

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2698 OF 2021

ALONGWITH

WRIT PETITION (ST) NO. 27881 OF 2019

Anjuman E Targeebe Taleem Trust

..... Petitioner

VERSUS

State of Maharashtra & Ors.

..... Respondents

Mr. Akhil Kupade, i/b. Manoj Harit & Co. for the Petitioner in WP/2698/2021.

Mr. Rahul B. Vijaymane, i/b. Mr.Vijay Killedar for the Petitioner in WPST/27881/2019.

Mrs.P.J.Gavhane, A.G.P. for the State in WP/2698/2021.

Mr.N.K.Rajpurohit, A.G.P. for the State in WPST/27881/2019.

**CORAM: R. D. DHANUKA AND
R.I.CHAGLA, JJ.**

DATE : 1st SEPTEMBER, 2021

P.C:-

Both these writ petitions are filed by the management for various reliefs. The petitioner in Writ Petition No.2698 of 2021 has impugned the order dated 14th August, 2019 whereby the respondent no.4 has conferred upon respondent no.5 the powers of signing pay bills, salary slips and other documents.

2. By Writ Petition (St) No. 27881 of 2019, the management has impugned the order dated 31st May, 2019 passed by the Education Officer, Zilla Parishad, Solapur and also order dated 6th May, 2021.

3. The petitioner has also prayed for an order and direction against the Education Officer (Secondary), Zilla Parishad, Solapur to implement the communications dated 26th March, 2019 issued by the respondent no.3 thereby directing the respondent no.4 to submit the proposal in respect of the grant of approval of the appointment of the petitioner no.2 on the post of headmaster.

4. It is the case of the management that the management had appointed the petitioner no.2 in Writ Petition (St) No.27881 of 2019 on the post of headmaster which was vacant by letter of appointment dated 1st January, 2019 and directed him to resume his duty as headmaster w.e.f 4th January, 2019. On 5th January, 2019 and 9th April, 2019 the management applied for approval in respect of the appointment of the petitioner no.2 on the post of the headmaster. On 26th March, 2019, the respondent no.3 directed no.4 to submit the proposal in respect of grant of approval of the appointment of the petitioner no.2 on the post of the

headmaster of the school.

5. On 31st May, 2019, the Education Officer (Secondary) however rejected the proposal on various grounds. On 6th May, 2021, the Education Officer (Secondary) again passed an adverse order and rejected the proposal for authorizing senior most teacher to sign the documents including pay bills.

6. A perusal of the record indicates that the Director of Education passed an order on 3rd February, 2018 directing the Deputy Director not to approve any appointment to the post of the headmaster on the ground that there was a dispute between the management or other office bearers of the petitioner trust. Relying upon such order issued by the Director of Education, the Education Officer refused to grant permission to the appointment of the petitioner no.2 as headmaster.

7. Learned counsel for the petitioner invited our attention to the judgment delivered by the Division Bench of this Court on 29th October, 2010 in ***Writ Petition No. 3034 of 2010*** filed by ***Murlidhar S/o. Janrao Kale & Ors. vs. State of Maharashtra & Ors.*** and more particularly paragraphs 2, 7, 8 and 9 and would submit that the Director

of Education has no power to decide as to which trustee would administer the trust and would appoint the staff members. Such power vest only in the Assistant Charity Commissioner under section 22 of the Maharashtra Public Trusts Act or under other related provisions of the said Act.

8. In our view, since the order passed by the Director of Education directing not to approve the appointment of the headmaster on the ground that the there is dispute between the management itself is totally illegal. No such direction can be issued by the Director of Education not to approve any headmaster and to allow the school to run without any Head of the school. In view of such perverse order passed by the Director of Education, second perverse order came to be passed by the Education Officer appointing respondent no.5 with a direction to sign the documents and payslips of the school run by the petitioner trust.

9. We have perused the order passed by the Education Officer rejecting the proposal for appointment of the petitioner no.2 to the post of headmaster merely on the ground that no such appointment could

be made in view of the dispute between the management.

10. Mrs.Gavhane, learned A.G.P. for the State vehemently opposes this petition on the ground that in view of the dispute between the management, Education Officer cannot sanction any appointment to the post of headmaster. Learned A.G.P. however could not distinguish the judgment of this Court in case of ***Murlidhar S/o. Janrao Kale & Ors.***(supra). The judgment of this Court in case of ***Murlidhar S/o. Janrao Kale & Ors.***(supra) applies to the facts of this Court. We are respectfully bound by the said judgment.

11. Learned counsel for the petitioner in Writ Petition No.2698 of 2021 filed by the management states that his client has no objection if the petitioner no.2 in Writ Petition (St) No.27881 of 2019 is authorized to sign the pay slips and other documents required to be signed by the headmaster of the school. It is submitted by the learned counsel that the petitioner trust already having found petitioner no.2 as a senior most suitable teacher has submitted his proposal to the Education Officer for his approval. Statement is accepted.

12. Since this Court is of the view that the order passed by the

Education Officer (Secondary) on 31st May, 2019 and 6th May, 2021 are totally perverse and based on the erroneous premise, both these orders are quashed and set aside.

13. Education Officer is directed to consider the proposal made by the management on 5th January, 2019 to appoint the petitioner no.2 to the post of headmaster within three weeks from today in accordance with law. It is made clear that the Education Officer cannot reject the proposal on the ground that there is a dispute between the office bearers of the Trust.

14. The Education Officer shall permit the petitioner no.2 in Writ Petition (St) No.27881 of 2019 as authorized signatory to sign all the documents including the pay slips from today.

15. It is made clear that if the approval is granted by the Education Officer for the post of headmaster in favour of the petitioner no.2, the salary of the petitioner no.2 shall be released as headmaster from the date of initial appointment within three weeks thereafter.

16. Since this Court has set aside the impugned orders, the salary

bills of the teaching and non-teaching staff members stopped so far shall be released within two weeks from today.

17. Writ petitions are allowed of in the aforesaid terms. No order as to costs.

18. The parties to act on the authenticated copy of this order.

[R.I.CHAGLA, J.]

[R.D.DHANUKA, J.]