

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1792 OF 2011

1. Ajit Shankar Mote, aged 39 years
2. Ajay Jagdish Nagavkar, aged 41 years
3. Sabino C. Lopes, aged 35 years

All Adults, Occupation: Service,
Working as Teaching Employees In
Father Agnel Technical High School
& Junior College, Bandstand,
Bandra (West), Mumbai-400 050.

.... Petitioners

- Versus -

1. The Director (Training)
Directorate of Vocational Education
& Training (M.S.), having office at
3, Mahapalika Marg, P.B.No.10036,
Mumbai – 400 001.
2. Incharge Joint Director of Vocational
Education & Training, Mumbai
having office at Ali Yawarjung Marg,
Bandra (E), Mumbai – 400 050.
3. The Principal,
Father Agnel Technical High School
& Junior College, Bandstand,
Bandra (W), Mumbai – 400 050.
4. The Society of St. Francisco Xavier
Pilar, India, through the Secretary,
At Father Agnel Ashram,

P.O. Box 6656, Bandstand,
Bandra, Mumbai – 400 050.

5. Incharge Director (Vocational
Education), Directorate of Vocational
Education & Training (M.S.), having
office at 3, Mahapalika Marg, P.B.
No.10036, Mumbai – 400 001.

6. State of Maharashtra,
through Principal Secretary,
Higher and Technical Education,
Mantralaya, Mumbai – 1.

.... Respondents

WITH

WRIT PETITION NO.1746 OF 2011

1. Kiran Daji Sawant

2. Shyla Samuel

3. Regina Lopes

4. Vijaya Konar

5. Ankush Vyankat Dawat

6. Treesa Joseph

All Adults, Occupation: Service,
Working as Teaching Employees In
Father Agnel Technical High School
& Junior College, Bandstand,
Bandra (West), Mumbai-400 050.

.... Petitioners

- Versus -

1. The Director (Training)
Directorate of Vocational Education
& Training (M.S.), having office at
3, Mahapalika Marg, P.B.No.10036,
Mumbai – 400 001.
 2. Incharge Joint Director of Vocational
Education & Training, Mumbai
having office at Ali Yawarjung Marg,
Bandra (E), Mumbai – 400 050.
 3. The Principal,
Father Agnel Technical High School
& Junior College, Bandstand,
Bandra (W), Mumbai – 400 050.
 4. The Society of St. Francisco Xavier
Pilar, India, through the Secretary,
At Father Agnel Ashram,
P.O. Box 6656, Bandstand,
Bandra, Mumbai – 400 050.
 5. Incharge Director (Vocational
Education), Directorate of Vocational
Education & Training (M.S.), having
office at 3, Mahapalika Marg, P.B.
No.10036, Mumbai – 400 001.
 6. State of Maharashtra,
through Principal Secretary,
Higher and Technical Education,
Mantralaya, Mumbai – 1.
- Respondents

WITH
WRIT PETITION NO.2677 OF 2014

Somnath Baban Kshirsagar,
Hindu Adult, Indian Inhabitant,
Age 36 years, Occupation Service,
R/o. Room No.303, Bldg. No.2,
Ashish Valaram Apartment,
Titwala (E), Taluka Kalyan,
District Thane.

.... Petitioner

- Versus -

1. The State of Maharashtra,
Higher & Technical Education
Department, Mantralaya,
Mumbai – 400 032.
2. The Director,
Vocational Education & Training,
M.S., Mumbai.
3. The Joint Director,
Vocational Education & Training,
Regional Office, 49, Kherwadi,
Bandra (East), Mumbai-400 051.
4. The District Vocational Education
& Training Officer, Mumbai City,
Mumbai.
5. Patuck Polytechnic Trust's Patuck
Technical High School & Junior
College, Santacruz (West),
Mumbai-55, through its Head
Master.

.... Respondents

Mr. Mihir Desai, Senior Advocate for the Petitioners
in WP-Nos.1792 & 1746 of 2011.
Mr. Ashutosh B. Patil i/by Mr. N.V. Bandiwadekar for
the Petitioner in WP-No.2677/2014.

Mr. Himanshu B. Takke, Assistant Government Pleader,
for Respondent Nos.1, 2, 5 & 6 in WP-Nos.1792 & 1746
of 2011, and for Respondent Nos.1 to 4 in WP-
No.2677/2014.

Mr. Amit Sale for Respondent No.4 in WP-Nos.1792
& 1746 of 2011.

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

DATE : JANUARY 28, 2019

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. These petitions under Article 226 of the Constitution of India challenge two orders of the Joint Director of Vocational Education and Training, Government of Maharashtra.

2. The said orders terminate the services of the petitioners with a technical institute known as Father Agnel Technical High School & Junior College, Bandra (West), Mumbai.

3. It is a Government recognized and aided private technical school and junior college. Its affairs are managed by

respondent No.4-Society which is governed by the Maharashtra Public Trusts Act, 1950 and the Societies Registration Act, 1860.

4. The respondent Nos.1, 2, 5 & 6 are respectively the Director (Training), In-charge Joint Director of Vocational Education and Training, Mumbai, In-charge Director (Vocational Education), Directorate of Vocational Education and Training, Maharashtra State, and the State of Maharashtra

5. The contentions of the petitioners are that the impugned orders have been passed by the State Government through its Joint Director (Vocational Education and Training) Government of Maharashtra, although there is no privity of contract between the petitioners and him, much less the Directorate as a whole.

6. The petitioners are employed by respondent No.4-Society as teachers/non-teaching employees in their technical school. Once there is a complaint with regard to the recruitment or functioning of the school itself and which led to a criminal

prosecution, still, the contract of employment is between the Management and the petitioners. The Management can be caused to make an inquiry or if it is not making it, then possibly some other power vesting in the Government and its Director could have been exercised. However, the impugned orders recite that there was a complaint made by one Ashok Shegar. Based on that complaint and when no action was taken, a Criminal Writ Petition {No.2546 of 2008} was filed in this Court. After that writ petition was disposed of on 11-9-2009, the Director proceeds on the assumption that the action taken report has to be submitted by the Directorate to this Court. Once the Court passed a comprehensive order, then the Government constituted a Two Member Committee. The Two Member Committee was to give an opinion/recommendation to the Government as to what action was to be taken on the criminal complaint as also on the direction of this Court.

7. It is in these circumstances, it is stated that the final order has been passed in criminal writ petition on 18-3-2011. After that the Government issued a directive on 13-5-2011. It is

pursuant to all this that the Director has taken steps to declare the appointments of the teachers and non-teaching staff as illegal. They have been quashed and set aside.

8. We find much substance in the contention of the learned Senior Counsel. The learned AGP could not point out to us any power which vests in the Government and the Director to quash and set aside the appointments made by the Management. If at all there was an irregularity, illegality or fraud in the whole process, then, the Government could have exercised its supervisory and overriding powers to cause an inquiry to be made. After that inquiry, the Government could have taken the requisite steps, but we find that for that purpose the principles of natural justice have to be complied with. In the instant case, these principles are not complied with. In fact, there is a complaint which is very specific and that is that the petitioners have been appointed validly. Secondly, that such valid appointments which were to the knowledge of the Directorate could not have been cancelled by the Directorate and the State. It is in these circumstances and when the fraud has to be

established by particulars, then all the more we cannot sustain the impugned orders. The learned AGP was unable to render any assistance with regard to the presence of such powers and stated to be overriding. The Government should have, therefore, been cautious and slow in cancelling these appointments.

9. In fact, after these petitions were brought challenging the impugned orders, from the date they were presented to the Division Bench of this Court, the impugned orders have not been allowed to be acted upon. While the effect of the impugned order dated 23-5-2011, challenged in Writ Petition Nos.1746 and 1792 of 2011, has been expressly stayed by an order of this Court dated 7-10-2011, against the impugned order dated 17-12-2013, challenged in Writ Petition No.2677 of 2014, an interim order has been passed by this Court on 23-9-2014. Thus, the termination could not go through.

10. As a result of the above discussion, we allow these petitions. We proceed to quash and set aside the impugned orders on the ground observed above but if there is any liberty

reserved in law to proceed against the Management and the teachers, then, our order passed in these petitions shall not preclude or prevent the Competent Authorities from exercising such powers as are permissible in law.

11. Rule in each of these petitions is made absolute in the above terms with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)