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

5 REVIEW APPLICATION (CIVIL) NO.70 OF 2021
IN WP/6425/2020

NEW ENGLISH SCHOOL KANKURI, THROUGH IT'S
SECRETARY LAXMAN MAROTI DANGE
VERSUS
BHASKAR APPA RANWADE AND OTHERS

...

Mr S. S. Jadhavar, Advocate for applicant;

Mr A. S. Gandhi, for respondent No.1;

Mr S. R. Yadav-Lonikar, A.G.P. for respondent Nos.2 & 3

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 20th September, 2021

PER COURT:

1. The Management, which was respondent No.3 in the writ petition, has preferred this Review Application on the ground that when this Court disposed off the writ petition on 02/08/2021, the name of the learned Advocate representing the Management was not reflected on the daily cause list at Sr. No.24. Therefore, he could not note this matter and remained absent from the proceeding.

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2. Vide our order dated 02/08/2021, we have issued directions below paragraph No.6, which read thus :-

“6. In view of the above, this petition is disposed off with the following directions :-

a) The respondent - school shall submit the seniority list of the teachers as in June 2020, since when the petitioner was officiating as the Headmaster, to respondent No.2 – Education Officer (Secondary), Zilla Parishad, Ahmednagar, on or before 31/08/2021.

b) The petitioner as well as the authorized representative of respondent No.3 shall appear before respondent No.2 on 06/09/2021 at 2.00 p.m.. After hearing the parties, the Education Officer would consider as to who amongst the two i.e. the petitioner and Shri. S. S. Rahane, was the senior most teacher and if it is noticed that petitioner was the senior most teacher, approval shall be granted to him as the Headmaster of the school since he was discharging functions of the Headmaster from June 2021 on-wards.

c) If the conclusion as above is arrived at, the Education Officer shall (i) fix the pay-scale of the petitioner as the Headmaster, (ii) direct payment of arrears of salary and (iii) would also direct the Management to forward the pension papers of the petitioner, subject to due compliance by respondent No.3 – school, all within four weeks from the passing of his order and which shall be complied with by the

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Management, without fail.

(d) Needless to state, if it is proved on the basis of the record that the petitioner was not the senior most teacher, naturally he would not be entitled to the benefits as are available to the Headmaster.”

3. The Management has based it's Review Application on the following grounds :

(a) The original petitioner was never appointed as the Headmaster;

(b) The original petitioner was indeed the senior most teacher at Sr.No.1, when the incumbent Headmistress Smt. Dange retired from service on superannuation;

(c) The Management claims to have appointed Shri. S. S. Rahane as the Headmaster;

(d) Admittedly, the Education Officer has refused to grant approval to the appointment of Shri. Rahane, since the original petitioner is at Sr. No.1 and one more teacher, namely, Shri. Bhagwan Sadashiv Chaudhari is at Sr. No.2. Shri. Rahane is at Sr. No.3.

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(e) Shri. Chaudhari has not objected while appointing Shri. Rahane as a Headmaster;

(f) When the petitioner is not appointed as a Headmaster, his proposal cannot be sent for approval as Headmaster.

4. Having heard the learned Advocates for the respective sides and having perused the Review Application as well as the writ petition, it is apparent that the petitioner teacher has never declined to be the Headmaster. The argument of the Management is that the petitioner is taking treatment from a doctor because he has certain psychiatric problems. It is undisputed that the original petitioner, who has been a teacher in the school, continues to be a teacher in the school even today and there have been no complaints against him till 31/05/2021. There was no grievance that his teaching ability is compromised because of any type of illness. It is equally undisputed that the petitioner was made in-charge Headmaster from June 2020. Approval as In-charge Headmaster was granted by the Education Officer initially for a period of one month. Subsequently, the petitioner was continued as In-charge Headmaster and the Education Officer has consistently granted the approval as In-charge Headmaster till 31/12/2020.

5. The petition was filed by the petitioner on 04/09/2020, setting forth prayer clause (B-I), (B-II), E and F, which read as under :-

“B-I. The respondent No. 3 be directed to forward the proposal of the petitioner to the post of Head Master in respondent no. 3 school with effect from 01/06/2020 and pay the salary accordingly.

B-II. The respondent No. 2 may be directed to give sanction to the appointment of the petitioner to the post of Head Master in respondent no. 3 school with effect from 01/06/2020 and pay the salary accordingly.

E. That, by issuing appropriate writ/direction/order, the order Karya-3/NAPASHA/431/2020 dated 20/07/2020 issued by the respondent No. 2 may be set aside/modified by directing the respondent no. 2 to give sanction to the appointment of the petitioner to the post of Head Master in the respondent No. 3 school with effect from 01/06/2020 till his retirement and pay the salary accordingly.

F. Pending hearing and final disposal of this writ petition, the respondents may be directed not to appoint or grant approval to any other teacher to the post of the Head Master in the respondent No. 3 school and the said post may be kept vacant.”

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6. It does not call for any debate that a Management is not empowered to declare a teacher as being ineligible or incompetent on account of any illness. Such certificate has to be obtained only by referring the said employee/teacher to a Medical Board for medical examination. If the arguments of the Management are accepted, it would lead to a chaos. The contention of the review petitioner-Management is that the original petitioner is mentally challenged and therefore, he was dis-entitled from becoming the Headmaster, without any medical examination. This would virtually grant a leverage to the Management to declare a teacher as being unstable or mentally challenged, so as to remove him from the path of appointment of a favourite candidate as a Headmaster.

7. It is in the light of the above, that we have perused the record and the learned Advocate for the Management is unable to point out any document to indicate that the charge given to the original petitioner to officiate as In-charge Headmaster, has been taken away anytime before appointing Shri. Rahane. So also, the appointment of Shri. Rahane has not been approved by the Education Officer vide the communication dated 10/11/2020,

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keeping in view that the original petitioner had made a specific complaint to the Education Officer that Shri. Rahane was appointed de-hors the Rules and by ignoring the petitioner, who was at Sr. No.1.

8. Considering the above, we have once again perused the directions that we had issued in our order at paragraph No.6 (a, b, c and d). We find that we had called upon the Education Officer to investigate as to who is the senior most eligible teacher in the school, who could be appointed as the Headmaster. There is no question of entertaining the plea of the Management that Shri. Rahane has been appointed when the Education Officer has refused to grant approval and therefore, dis-entitled/disqualified Shri. Rahane from continuing as a Headmaster. No ineligible employee can continue as the Headmaster without approval.

9. As such, we find that the directions set out below paragraph No.6, in the interest of the school, do not appear to be affected by the submissions of the learned Advocate for the Management.

10. Having considered all the contentions of the Management, we do not find that the directions issued, need to be interfered with. As such, this Review Application is rejected.

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11. We are informed that pursuant to our directions, no hearing took place on 06/09/2021, as the Education Officer was on leave.

12. We, therefore, replace the date 31/08/2021, appearing in paragraph 6-a, with 08/10/2021. We further replace the date of appearance 06/09/2021 in paragraph 6-b with 14/10/2021, the time being the same.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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