

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.51 OF 2013

Hindustani Islamic Magasvargiy
Alpasankhyank Shikshan Santha,
Solapur

.... Petitioner

Vs.

The Education Officer (Primary)
Zilla Parishad, Solapur & Others

.... Respondents

Mr. S.G. Kudle for the Petitioner.
Mr. Sushil Inamdar for Respondent No.1.
Mr. R.S. Alange for Respondent Nos.3 to 9.
Mr. M.M. Pable, AGP, for Respondent No.10-State.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : DECEMBER 03, 2019

P.C:

1. By this petition under Article 226 of the Constitution of India, the petitioner prays for the following relief:-

“(b) This Hon’ble Court be pleased to issue the writ of certiorari, order, directions or any other order, directions or appropriate writ in the nature of certiorari calling for records and proceedings from office of the Respondent No.1 in respect of appointment orders issued in favour of Respondent No.3 to 8 herein and after perusing the legality, propriety and correctness of the said appointment orders issued by Respondent No.2 herein, this Hon’ble Court be pleased to quash and set aside the order of approval dated 22-8-2008 bearing Outward No.860 of 2008 (Exhibit ‘G’), order dated 19.5.2009 bearing Outward No.567 of 2009 (Exhibit ‘J’), order dated 22.2.2010, bearing Outward

No.174 of 2010 and 175 of 2010 (Exhibit 'N' and 'O' respectively) holding that the Respondent Nos.3 to 8 herein were not appointed by the School Committee in question and the Respondent No.2 is not empowered to appoint the employees of the school contrary to the provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981 and accordingly, the said appointment orders issued in favour of the Respondent Nos.3 to 8 herein be held as illegal and invalid appointment orders for the purpose of grant of an approval;"

2. As a consequence of the above, the petitioner prays that a writ of mandamus or any other writ, order or direction in the nature thereof be issued so as to appoint a high ranking official in the Government of Maharashtra to hold an inquiry into the appointments made of respondent Nos.3 to 8 and thereafter further orders be passed, including to recover the salaries that have been paid till the date of action.

3. Ordinarily, such a petition could not have been treated as a PIL. However, on 29-1-2013 the following order was passed on this petition:-

"1. The Education Officer is seized of the complaint made by the petitioner. However, by a letter (Exhibit U-1 to the petition), the Education Officer has observed that schedule 1 of the record maintained by the Assistant Charity Commissioner notes that the petitioner is no longer the President of the petitioner-Association as he had tendered his resignation. As noted by the Education Officer, the further proceedings have been suspended till any amendment to the order of the Assistant Charity Commissioner. If there is an amendment, the application before the Education Officer would obviously continue. Mr. Kudle, however,

states that even otherwise, the petitioner is entitled to maintain this petition to expose the allegedly illegal appointment. That the petitioner is entitled to do only by way of a public interest litigation which assignment is not with us.

2. The petition is, therefore, directed to be treated as a public interest litigation. Office to proceed accordingly."

4. In due deference to this order, we have treated this petition as a PIL. However, this order of 29-1-2013 shall not be treated as a precedent for future cases of this nature.

5. The petitioner before this Court says that there is an educational institution of which he is the President. The 1st respondent is the Education Officer (Primary), Zilla Parishad, Solapur whereas the 2nd respondent is the Secretary of this educational institution known as Hindustani Islamic Magasvargiy Alpasankhyank Shikshan Sanstha.

6. The respondent Nos.3 to 8 have been appointed as teachers and their appointments have been approved. The 9th respondent claims to be an ex-in-charge Headmistress at the relevant time. The 10th respondent is the State of Maharashtra through the Secretary, Department of School Education and Sports.

7. It is said that the Sanstha is a registered charitable Trust governed by The Maharashtra Public Trusts Act, 1950

(**“Trust Act”**) as also The Societies Registration Act, 1860. This Trust is managing and administering a primary school. The name of the school is Samadhan Primary Marathi School. It is a 100% aided school. The 2nd respondent claims to be the Secretary of the Trust and administering and managing the school. He has prepared bogus and false records in relation to the appointments made by the school. These appointments are of respondent Nos.3 to 8. These records have been accepted and the appointments have been approved by the concerned officers in the State. The proposals for approval were forwarded through the 9th respondent.

8. The petitioner says that the copies of the appointment orders annexed by him would reveal that the same are not duly signed nor is there the necessary and mandatory endorsement with regard to fulfilment or compliance with the procedure of appointment. Therefore, the approval could not have been granted to the appointments by the 1st respondent. Thus, the approval has been granted without verifying and scrutinising the records. In these circumstances, the authorities be directed, after the orders of approvals are quashed and set aside, to initiate a probe and inquiry, in short, in terms of prayer clause (c). The petitioner says that for all these years the said employees have drawn the pay-scales admissible to the post of teachers and the amounts paid be therefore directed to be

recovered. The petition has been filed to put in issue the above referred approval orders. The approval orders are stated to be that of 2002 onwards. Some of them are of the year 2008, 2009 and 2010. The petition is filed on 16-6-2011.

9. On a notice being issued on this petition, an affidavit was filed by the 1st respondent and the 1st respondent, in the first affidavit in reply filed on 11-4-2017, says that the petitioner and the 2nd respondent are Trustees as well as office bearers of the concerned Trust. They are close relatives. Since beginning they have been managing the affairs of the Trust together. There was no dispute between them till the year 2008. After the year 2008, there were disputes and the Education Officer says that an attempt was made to transfer the Management of the school to some other local entity. The disputes worsened during the Academic Year 2010. In that year, the primary school was placed under partial step-wise grant-in-aid scheme. The 1st respondent says that the petitioner made a representation to the Deputy Director of Education, Pune, on 30-3-2010 and followed up with the representations made in June, July, August and September, 2010. It is stated that the petitioner has made a complaint but certain proceedings were pending before the authorities under the Trusts Act.

10. This Education Officer says that the 4 teachers,

who are party respondents to the PIL, made a written complaint to the Education Officer on 13-4-2011. The complaint was made against the petitioner and the harassment allegedly caused by him. These teachers say there has never been any dispute between the petitioner styling himself as the President and the 2nd respondent styling himself as the Secretary of the Trust, till 2008. The petitioner himself was managing the affairs and during his tenure as the President, the appointments of the teachers were made as per the Rules. No dispute was ever raised by the petitioner with respect to the appointments. The grants also came to be released. Thereafter, the petitioner started threatening the teachers and demanded money. Since the teachers did not fulfil this demand of the petitioner, he has made complaint and raised objection to the manner and method of appointment of these teachers. Exhibit-2 to this affidavit is a copy of the complaint made on 13-4-2011 by these teachers and the paragraphs set out the gist thereof.

11. The affidavit also relies upon a communication from the Deputy Director of Education, Pune Region, Pune, dated 29-12-2004 sanctioning Divisions V-A, VI-A and VII-A on account of natural growth and I-B, II-B and III-B as the Divisions on no-grant-aid basis. These were started way back in the year 1997-1998, 1998-1999 and 1999-2000. The additional Divisions from Ist to IIIrd standards were also sanctioned and the same

Divisions came to be formed. They have been also sanctioned by the Education Officer by letters dated 30-10-2006 and 29-4-2006. It is then stated in this affidavit that the aforesaid Divisions were brought under partial grant basis and thereafter the proposal for approval of the Education Officer was forwarded. The grants were sanctioned and the approval to the appointment of the teachers also was granted by the Education Officer. The relevant period is 1998 to 2002. The approval was not granted at that time unless the Divisions were brought under partial grant basis. It is, therefore, clear that the appointments have been made after following the procedure set out in the Rules. It is very clear from this affidavit that a justification is provided for entertaining the proposal from the in-charge Headmaster as the appointment of Vajir Kondaji Shaikh, the then Headmaster, was not approved. He was declared surplus. It is then stated in this affidavit that there was an inquiry held pursuant to a letter of 7-4-2010 of the 1st respondent. The inquiry reveals that the appointments of the teachers were made by the School Committee. The Secretary has signed the approval order and the proposal was duly submitted to the office. In order not to cause any loss to the students, the approvals have been granted as per the Rules. The Secretary, while forwarding the proposal, made it clear that the complaint of the petitioner is bogus and should not be entertained.

12. In para 7 of this affidavit, it is stated that there was a compromise effected between the petitioner and the 2nd respondent in the Managing Committee Meeting held on 25-7-2010. The consent arrangement records that they will join in managing the affairs of the Trust. The Court cases filed till that date were to be withdrawn. The appointments made would be treated as legal and valid. In these circumstances, the affidavit, in para 7, relies upon the Consent Terms and the compromise proceedings dated 25-7-2010.

13. Thus, it is very clearly said that this PIL is filed belatedly and there is no reference therein to the above mentioned acts and proceedings.

14. The petitioner responded to this affidavit and also placed on record the statement of Vajir Kondaji Shaikh. Vajir Kondaji Shaikh says that the proposals were forwarded by him during the year 1996-2001. He says this in an affidavit filed on 28-7-2010.

15. The petitioner's rejoinder to the first affidavit of the Education Officer is not only reiterating the statements and allegations in the writ petition but purporting to deal with the affidavit in reply. However, there is denial of the fact that on one or two occasions the petitioner was a party to the proposals

forwarded and pertinently there is complete silence about Exhibit-4, which is a record of the compromise and the Consent Terms between the petitioner and respondent No.2.

16. Be that as it may, as this petition raises question against the approval granted to the appointments of the teachers and because there is an allegation that the appointments were bogus and false, we called for an affidavit of the Education Officer. That was to elicit the latest position from him. In this affidavit filed pursuant to this Court's order, the Education Officer says that though the petitioner relies upon the affidavit of Vajir Kondaji Shaikh, which says that the appointments were made by the School Committee when Vajir Shaikh was working as a Headmaster, the Education Officer clarifies that his office never granted approval to the appointment of Vajir Kondaji Shaikh. Therefore, Vajir Kondaji Shaikh himself was not approved as the Headmaster of the school. This fact is stated in para 5 of the affidavit earlier filed by the Deputy Education Officer. Since there was no approved Headmaster, the appointment orders of the teachers were signed by the Secretary of the Management. This fact has also been mentioned by the Education Extension Officer in his report annexed at page 106 of the paper-book. In the report of the Education Extension Officer it is stated that the appointment orders of the concerned teachers were signed by the Secretary

of the Management and the office of respondent No.1 had granted approval to the appointments of teachers considering the interest of the students. Thereafter, it is stated that the 1st respondent has no power of review and the approval orders cannot therefore be reviewed. We do not think that such power needs to be specifically conferred in the Education Officer. So long as there is a power to quash and set aside any appointment, which was stated to be illegal or fraudulent, then, this aspect of the matter need not detain us.

17. Thereafter, the Education Officer called upon the said Vajir Shaikh to furnish information in writing so that he can verify the correctness of the allegations therein. The Education Officer says that Vajir Shaikh furnished the information in writing to the office of respondent No.1 and further stated, before the Education Officer, that his affidavit was obtained by the petitioner. The said Vajir Shaikh was not aware of the contents of this affidavit.

18. It is said that the petitioner is questioning the legality of the appointments made (appointment of respondent Nos.3 to 8) but he is a total stranger to the process. Now, it is claimed that the petitioner, therefore, has no power to question the appointments.

19. We have perused this entire record with the

assistance of Mr. Kudle, who maintains that there is something fishy or bogus about the appointments, the process preceding the same and the orders of approval. However, we are unable to agree with Mr. Kudle for the simple reason that the specific statements made in the affidavits in reply filed by the Education Officer are not denied and dealt with by the petitioner at all. In this case, it is clear that if the petitioner has a dispute with the Trustees or the office bearers of the Trust and proceedings in that behalf are pending with the Competent Authorities under the Trusts Act, then the remedy of the petitioner was to proceed with those matters and seek such orders therein as are permissible in law. The PIL could not have been filed to question the entire process and to which, upto a substantial stage, the petitioner was himself a party. If the petitioner has not been allowed to function as a Trustee and has been illegally removed, then the change report filed subsequently by the Trustee can be questioned by the petitioner. In fact it appears that the change report proceedings are pending. If the change in the Management of the Trust is not approved by the Charity Commissioner, then all the consequences may follow. However, the Education Officer says that, while the petitioner makes a complaint and also seeks to procure the affidavit of the said Vajir Shaikh as an afterthought, still he maintains complete silence with regard to the Consent Terms and the compromise arrived at between him and the 2nd respondent.

20. We are, therefore, of the clear opinion that the petitioner cannot complain that the process of appointment is not in conformity with law. On a complaint made by him, as also against him by the said Vajir Shaikh, the Education Officer and the Deputy Director caused an inquiry to be carried out. That inquiry was held and the details of the same are set out on record. The affidavit of the Education Officer (Primary) discloses that the Education Officer caused an inquiry to be carried out. That inquiry was carried out. After that inquiry, the Inquiry Officer, Mr. B.S. Jamdar, submitted a report. In that he has said that the ex-President, namely, the petitioner and the Secretary of the school-Trust have made complaints against each other. There was a demand for production of PTR Register of Schedule-1, maintained with the Assistant Charity Commissioner, Solapur. The Inquiry Officer perused this record and exhibited the other documents as well. In that it is revealed that the petitioner tendered his resignation and that was accepted in the meeting of the Managing Committee held on 24-8-2008. The change report indicating this change and deleting the name of the petitioner as the President was accepted by the Assistant Charity Commissioner on 24-8-2008. The Inquiry Officer also says that the appointment of the teachers has been made by the School Committee. However, the appointment order has been signed by the Secretary in the

absence of the President on account of the above noted peculiar facts and circumstances. The Education Officer had found this proposal seeking approval to be in order. He has not objected to the signature of the Secretary on the proposal and in the light of the peculiar facts and circumstances, approved the appointments.

21. It is, therefore, clear that the complaints and counter-complaints are not vitiating the whole process of selection and the appointments. That is said to be in conformity with law. We are, therefore, of the view that in the absence of any challenge to this report, the Consent Terms and the compromise recorded, copy of which is also annexed to the affidavit in reply, we cannot accept the complaint of the petitioner to be genuine and *bona fide*. From the records it appears that the petitioner and the Secretary are trading charges against each other. The petitioner is not really interested in improving the state of affairs. The petitioner is only objecting so as to be a stumbling block. We do not think that the process can now be questioned at this belated stage and the orders of appointment of the teachers should be disturbed by us. In fact, there is no complaint against these teachers. Further, these teachers and the Management have been maintaining cordial relations with each other. To our mind, therefore, this is not a fit case where we should interfere in writ

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jurisdiction. The PIL is, therefore, disposed of. We clarify that the other remedies of the petitioner to obtain such relief as is permissible in law shall not be affected by our order in this PIL.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

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