

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

WRIT PETITION NO. 6442 OF 2021

Namdev S/o Vishnu Sase .. Petitioner

Versus

The State of Maharashtra and others .. Respondents

Shri S. T. Shelke, Advocate for the Petitioner.
Shri A. R. Kale, A.G.P. for Respondent Nos. 1 to 3.
Shri R. S. Deshmukh, Senior Advocate i/by Shri D. R.
Deshmukh, Advocate for the Respondent No. 4.
Shri R. N. Dhorde, Senior Advocate i/by Shri V. R. Dhorde,
Advocate for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
R. N. LADDHA, JJ.**

CLOSED FOR ORDERS ON : 22.10.2021

ORDER PRONOUNCED ON : 18.11.2021

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioner assails the order of the Deputy Director of Education dated 19.04.2021 thereby cancelling the approval granted to the appointment of the petitioner as a Head Master and further directing that the senior most teacher be directed to work as an incharge head master.

2. The Education Officer had approved the promotion of the petitioner as Head Master under order dated 28.05.2020. Under

the impugned order the said approval granted to the petitioner as Head Master stands cancelled. The reason given for cancellation of the approval order is that there is dispute between one Mr. Kurhe and the petitioner before the High Court in writ petition regarding the seniority and till the High Court takes decision on the same and the change report proceedings are decided by the Charity Commissioner, Pune the senior most teacher be permitted to work as an incharge head master.

3. We have heard the learned advocate for the petitioner, the learned Assistant Government Pleader for respondent Nos. 1 to 3, Mr. R. S. Deshmukh, learned senior advocate for the respondent No. 4 and Mr. R. N. Dhorde, the learned senior advocate for the respondent No. 5.

4. Though the advocate for the petitioner and learned senior advocates and the learned A. G. P. for respondents canvassed submissions on various aspects, we are not required to consider the same.

5. The impugned order is passed only on the premise that the dispute between the present petitioner and Mr. Kurhe regarding seniority is pending in the High Court. Mr. Kurhe stood retired on attaining age of superannuation on 31.05.2019. The petitioner was granted approval as Head Master with effect from 01.06.2019.

6. Much arguments were advanced as to the persons in

charge of management, the seniority list and the competency of the petitioner being an arts teacher to officiate as Head Master. However, the same does not appear to be the reason given for cancelling approval granted by the Education Officer in favour of the petitioner as Head Master. In the present petition, we are not going to decide as to who is in power/management, that job is left to the office of Charity Commissioner/Joint Charity Commissioner/Deputy Charity Commissioner.

7. Needless to state approval granted to the appointment of the petitioner is with effect from 01.06.2019 and Mr. Kurhe had retired on attaining age of superannuation on 31.05.2019. The pendency of writ petition and dispute between Mr. Kurhe and Mr. Sase of seniority would not matter much for the decision, for the simple reason that the appointment of the petitioner as Head Master is from 01.06.2019. In the present writ petition, we are not going to decide as to whether the respondent No. 5 is senior to the petitioner or otherwise. Under Rule 12 of the M. E. P. S. Rules, it is the Education Officer, who is the authority to take decision upon the seniority. After the matter was reserved for orders, the petitioner has filed civil application thereby placing on record the order passed by the Joint Charity Commissioner, Pune Region thereby staying the judgment of the Deputy Charity Commissioner, Ahmednager until further orders. The Deputy Charity Commissioner, Ahmednagar had allowed the Change Report No. 548/2020. The same is stayed until further orders.

8. Be that as it may, as already observed above, we are not, in

the writ petition going to decide about the persons who are in the management/power, as the matter is subjudice before the Joint Charity Commissioner.

9. The Deputy Director of Education, certainly can consider legality of the order of approval issued by the Education Officer, as he is higher authority. The contention of the petitioner that, the Deputy Director of Education did not have jurisdiction to decide the issue in dispute is not accepted. However, the manner in which the Deputy Director of Education has decided is improper. Now the respondent No. 5 also contends that he is appointed as Head Master. All these aspects will have to be considered by the Deputy Director of Education.

10. The Deputy Director of Education can certainly consider whether the petitioner is having necessary qualification to be appointed as Head Master and other aspects required for granting approval. The parties can agitate all these aspects before the Deputy Director of Education.

11. In the light of the above, the impugned order is quashed and set aside. The Deputy Director of Education, Pune Region, Pune shall reconsider the issue afresh. All the parties shall appear before the Deputy Director of Education, Pune Division, Pune on 30.11.2021. The Deputy Director of Education shall consider all the aspects of the matter regarding qualification, the appointments made of the persons as Head Masters and shall take decision afresh with regard to the approval granted to the

petitioner as Head Master by the Education Officer after hearing all the parties concerned and consider their stand, the order of approval. The issue of seniority between the petitioner and Mr. Kurhe is irrelevant as on date petitioner claims to have been appointed Mr. Kurhe already stood retired with effect from 31.05.2019. The petitioner claims the said post from 01.06.2019. The Deputy Director of Education shall also consider all the orders passed and produced before it. The same shall be decided afresh, expeditiously and preferably within a period of four (04) months from the date of appearance of the parties. As date of appearance is given before the Deputy Director of Education, the Deputy Director of Education is not required to issue notice to the parties.

12. In the light of the above, the writ petition is disposed of. No costs.

[R. N. LADDHA, J.]

[S. V. GANGAPURWALA, J.]

bsb/Nov. 21