

Urmila Ingale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12809 OF 2019

Vishnu Ramchandra Korade Petitioner
Vs.
The State of Maharashtra and ors. Respondents

Mr.Avinash R.Belge, for the Petitioner.
Mr.S.H. Kankal, AGP for the Respondent – State.

CORAM : M. S. KARNIK, J.

DATE : 27th JANUARY, 2021

P.C. :

. Heard learned Counsel for the Petitioner and learned AGP for Respondents No. 1 & 2. None appears for Respondent No.3 despite service of Advocate's notice in terms of order dated 13/01/2021 passed by this Court. Affidavit of service is duly tendered and the same is taken on record. I have gone through the impugned communication which is at page 40 of the Petition. It is the contention of the Petitioner that he is in the employment of Respondent No.3 Institution – School since the year 1989. Therefore according to him, the approval to the appointment of the Petitioner as a Head Master and further approval to the appointment of the Petitioner as a Head Master in the School -

Madhyamik Vidyalaya, Adur, Tal.Guhagar, Dist. Ratnagiri together with release of payment admissible to the post of Head Master to be granted to him. He accordingly made representation to the Respondent No.2. The said representation is rejected by Respondent No.2 on the ground that there is dispute in respect of Management of the said education institution and therefore it is not presently possible for the Education Officer to consider the issue of grant of approval.

2. Learned AGP vehemently opposes the Petition. He submitted that the Petitioner was never appointed as a Head Master.

3. Heard. The only reason why the impugned order passed is pendency of dispute between the Management of the said institution. Having regard to the objection of AGP, it is for the Education Officer to consider the aspect whether there is order of appointment in respect of which the approval is sought. Learned Counsel for the Petitioner says that he is entitled to the appointment as a Head Master on the basis of seniority. Without commenting on merits, the Education Officer to consider all objections and decide the representation on its own merits.

4. Learned Counsel for the Petitioner invited my attention to the decision of the Division Bench of this Court in the case of **Madhav Shankar Kshirsagar and ors. Vs. The State of Maharashtra and anr. 2016 SCC OnLine Bom 11462**. The Division Bench of this Court in paragraph 5 considered the decision of Division Bench of this Court in Writ Petition 4474 of 2012 in the case of Dr.Ishrat Ullah Khan Vs. State of Maharashtra decided on 13/02/2013 which clearly lays down that the Education Officer while considering the issue of approval is not required to go into the dispute inter se between the Management and he has to only see whether the person functioning as Head Master has been appointed in accordance with law and not.

5. In this view of the matter, the impugned order calls for interference. The impugned order dated 29/08/2019 at page 40 of the Petition passed by Respondent No.2 is set aside.

6. The matter is remitted back to the Respondent No.2 for passing a fresh order in accordance with law. The decision thereon to be taken within a period of 6 weeks from the date of receipt of copy of this order.

7. I may not be understood to have expressed any opinion on merits of the approval and the Education Officer is free to consider the issue on its own merits.

8. Writ Petition is disposed of.

(M.S.KARNIK, J.)