

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

WRIT PETITION NO. 3768 2021

- 1) Shri. Shivaji Mofat Education Society,
Kandhar, Tq. Kandhar, Dist. Nanded.
Through its Secretary.
 - 2) Anil Digambarrao Gharule, Age 50 years,
Occ. Service, at present Headmaster,
Shivaji Kanya Prashala, Ranjangaon
(Shgenpunji), Tq. Gangapur,
Dist. Aurangabad.
- ... **Petitioners.**

VERSUS

- 1) Dilip Bhagwanrao Jadhav,
Age 58 years, Occ. Service
as Assistant Head Master,
Shri. Shivaji High School,
Khokadpura, Aurangabad,
R/o. Row House N C-1,
Kasliwal Puram, Shahanurwadi,
Gadia Vihar Road, Aurangabad.
Tq. & Dist. Aurangabad.
 - 2) The Education Officer (Secondary)
Zilla Parishad, Nanded.
 - 3) Shri. Pradip Sahebrao Panpatte,
Age 55 years, Occ. Service as
Assistant Teacher in Sant Gadge
Maharaj Secondary and Higher
Secondary School, Loha, Tq.
Lohara, Dist. Nanded.
- ... **Respondents.**

AND

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Advocate for the Petitioners : Mr. Panpatte V.S.
Advocate for the Respondent No. 1 : Mr. Rajendra J. Godbole.
Advocate for Respondent No. 3 : Kalyan V. Patil.

CORAM : MANGESH S. PATIL, J.
DATE : 24.08.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Learned advocates for the contesting respondents waive service. With the consent of both the sides the matters are heard finally at the stage of admission.

2. The respondent No. 1 in both these Petitions has challenged the

orders dated 01.02.2015 and 10.01.2017 whereby the petitioner No. 1-Management granted promotion to the petitioner No. 2 to the post of Assistant Headmaster. The approval was granted by the respondent No. 2-Education Officer Nanded. His promotion is challenged by two separate appeals under Section 9 of the Maharashtra Employees of Private School (Condition of Service) Regulation Act, 1977 and the Rules framed thereunder. By filing applications (Exh. 49 and 41) the petitioners questioned maintainability of the appeals because of non-joinder of the Education Officer, Aurangabad as a party to the appeals. The stand of the petitioners is to the effect that though at the time of granting promotion the petitioner No. 2 was at Nanded and consequently the Education Officer at Nanded has been made a party, since he is currently posted at Aurangabad, Education Officer at Aurangabad would be the appropriate authority who would be having control over the schools being run by the petitioner No. 1 at Aurangabad. The learned Presiding Officer of the School Tribunal has rejected the application holding that the Education Officer Aurangabad is not a necessary party.

3. The learned advocate Mr. Panpatte for the petitioners would submit that though the approval was granted by the Education Officer Nanded while the petitioner No. 2 was posted at Nanded and at that time the Education Officer Nanded was made a party, since the petitioner No. 2 has subsequently been transferred to Aurangabad on 01.07.2017, it was appropriate to add the Education Officer at Aurangabad as a party to the appeal. In the absence of him there would be a defect in the appeals going to the root of maintainability.

4. The learned advocates for the contesting respondents would submit that they have been questioning the order of the petitioner No. 1-Management promoting the petitioner No. 2 when he was at Nanded and the Education Officer at Nanded had granted approval to such promotion. Merely because subsequently he has been transferred from Nanded to

Aurangabad would not make any change in the scenario. The Education Officer at Aurangabad is not a necessary party to the appeal. The learned Member of the Tribunal has rightly considered these aspects and has committed no error or illegality in rejecting the applications.

5. The learned advocates would further submit that it would be incomprehensible to think that merely because of the change in the posting from Nanded to Aurangabad, the Education Officer at Aurangabad is to be made party. If at all the petitioner No. 2 is again transferred to some other place since the petitioner No. 1 has been running educational institutes at very many places, with every such transfer the Education Officers of that particular place would have to be added. Cause of action had arisen exclusively at Nanded. The parties in their official capacities were stationed at Nanded and consequently the appeals have been rightly preferred against the petitioners in the School Tribunal at Latur having the jurisdiction.

6. I have carefully considered the submissions. Admittedly, the contesting respondent has been disputing the legality of the promotion granted to the petitioner No. 2 by the petitioner No. 1 as Headmaster while he was at Nanded. There is also no dispute that the petitioner No. 1 has its registered office at Nanded. Needless to state that it is the petitioner No. 1/Management which had passed the impugned order and the Education Officer at Nanded had merely granted approval. Only because subsequently the petitioner No. 2 has been transferred to a different school at Aurangabad being run by the petitioner No. 1, would not make the Education Officer Aurangabad a necessary party to the appeal. This is what precisely has been pointed out and clarified by the learned Member of the School Tribunal.

7. Besides, when the contesting respondent who has preferred the appeal is ready to prosecute the appeals as it is, they being dominus litis they cannot be imposed with any direction to add anybody as a party, more so when he is of the opinion that the Education Officer at Aurangabad is not a

necessary party.

8. There is no error or illegality in the impugned orders rejecting the applications of the petitions.

9. The Writ Petitions are dismissed in limine. Rule is discharged.

(MANGESH S. PATIL, J.)

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