No.4/Mrs. Fuke, with a further direction to take necessary steps for payment of salary to her since January 2016 till the date of the order and the order dated 27/10/2016 passed by the Education Officer (Primary), Z.P.), Aurangabad, directing the Extension Education Officer to physically accompany respondent No.4 Mrs. Fuke to the school at Wadgaon (Ko.) and ensure that she takes charge and to file an according report to him.

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4. The services of respondent No.4, who was the Headmistress of the school, namely, Indira Primary School, which was renamed as Dnyanganga Public School, consequent to its transfer from Indira Nagar, Baijipura, Aurangabad to Wadgaon (Kolhati), after issuing the show cause notice and conducting departmental enquiry, were terminated on 12/06/2016, which termination was never challenged by her by filing appropriate proceedings u/s. 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and in absence of such a challenge, the termination became final. The resultant vacancy in the post of Headmistress was filled up by the management by appointing Mrs. Mangala Nikam, on a permanent basis, whose proposal was sent to the Education Officer for approval, which was kept pending and is yet to be decided.

5. In the meantime, respondent No.4/Mrs. Fuke, who had never challenged her termination by preferring an appeal u/s. 9 of the M.E.P.S. Regulation Act, 1977, on 02/01/2017, submitted an application to the Education Officer (Primary) under Rule 33 of the M.E.P.S. (Conditions of Service) Rules, 1981 praying to be reappointed on the post of Headmistress in the school run by the management-Dnyanganga Shikshan Sanstha and to pay her arrears of salary from 2016 on the ground that the person terminating her

service did not have any power to take any action against the employees and other reliefs.

6. The Education Officer (Primary) thereupon scheduled
5 hearings upon the application as submitted by respondent No.4/Mrs. Fuke from time to time and considering the documents submitted and the contention that the change report of the change in the management in 2012 in respect of the petitioner-trust was rejected by Mr. V.R. Sonune, Asstt. Charity Commissioner, Aurangabad, as a
10 result of which, action of dismissal of respondent No.4 having been found to be taken by the management, which was non-existent, the order of dismissal dated 12/06/2016 was set aside and respondent No.4/Mrs. Fuke was directed to be reinstated, by order dated 18/22 March 2017, which is impugned.

15 7. Mr. Nagargoje, learned Counsel for the management in Writ Petition No. 5900/2017 and Mr. S.R. Kolhare, learned Counsel for the petitioner in W.P. No. 5792/2017, have vehemently assailed the impugned order dated 18/22.03.2017 by contending that the only
20 mode available for setting aside of the impugned order was by way of a challenge to it u/s. 9 of the M.E.P.S. Regulation Act, 1977 and not otherwise. They further contended that neither under the provisions of the M.E.P.S. Regulation Act, 1977 nor otherwise, does the Education Officer (Primary) has any authority or jurisdiction to
25 entertain any application or proceedings against the order of

termination of an employee. They further contended that a perusal of the impugned order demonstrated that the application filed by respondent No.4/Mrs. Fuke was treated by the Education Officer (Primary) as an appeal and the Education Officer (Primary) thereafter proceeded to fix dates for hearing, call for records and information and decide the application on merits, which was not permissible for him. They further contend that lack of jurisdiction in the Education Officer (Primary) to entertain any proceedings for setting aside an order of termination is apparent on the face of the record. They further contend that Rule 33 of the M.E.P.S. Rules, 1981 relied upon by the respondents does not authorise or confer jurisdiction upon the Education Officer (Primary) to entertain a challenge to an order of termination or for that matter to set aside the order of termination. They, therefore, contend that the impugned order of the Education Officer (Primary) setting aside the order of termination of respondent No.4/Mrs. Fuke, is totally non-est, without any jurisdiction and also smacks of malafides on the part of the Education Officer (Primary), who has travelled beyond his powers to favour respondent No.4 Mrs. Fuke, instead of taking action against her for illegally running the school at Baijipura, Aurangabad, inspite of the same having been transferred to Wadgaon (Ko.). They, therefore, contend that the impugned order cannot be sustained in law and, therefore, needs to be quashed on account of lack of jurisdiction. That apart, they further contend that

the bogey of a dispute between the management is clearly without any substance in light of the fact that the change report enquiry bearing Nos. 178/2017 and 179/2017 has been accepted by the Asstt. Charity Commissioner, Aurangabad, vide judgment dated 23/05/2014 and the further change report enquiry for the subsequent period of 2015 to 2018, is pending with the Asstt. Charity Commissioner. They further point out that none of the persons, whose names appear in the earlier change reports or earlier managements, have raised any objection with the Education Officer (Primary). They place reliance upon the judgment in the case of ***Ganesh Laxman Kurhade Vs. State in W.P. No. 5418/2009 and Arjun Manikrao Chavan Vs. State of Maharashtra and others in W.P. No.5457/2009*** to contend that even in a case, where there is a dispute between the management, the same cannot be the basis for rejection of the request of the approval for appointment and ***Shailaja Ashokrao Valse Vs. State M.E.C. 3021*** to contend that in case the approval proposal is not decided within a period of 2/3 months, the concerned appointment may be deemed to have been approved if the same is in accordance with the provisions of the M.E.P.S. Act and Rules thereunder. Further reliance is placed upon ***Saraswati Seva Sangh Vs. Education Officer (Secondary Section), Zilla Parishad, Thane and others, 2002(5) Mh.L.J. 388***, in support of the contention that the Education Officer has no authority to direct reinstatement. Mr.

Nagargoje, learned counsel, also placed reliance upon ***Chembur Trombay Education Vs. D.K. Marathe, 2002(3) B.C.R. 161*** and ***Ganesh Madhavrao Thavre Vs. Central Hindu Military Education Society, 2007(5) B.C.R. 680*** to contend that the

5 change brought about in accordance with law would come into effect from the date of the resolution of the trust to bring about the change, which in the present case, was the meeting dated 05/08/2015, in which the managing committee for the period 2015 to 2018 came to be elected. The ambit and scope of Section 22 of

10 the Mah. Public Trusts Act was restricted to examine the legality of the change and not otherwise, in light of which, it is contended that the actions of the managing committee elected for the period 2015 to 2018 were legal and proper and the contrary opinion of the Education Officer was without any substance altogether. They

15 further contend that the order dated 29/08/2016 passed by the Dy. Director (Education) directing the E.O. (Primary) to reinstate respondent No.4 and pay arrears of her salary, though the same subsequently came to be withdrawn by him vide his letter dated 24/05/2017 holding that she had the alternative to file proceedings

20 u/s. 9(1) of the M.E.P.S. Act, 1977, is an indication of the favouritism being shown to respondent No.4 by the authorities. He further contends that the order dated 27/10/2016 passed by the Education Officer (Primary) directing the Extension Education Officer to visit the school with respondent No.4 and ensure that that she takes

charge and to file an according report to him, further supports the claim of favouritism and are both unsustainable in law, as there is no warrant in any statute for such an action on their part.

5 8. Learned counsel Mr. S.R. Barlinge for respondent No.4, at the outset, made a categoric statement to the effect that respondent No.4 Mrs. Fuke had no role to play in the management of the trust, namely, Dnyanganga Shikshan Sanstha and neither was she a part of it nor had any interference or say therein. He contends
10 that her only role was that of a Headmistress of the school being run by the trust. He contends that under the provisions of Rule 33 of the M.E.P.S. Rules, 1981 as there was dispute in the management, the Education Officer was right in entertaining the application as filed by respondent No.4 and as the order of dismissal was without any legal
15 authority, the impugned order cannot be faulted with. He, therefore, submitted that the petitions are without any merit whatsoever and are liable to be dismissed. Mr. Patil, learned Counsel holding for Adv. Mr. Barlinge, in fact, on the last date of hearing tendered an apology at the bar and a letter purporting to have been issued by the
20 management on 31/12/2016, whereby the order of termination dated 12/06/2016 of respondent No.4 stood withdrawn by the management itself and contended that in light of such withdrawal, the petition itself was not maintainable.

25 9. Learned Counsel Mr. Dilip Patil Bankar, appearing for the

Education Officer (Primary) and learned Counsel Mr. V.B. Jadhav, holding for Adv. Mr. A.V. Hon in C.A. No. 9143/2017 in W.P. No. 5792/2017 and C.A. No. 13469/2017 in W.P. No. 11370/2017 have supported the impugned order and have adopted the argument, as
5 advanced by learned Counsel Mr. Barlinge, appearing for respondent No.4/Mrs. Fuke pertaining to the alleged dispute in the management of the petitioner-trust for the purpose of the applications for intervention.

10 10. Having heard the learned Counsel for the parties, we find that the reliance placed by the learned Counsel for the respondents upon Rule 33 of the M.E.P.S. Rules, 1981, is wholly misplaced. Rule 33 merely prescribes a procedure for inflicting major penalties. Rule 33(1), merely postulates obtaining of the permission of the
15 Education Officer in case management decides to suspend the employee pending enquiry. Sub-rules (2) to (4) of Rule 31 then deal with the restrictions and obligations upon a suspended employee. Sub-rule (5) then deals with the position where a proceeding has been taken against an employee on a criminal charge or who has
20 been detained under a law for the time being in force providing for preventive detention. Sub-rule (6) thereafter contemplates the situation where as a result of criminal prosecution in case there is a judgment of conviction, what the management should do. None of the provisions of Rule 33 of the M.E.P.S. Rules 1981 contemplate any

power nor confer any jurisdiction upon the Education Officer to entertain an appeal or an application by a dismissed employee challenging the order of dismissal or for that matter to exercise the jurisdiction to set aside the order of dismissal. Such a power to entertain an appeal against an order of dismissal has been conferred by the statute and specifically Section 9 of M.E.P.S. (Conditions of Service) Regulation Act, 1977 upon the Tribunal, so constituted u/s. 8 of the M.E.P.S Act, 1977. It is, thus, apparent that it is only a duly constituted Tribunal u/s. 8 of the M.E.P.S. Act, 1977, which can have jurisdiction or authority to entertain an appeal against an order of dismissal of an employee and no other authority. By any stretch of imagination, the Education Officer cannot be held to have been vested with any power, authority or jurisdiction to entertain an appeal under the guise of an application by a dismissed employee challenging the order of dismissal. The position in this regard is squarely covered by the judgment in the case of **Saraswati Seva Sangh** (supra), wherein in para 5 it has been held as under:

“ 5. It appears that thereafter on 25th September, 2001, the Education Officer, Zilla Parishad, Thane, passed the impugned order directing the petitioner-Sangh to permit respondent No.5 to function as the Headmaster of the School. We fail to understand what authority the Education Officer has to direct respondent No.5-Parishad and the petitioner-Sangh to reinstate respondent No.4 as the Headmaster of

the School when in a disciplinary proceeding, respondent No.4 was found guilty, and the punishment of termination of service was inflicted upon him. Counsel for the State could not support the order of the Education Officer, but he submitted that the impugned order dated 25th September, 2001 may be treated only as a request and not as a command.

6. We have perused the impugned order and we find that the order passed by the Education Officer is in the nature of a direction to the petitioner-Sangh as well as respondent No.5 and it cannot be termed as a mere request. In the circumstances, we find that the impugned order passed by the Education Officer, Zilla Parishad, Thane, respondent No.1 dated 25th September 2001 is wholly without jurisdiction and must be set aside. We accordingly quash the impugned order."

The order dated 18/22-03-2017 is, thus, without jurisdiction and cannot be sustained.

11. That brings us to the next contention of learned Counsel Mr. Barlinge that since there was dispute in the management, the order of termination was, therefore, without any jurisdiction and, therefore, had rightly been set aside by the Education Officer. We are afraid we cannot accept this contention. This is for multiple reasons, the first being the absolute lack of the jurisdiction in the

Education Officer to set aside the order of termination of a dismissed employee, for whatsoever reason. The power in this regard as stated above has been statutorily conferred upon the School Tribunal by virtue of section 9 of the M.E.P.S. Act, 1977. It is a trite position of law that jurisdiction has to be specifically conferred and cannot be assumed. Whatever be the nature of the order, since it resulted in termination of the services of an employee, the only recourse available to such an employee was to challenge the same by way of an appeal u/s. 9 of the M.E.P.S. Act, 1977. Respondent No.4 Mrs. Fuke was clearly aware of her right to appeal, which is also reflected from the order of the Court dated 24/10/2016 as passed in W.P. No. 5706/2016, Smt. Sunita Laxmanrao Fuke Vs. State of Maharashtra and others, which is quoted as under:

“ *Learned Counsel for the petitioner restricts her challenge in respect of transfer of school from one place to another and transfer of management.*

Learned Counsel appearing for Respondents informs that disciplinary inquiry has been conducted against the petitioner and her services have been terminated.

It would be open for the petitioner to raise challenge to the adverse order of termination issued by the management.

Stand over to 28.11.2016 at the request of learned Counsel for the petitioner.”

This being the position, the absence of a challenge to the order of termination by respondent No.4/Mrs. Fuke, makes the termination final and binding not only upon the management-trust but also upon the respondent-authorities. The Education Officer or for that matter, respondent No.4/Mrs. Fuke cannot be permitted to circumvent the statutory remedy, under the guise of an application to set aside the order of dismissal being entertained by the Education Officer, on the ground of the dismissal order being passed by the management without authority. This course was not open nor can be held to be open or permissible to any dismissed employee or any Education Officer or other authority. The second reason for not accepting the contention of learned Counsel Mr. Barlinge is that the issue of any dispute between the management, has to be raised by persons, who are in the management or who have any interest in the trust. In the instant case, respondent No.4 Mrs. Fuke cannot be said to be a person having any interest in the trust, so as to raise any dispute. That apart, no other person has come forward, before the Education Officer, claiming any dispute in the management. At least, the reading of the impugned order or for that matter, the petitions and the replies therein, do not reflect any such dispute as is sought to be canvassed. On the contrary, by the judgments dated 23/05/2014, the Asstt. Charity Commissioner in Charge Reports Enquiry No. 178/2014 and 179/2014 has accepted the change for the years 2009-2012 and 2012-2015 to be legal and valid. That apart, Change

Report Enquiry No. 1746/2017 for the period 2015 to 2018 of the election held on 05/08/2015, and Change Report Enquiry No. 914/2018 for the period 2018 to 2021 for the election held on 22/08/2018 is claimed to be pending before the Asstt. Charity Commissioner as per the submissions of learned Counsel Mr. Nagargoje appearing for the petitioner-trust. This position has not been disputed by the respondents. In the above context, the following observations in the case of **Chembur Trombay Education Society** (supra), being material, are quoted, thus:

10 *“11. A priori, any amendment or change brought about in accordance with law would come into effect from the date of resolution of the Society to bring about such a change. This proposition is fortified from the plain language of section 22 of*
15 *the Bombay Public Trusts Act. The said section requires that where any change occurs in any of the entries recorded in the register kept under section 17, the trustee shall, within 90 days from the date of the occurrence of such change, report*
20 *such change to the Deputy or Assistant Charity Commissioner, as the case may be. The dictionary meaning of expression “occur” as observed in the Blacks Law Dictionary is :*
25 *“To happen; to meet one's eyes; to be found or met with; to present itself; to appear; hence, to befall in due course; to take place; to arise.”*
Giving the natural meaning to this word in section 22 of the Act, coupled with the principle

enunciated by the Apex Court that when the Act does not require that registration of any change is a condition precedent to come into effect, I have no hesitation in taking the view that the amendment to the constitution as well as subsequent elections of the President and members of the Governing Council, therefore, came into effect from the date of respective resolutions of the general body. The enquiry postulated under section 22 is only to ascertain the factum as to whether the change has occurred or not. In the event, the coimpetent authority is satisfied that the change has not occurred in accordance with law, only then that change will have to be undone and status quo ante will have to be restored. A fortiori, resolution of the general body of the Society is sufficient to ignite the change of amendment in the constitution as well as of electing new general body for administering the affairs of the Society. The fact that the change report is pending consideration before the Charity Commissioner, would be of no avail. Understood thus, as a necessary corollary, it will have to be held that the respondent-Shri Marathe ceased to be the President of the Society from the date when the General Body elected another President in its meeting dated June 18, 1995. If this be the position, the respondent-Shri Marathe will have no right whatsoever to continue in the post of president and, there would be no question of

granting any mandatory relief at this stage.”

The above view has been approved of in ***Ganesh Madhavrao Thavre*** (supra).

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12. The contention of learned Counsel Mr Barlinge that there was dispute between the management and therefore, the order of termination dated 12/06/2016 was non-est, cannot be accepted, in light of the above position. In so far as the contention
10 that the change report of the management in 2012 was rejected by the Asstt. Charity Commissioner, Aurangabad, vide order dated 21/07/2015, it is pertinent to note that the said change report pertains to the filling up of the vacancies in the managing committee of the petitioner-trust due to resignation of some of the
15 members in the meeting dated 15/06/2014 and the reason for rejection as revealed from the order dated 21/07/2015 appears to be that there was proposer or seconder to the resolution accepting the resignations, which being the case, same does not assist the case of respondent No.4 in any manner.

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13. The further contention by Mr. Patil, learned Counsel holding for Adv. Mr. Barlinge that by the letter dated 31/12/2016, the management had withdrawn the order of termination of respondent No.4 Mrs. Fuke dated 12/06/2016, as a result of which she continued
25 to be in service, cannot be accepted for the reason that this position

is not extant in any of the petitions, either by way of original pleadings or by way of amendment. That apart, a perusal of the letter dated 31/12/2016 would demonstrate that the same is signed by one Shri Balaram Bhaurao Kale who claims to be the Secretary of the trust. The letter dated 31/12/2016 also shows Shri Magan Mohan Sarsande as the President of the trust. In light of the judgments dated 23/05/2014 as passed by the Asstt. Charity Commissioner, Aurangabad Region, Aurangabad in Change Report Enquiry Nos. 178/2014 and 179/2014, and the changes made in Schedule 1 in pursuance thereto, it cannot be said that either Shri Magan Mohan Sarsande was the President of the trust or Shri Balaram Bhaurao Kale was its Secretary, as the judgment dated 23/05/2014 and the changes effected in pursuance thereto, as recorded in Schedule - I do not contain their names at all, either as President or Secretary of the trust. Thus, there is nothing on record to demonstrate that the persons named above, have in any manner assumed the functioning of the management of the trust in any capacity whatsoever, in light of which, the letter dated 31/12/2016 issued by Mr. Balaram Bhaurao Kale, does not carry any meaning whatsoever and thus, the argument based upon it that the order of termination of respondent No.4 Mrs. Fuke stood withdrawn, cannot be accepted.

14. 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 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, which has to be considered in light of the statement made at bar by learned Counsel Mr. Barlinge appearing for respondent No.4 to the effect that respondent No.4/Mrs. Fuke had nothing to do whatsoever with the management of the trust. 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.4 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.4 Mrs. Fuke. The application is further signed at serial No.12 by one Dwarkabai Laxman Fuke, who is said to be the relative of respondent No.4. 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.4/

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.4 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.4 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 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
5 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.4, to anyhow get back her earlier job of Headmistress at the institution
10 run by the petitioner.

15. Thus, the above position would categorically demonstrate that the justification as sought to be raised in support of the impugned order 18/22.03.2017, as passed by the Education
15 Officer (Primary) by the learned Counsel for respondents, is clearly unsustainable on facts as well as in law.

16. As the order dated 29/8/2016 passed by the Dy. Director (Education) directing the Education Officer (Primary) to reinstate
20 respondent No.4 and pay arrears of her salary, which has been challenged in Writ Petition No. 11370/2016, has subsequently been withdrawn by him vide his letter dated 24/05/2017 (Exh.R-3/10-143) holding that respondent No.4 had the alternative to file proceedings u/s. 9(1) of the M.E.P.S. Act, 1977, no orders are necessary in that
25 regard. In so far as the order dated 27/10/2016 passed by the

Education Officer (Primary) directing the Extension Education Officer to visit the school with respondent No.4 and ensure that that she takes charge and to file an according report to him, under challenge in Writ Petition No. 11370/2016, in light of what has been stated in
5 respect of powers of the Education Officer, the said order dated 27/10/2016 was clearly illegal and is unsustainable in law and is hereby quashed and set aside.

17. We, therefore, pass the following order:

- (I) The order dated 18/22.03.2017 as passed by the Education Officer (Primary), Zilla Parishad, Aurangabad, is hereby quashed and set aside.
- (II) The order dated 27/10/2016 as passed by the Education Officer (Primary), Zilla Parishad, Aurangabad, is also quashed and set aside.
- (III) The Education Officer (Primary), Zilla Parishad, Aurangabad, is hereby directed to consider the proposal as filed by the petitioner-trust for approval of Smt. Mangala Nikam as permanent Headmistress of Dnyanganga Public School, Wadgaon (Ko.) in accordance with law and decide the same within a period of two weeks from the date of this order.

- (IV) Writ Petitions No. 5792/2017, 5900/2017 and 11370/2016 are allowed in above terms.
- (V) Rule is made absolute.
- (VI) Civil Application No. 6675/2019 in Writ Petition No. 5792/2017 and Civil Application No. 8173/2017 in W.P. No. 11370/2016 accordingly stand disposed off.
- (VII) 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. 9143/2017 in W.P. No. 5792/2017 and civil application No. 13469/2017 in W.P. No. 11370/2017 no longer survive for consideration and are accordingly disposed off.