

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.1703/2021

Shagufta Ajaz Khan,
aged about 52 Yrs., Occ. Service,
R/o 2nd Floor, Shiv Palace, Rajasthan
Chowk, Akot, Tq. Akot, Dist. Akola.

..Petitioner.

..Vs..

1. Education Officer (Secondary),
Education office, Zilla Parishad,
Akola, Behind Santoshi Mata Mandir,
Akola.
2. Urdu Education Society, Akot,
Tq. Akot, Dist. Akola, through its
President Mohibullah Khan Fakrullah
Khan Patel, R/o Satranji Pura, Akot,
Tq. Akot, Dist. Akola.
3. Shabina Jamal D/o Sy. Bakhat Jamal,
aged adult, Occ. Service, R/o 1st Floor,
Shiv Palace, Rajasthan Chowk, Akot,
Tq. Akot, Dist. Akola.

4. Deputy Director of Education,
Amravati.

..Respondents.

Mr. C.S. Kaptan, Senior Advocate with Mr. Palash K. Mohta, Advocate for the
petitioner.

Mr. A.S. Fulzele, Additional Government Pleader for respondent No.1.

Mr. S.N. Tapadia, Advocate for respondent No.2.

Mr. Ateeb A. Syed, Advocate for respondent No.3.

CORAM :- SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED :- 23.9.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Learned counsel for respondent Nos.2 and 3 seeks time in the matter. However, considering the narrow compass of the facts relating to the dispute involved in this petition, we do not think that any fruitful purpose would be served by granting further time to these respondents and, therefore, the request on their behalf is declined.

2. Heard. Leave to amend cause title by adding the Deputy Director of Education as party respondent is granted. Amendment be carried out forthwith. Mr. A.S. Fulzele, learned Additional Government Pleader waives notice for newly added respondent.

3. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

4. The dispute involved in this petition is as to whose appointment as Headmaster of Urdu Girls High School, Akot from amongst petitioner and respondent No.3 should be approved by the Education Officer and the Education Officer, after considering the proposals received regarding appointment of petitioner from one faction of the Board of Trustees of Urdu Education Society and the proposal of respondent No.3 made by the other faction of Urdu Education Society,

decided that approval to neither petitioner nor respondent No.3 could be granted and accordingly he passed his order on 12.2.2021.

5. Later on, the Education Officer i.e. respondent No.1 reviewed his order dated 12.2.2021 and took a decision to grant approval to the appointment of respondent No.3 as Headmaster of the said school vide his next order dated 26.4.2021. According to learned Senior Advocate, the subsequent order dated 26.4.2021 being in the nature of review of the earlier order dated 12.2.2021, could not have been passed by respondent No.1 and it is an order which is made without jurisdiction. He places reliance upon the view taken by coordinate Bench of this Court in the case of *Rekha Ashok Khandare V/s. Bahuuddeshiya Shikshan Prasarak Mandal, through its Secretary Dashrath and others* reported in 2021 SCC OnLine Bom 564.

6. Learned counsel for respondent No.3 supports the impugned order which appoints respondent No.3 as Headmaster of the said school. However, learned counsel for respondent No.2 supports the stand of the petitioner.

7. In the case of *Rekha Ashok Khandare* (supra) this Court has taken a view that the Education Officer being an Authority to decide

the issue pertaining to grant or refusal of approval to the appointments of Teachers / Headmasters, ceases to exercise jurisdiction the moment he exercises his power by taking decision one way or the other and, therefore, unless power of review is expressly conferred upon such an Authority under the Statute, the Education Officer would have no power to review his own decision. The view so taken by the coordinate Bench of this Court commends to us.

8. In the present case by the subsequent order dated 26.4.2021 respondent No.1 has taken a decision which is contrary to the decision he had taken on 12.2.2021. On 12.2.2021, respondent No.1 had decided that he could not grant approval to the appointment of the petitioner as Headmaster nor could he grant approval to the appointment of respondent No.3 as the Headmaster and thus, he rejected the proposals received by him in respect of petitioner as well as respondent No.3 in this regard. Then, suddenly on 26.4.2021, respondent No.1 reviewing his order dated 12.2.2021, granted approval to the appointment of respondent No.3 as Headmaster of the school. This subsequent order is nothing but an order which is passed without power of review which he never possessed under the Statute. Therefore, the subsequent order dated 26.4.2021 has to be held as illegal and it deserves to be quashed and set aside.

9. Now, the question would be as to how the imbroglio which has arisen on account of dispute between two factions of the Board of Trustees is to be resolved. The issue has to be resolved as the school would require an administrative head for its day to day management and for payment of salary to the teachers and other staff. In our view, the issue could be resolved if the parties are referred to the Deputy Director i.e. respondent No.4 for resolution of the issue. Accordingly, we direct the Deputy Director i.e. respondent No.4 to consider the legality and correctness of the order dated 12.2.2021 and take a decision regarding grant of approval to the appointment of eligible teacher as Headmaster of Urdu Girls High School, Akot, in accordance with law and after hearing the parties as early as possible and preferably within two weeks from the date of appearance of the parties before it. The petitioner and respondent Nos.2 and 3 are directed to appear before respondent No.4 on 27.9.2021. We also direct respondent No.4 to consider issuance of appropriate directions by way of an interim arrangement for making regular payment of salary and looking after other essential administrative matters in case he is unable to take a decision regarding grant of approval or otherwise to the appointment of the Headmaster within the time stipulated under this order. Rule accordingly. No costs.

10. In view of above, all the pending applications do not survive and are **disposed of** accordingly. No costs.

JUDGE

JUDGE

Tambaskar.