

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

WRIT PETITION NO. 11870 OF 2017

Uttam Prabhakar Karande
Vs.

... Petitioner

The President/Secretary, Hanuman
Lokseva Mandal and Ors.

... Respondents

Mr. Rajaram Deshmukh, Advocate for Petitioner
Mr. A. B. Tajane, Advocate for Respondent No. 1.
Mr. Anant Vadgaokar, Advocate for Respondent No. 2.
Mr. Rahul Kadam, Advocate for Respondent No. 3.
Mrs. P. J. Gavhane, Learned AGP for State- Respondents No. 4, 5
and 7.

**CORAM : R.D. DHANUKA &
ABHAY AHUJA, JJ.
DATE : 14TH SEPTEMBER 2021**

P.C. :

1. After completion of arguments and after we started dictating the order, Mr. Tajane, learned counsel for respondent no.1 tenders affidavit in reply. We refuse to take affidavit in reply on record.

2. Heard learned counsel for parties.

3. By this petition filed under Article 226 of the Constitution of India, the petitioner has impugned the order dated 7th October 2017

passed by the Deputy Director of Education, Pune and seeks further directions against the respondent no. 3 to grant approval for the post of Head Master in favour of the petitioner.

4. The case of the petitioner is that he is having qualification of B. Sc. B. Ed. and was appointed as Head Master on 14th June 1993. His services were terminated by respondent no. 1 on 30th April 2016. The school tribunal initially was pleased to grant stay on the order of termination by order dated 5th July 2016. This Court in the Writ Petition No. 760 of 2017 filed by the Respondent No. 1 directed the respondents to allow the petitioner to resume his duties and remanded the stay application for fresh hearing. The petitioner accordingly resumed his duties. Respondent no. 2 forwarded a proposal of petitioner to the Education officer for the post of head master on 19th August 2017. On 4th September 2017 the Education Officer granted approval to the said appointment of head master in favour of the petitioner. The respondent no. 1 made a representation to the Deputy Director of Education by the said order dated 4th September 2017. The Deputy Director of Education passed an order on 7th October 2017 directing Education Officer to look into the affairs of the trust and was pleased to set aside the said

approval on 4th September 2017 granted by the Education officer. Being aggrieved by the said order dated 7th October 2017, petitioner filed this petition.

5. Learned counsel for the petitioner submits that the Deputy Director of Education has no power to recall the order passed by the Education officer. He submits that Deputy Director of Education has set aside the proposal granted by the Education officer on the ground that there was management dispute and that the change report filed by the management are pending before the charity commissioner.

6. This Court in catena of decisions has taken decision that on the ground of alleged disputes between the management, Education officer or any authority empower to sanction approval cannot refuse to grant sanction on such ground. A perusal of the order indicates that the sole reason for setting aside the approval granted by the Education officer is that there was management dispute.

7. In our view, the order passed by the Deputy Director of Education deserves to be set aside on this ground.

8. We accordingly pass the following order:-

- i) The impugned order dated 7th October 2017 passed by the Deputy Director of Education is quashed and set aside.
- ii) The proceedings are restored before the Deputy Director of Education, Pune.
- iii) It is made clear that we have not decided the issue whether the Deputy Director of Education has power to recall/set aside the order passed by the Education Officer granting approval to the petitioner for the post of head master or not.
- iv) The petitioner would have liberty to raise an issue of jurisdiction of Deputy Director of Education to pass any order against the order passed by the Education officer granting approval to the petitioner for the post of head master.
- v) The Deputy Director of Education shall decide the issue of jurisdiction also before passing an order on merits.
- vi) The Deputy Director of Education to grant personal hearing to the petitioner before passing any order.
- vii) It is made clear that Deputy Director of Education, if has jurisdiction to interfere with the order passed by the

Education officer, he shall not set aside the approval granted by the Education Officer on the ground of management disputes.

viii) The Deputy Director of Education will pass the order within eight weeks from the date of communication of this order.

ix) If the order passed by the Deputy Director of Education is adverse against the petitioner, such order shall not be implemented for the period of two weeks from the date of communication of the order. Petitioner would be at liberty to file appropriate proceedings.

9. The Writ Petition is allowed in above terms. There shall be no order as to costs.

(ABHAY AHUJA, J.)

(R.D. DHANUKA, J.)