

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 3732 OF 2013

1 Shaikh Usman Educational Society & Ors. ... Petitioners

Vs

1 The State of Maharashtra & Ors. ... Respondents

***WITH
CIVIL APPLICATION NO. 1971 OF 2013
IN
WRIT PETITION NO. 3732 OF 2013***

***WITH
CIVIL APPLICATION NO. 1970 OF 2013
IN
WRIT PETITION NO. 3732 OF 2013***

***WITH
CIVIL APPLICATION NO. 1722 OF 2017
IN
WRIT PETITION NO. 3732 OF 2013***

Mr. S.M. Kamble for the Petitioner in the Writ Petition and for the Applicant in CAW NO.1722 of 2017..

Mr. Vivek Salunkhe for the Applicant in CAW No.1971 of 2013.

Mr. N.R. Bubna for the Applicant in CAW 1970 of 2013.

Ms. S.D. Vyas, 'B' Panel Counsel for the Respondent Nos.1 to 3.

***CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK , JJ.***

WEDNESDAY, 13TH FEBRUARY, 2019

P.C. :

1 By this writ petition under Article 226 of the Constitution of India, the petitioner have prayed for the following reliefs :

(a) *Rule be issued and record and proceedings be called for;*

(b) *By suitable writ, order or direction, this Hon'ble Court be pleased to direct the Respondent no.3 to decide and grant the proposal submitted by the Petitioner - Institution dated 21//6/2012 and 11/12/2012 **Exhibit-G & 1** for approval to the appointment of the Petitioner No.3 as a Headmaster in the Petitioner No.2 School;*

(c) *By suitable writ, order or direction this Hon'ble Court be pleased to direct the Respondents to release all the consequential benefits entitled to the Petitioner No.3 after granting approval in the post of Headmaster,*

(c) *Pending the hearing and final disposal of the present Writ Petition, this Hon'ble Court be pleased to direct the Respondent No.3 to decide and grant the proposal submitted by the Petitioner - Institution*

dated 21/6/2012 and 11/12/2012 Exhibit G & I for approval to the appointment of the Petitioner No.3 as a Headmaster in the Petitioner No.3 as a Headmaster in the Petitioner No.2 School;

(e) Interim and ad-interim relief in terms of prayer clause (d) be granted;

(f) Cost of this Petition be provided for;

(g) Any other order or relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case be passed;"

2 After this petition was argued extensively before us and our attention was drawn to the pleadings, we gave a suggestion to Mr. Kamble appearing on behalf of the petitioners. That suggestion was that there is an accompanying Civil Application being Civil Application No. 1971 of 2013. In that Civil Application, Mr. Riyaz Ali - applicant has alleged that the petitioners are not entitled to any reliefs. The applicant - intervenor says that the petitioners projected before this Court that the post of In-charge Headmaster was being held not by anybody else, but a relative of the Chairman. It is stated that

Ansari Rizwana Mohammed Ayub is related to the Chairman and she has been appointed Principal knowing fully well that the applicant – intervenor is holding that post.

3 The argument is that the post has been held from 1st November, 2005 and there is an approval granted to this appointment. A letter of confirmation has also been issued on 11th February, 2011.

4 A writ petition was filed by these very petitioners being Writ Petition No. 3789 of 2011 which was rejected. Now this Writ Petition is filed alleging certain events and projecting them to be subsequent developments.

5 After all these allegations were made in the Civil Applications, we put it to Mr. Kamble as to whether the petitioners are ready and agreeable to this Riyaz Ali continuing as a Headmaster. More so, when he is going to retire or demit office on attaining the age of superannuation with effect from 31st May, 2019. Post his superannuation, the claim of the petitioner No.3 can be considered and that will be considered irrespective of

her concession or her agreement and consent to allow the said Riyaz Ali to continue as a Headmaster till he attains the age of superannuation.

6 Mr. Kamble sought time to take instructions and particularly put across these suggestions of the Court.

7 At his request the matter was posted today for passing final orders.

8 Upon taking instructions Mr. Kamble has informed the Court that the petitioners are agreeable to the continuation of the said Riyaz Ali as a Headmaster of the School. The School is Shaikh Usman High School, Malegaon. That person can continue till 31st May, 2019 whereupon he retires on attaining the age of superannuation. Till the date of his superannuation, he can draw all the benefits as well. He should also be held to be entitled to draw the terminal benefits. No impediment will be placed nor any objection will be raised to his continuance and drawing such benefits.

9 Once Mr. Kamble has taken these instructions and informed us all his statements are accepted as undertakings to this Court. We clarify that we have not examined the rival contentions. We also clarify that the claim of the petitioner No. 3 for the post of Headmaster shall be considered strictly in accordance with law. The requisite competent authorities, including the Education Officer (Secondary) Zilla Parishad, Nashik and the Deputy Director of Education, Nashik shall assist the Management in filling up the vacancy. That vacancy in the post of Headmaster would be filled in in accordance with the rules and regulations in force and as expeditiously as possible and, in any event, within a period of three months from the date the said vacancy occurs. The requisite permissions and approvals be granted to fill up such vacancy and the statutory authority shall ensure that after the process is completed, the Management forwards the proposal so that the appointee is not left without a salary or the regular emoluments which are admissible to the post. No monetary loss should be caused to him.

10 We find that there are two other Civil Applications and from a reading of the same so also the affidavits in reply and

rejoinder to this petition, there is a conflict between groups and factions within the Management. It is obvious that somebody wants to retain control or obtain it, but we do not express any opinion for there are other forums for this warring factions and groups to have the dispute resolved. Let them approach these forums, but we do not want the School and its administration to be paralyzed so also adversely affected on account of such factional fights or group conflicts. Let the statutory authority, particularly in the Education Department ensure that there is no obstacle or hindrance to the smooth management of this Educational Institution. The real stakeholders are the students and the staff and the general public. Let their interest be not jeopardized on account of such disputes within the Management. Clarifying that this forum could not have been resorted to to resolve these internal disputes, we dispose of this Writ Petition and all the Civil Applications.

M.S. KARNIK, J.

S.C. DHARMADHIKARI, J.