

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

**WRIT PETITION NO.10918 OF 2018
WITH
CIVIL APPLICATION NO. 6478 OF 2021**

. Dattakrupa Shikshan Sanstha,
Through its Secretary, Dr. Ramchandra
Khando Kulkarni,
Age: 70 years, Occu: Pensioner,
R/o: Datta Nagar, Ausa Road,
Latur, Tal. & District Latur

... Petitioner
(Orig. Respondents)

VERSUS

1. Shrirang S/o Khanderao Jodtale,
Age: 30 years, Occu: Teacher,
R/o Sirsi-Hangarga, Tal. Nilanga,
District Latur.

2. The Headmaster
Sadanand Primary School,
Data Nagar, Aura Road, Latur
Tal & District Latur.

3. The Education Officer (Primary),
Zilla Parishad, Latur.

4. The Deputy Director of Education
Latur Region, Latur.

5. Dattakrupa Shikshan Sanstha,
Through its Administrator C/o Deputy
Director of Education Gandhi Chowk, Latur.

... Respondents

...

Mr. S. S. Thombre, Advocate for the Petitioner
Mr. A. A. Jagatkar, AGP for Respondents/State
Mr. M.R. Tripathi, Advocate for Respondent No.2
Mr. P. R. Tandale, Advocate for Respondent No.3
Mr. A. N. Irpatgire in CA No.6478/2021, Advocate for the Intervener

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 6th December, 2021

ORAL JUDGMENT :

. **RULE.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. A checkered history of litigation between the parties is narrated in this petition. Before filing the present petition, Writ Petition No.6884/2014 was filed by the Management and Writ Petition No.8306/2014 was filed by Respondent No.1/Teacher and there are certain orders passed in these petitions which are referred to during the course of arguments by the respective parties.

3. The present petition is directed against the order dated 21-07-2018, passed by the School Tribunal, Latur in Appeal No.2/2018 in favour of Respondent No.1/Teacher. The order dated 01-07-2019 passed by the Education Officer (Primary), Zilla Parishad, Latur is also questioned, by which the Education Officer has granted approval to the services of the Respondent No.1/Teacher.

4. Admittedly, there is a dispute in the Management/Petitioner No.1, claims to be the Secretary of the Dattakrupa Shikshan Sanstha,

Latur. Civil Application No.6478/2001 is filed by a person claiming to be Secretary of the Petitioner's Institution, according to him, there is dispute in the Management and two Managements claim that they are in power pursuant to the elections held in the year 2010. Change reports of both the Managements are pending before the Assistant Charity Commissioner, Latur.

5. The Management filed Writ Petition No.6884/2014 with a prayer for direction to the Education Officer (Primary), Zilla Parishad, Latur not to release the salary pursuant to the proposal submitted by the Head Master, Sadanand Primary School, Ausa Road, Latur, on the basis of bogus letters dated 15-11-2011 and 30-01-2012. An inquiry is sought, including action of criminal prosecution against the Head Master and Education Officer (Primary), Zilla Parishad, Latur. By order dated 07-08-2014, the Division Bench of this Court directed the Education Officer/Authority not to take any decision on the salary bills submitted to it till the next date. This petition is still pending.

6. Writ Petition No.8306/2014 was filed by the Respondent No.1/Teacher seeking direction to pay him regular monthly salary along with arrears from January-2012. The said petition was resisted by the Management. By order dated 05-01-2016, the Division Bench of this Court directed the Deputy Director of Education, Latur to look into the

matter and by summoning the entire record from the office of Education Officer (Primary), Zilla Parishad, Latur and after hearing the Petitioner and the Respondents therein to prepare inquiry report and submit the same to this Court.

7. Pursuant to the said direction, inquiry report was submitted to the Division Bench of this Court. It is stated in the enquiry report that, though there was no vacant post of Assistant Teacher, the advertisement dated 24-12-2011 was illegally issued by the School for filling up post of Assistant Teacher. No entry of proposal for approval dated 20-01-2012 and 30-01-2012 was found in the inward register. So also no entry of the order granting approval is found in the outward register. Similarly, approval dated 13-03-2012 granted by the Education Officer does not bear outward number of Education Office. After verifying the outward register, no entry of the approval order dated 13-03-2012 was found. The approval order dated 13-03-2012 was not made available to the Deputy Director of Education till the date of hearing. The appointments of Teachers (including Respondent No.1) and other five Teachers were not on the sanctioned posts and their approvals were not granted by following prescribed procedure. The appointment orders as well as approvals appear to be suspicious.

8. The Respondent No.1/Teacher filed an Appeal No.2/2018 in the School Tribunal by arraying the Petitioner as follows; (i) "Dattakrupa

Shikshan Sanstha, Through its Administrator C/o Deputy Director of Education Gandhi Chowk, Latur. (ii) Respondent No.2 was Head Master of Sadanand Primary School, Datta Nagar, Ausa Road, Latur and (iii) Respondent No.3/Education Officer (Primary), Zilla Parishad, Latur District Latur". The said appeal proceeded ex-parte against all the Respondents. By the impugned order, the Tribunal allowed the appeal and set aside the otherwise termination order dated 01-11-2012 and directed the Respondents therein to reinstate the Appellant/Respondent No.1/Teacher to the post of 'Shikshan Sevak' with continuity of service and full back wages. This order is impugned in the present petition.

9. Admittedly, writ petition No.8306/2014 is disposed of, by the Division Bench of this Court vide order dated 27-09-2018, by observing that:

"5. The matter would involve disputed question of facts. The petitioner may approach the Education Officer (Primary). The Education Officer shall hear all the concerned parties and peruse the record, so also the report of the Deputy Director of Education, the order of the Court and shall take decision upon the entitlement of the petitioner preferably within a period of six (06) months.

6. All contentions of the respective parties kept open.

7. Writ Petition is disposed of. No costs."

10. Pursuant to the above directions, the Education Officer issued notices to the Petitioner, the Respondent No.1/Teacher and others to appear before him on 08-05-2019. On that date, only Respondent

No.1/Teacher and Head Master appeared before the Education Officer. The Education Officer passed the impugned order dated 01-07-2019, thereby granting approval to the services of Respondent No.1/Teacher w.e.f. 13-01-2012 for a period of three years as a 'Shikshan Sevak' and since that period was over, his service was approved as 'Assistant Teacher' w.e.f. 13-01-2015. He was also given continuity in service. This order is also challenged by the Petitioner in the present writ petition.

11. Though arguments on the merits of the matter are advanced, this Court is not inclined to go into the merits of the matter as the impugned decision of the School Tribunal is ex-parte and Petitioner or the intervener, who claims to be the Secretary, were not heard before passing the impugned order. Even, the Education Officer has not appeared before the School Tribunal. The clear facts and record was not before the School Tribunal when the impugned order was passed. In that view of the matter, this Court is of the considered opinion that the impugned order cannot sustain as the same is ex-parte order which is passed without taking into consideration the relevant record and without hearing the concerned parties. In that view of the matter, the impugned order is liable to be quashed and set aside.

12. The approval granted by the Education Officer (Primary), Zilla Parishad dated 01-07-2019 is also challenged in the present petition.

Though from record it appears that notices were issued by the Education Officer. There is nothing on record to show that the notices were served on the respective parties. In the reply by the Education Officer, no specific averment in that behalf is made. It appears that only the Head Master who according to the Petitioner is hand in glove with the Respondent No.1/Teacher and the Respondent No.1 were present before the Education Officer. In that view of the matter, since this order is also passed without hearing the concerned parties and without considering the relevant record, the same is also liable to be quashed and set aside.

13. In the result, I pass the following order:

ORDER

(I) Writ Petition is allowed.

(II) The impugned order passed by the School Tribunal, Latur in Appeal No.2/2018 is hereby quashed and set aside.

(III) Appeal No.2/2018 is remitted back to the School Tribunal, Latur which shall be decided by taking into consideration the relevant record, the orders passed by this Court from time to time in the writ petitions referred in this order, and after hearing all the concerned parties, including the intervener.

(IV) The Tribunal shall decide the appeal expeditiously and in any case within a period of three months from the date of receipt of the writ of this order.

(V) In the meanwhile, the parties shall maintain *status quo* as on today.

(VI) The impugned order passed by the Education Officer (Primary), Zilla Parishad, Latur at Exhibit-J dated 01-07-2019, thereby granting approval to the services of Respondent No.1/Teacher is quashed and set aside.

(VII) After the decision of School Tribunal, Latur in Appeal No.2/2018, the Education Officer shall take decision in respect of approval of Respondent No.1/Teacher, after giving an opportunity of hearing to all the concerned parties, including the intervener and after considering the relevant record. This exercise shall be done by the Education Officer within a period of three months from the date of decision of the School Tribunal, Latur.

14. It is made clear that the observations made herein above shall not influence the School Tribunal, Latur or the Education Officer (Primary) Zilla Parishad, Latur while deciding the matters before them, on merits.

15. Civil Application for intervener is also allowed.

(NITIN B. SURYAWANSHI, J.)