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

932 WRIT PETITION NO.1947 OF 2019

NILESH CHUNNILAL SONWANE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Mr S. R. Barlinge, Advocate and Mr S. K. Mathpati, Advocate for
petitioners;
Mr S. R. Yadav, A.G.P. for respondent Nos.1 to 3;
Mr A. R. Syed, Advocate for respondent No.6

**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, JJ.**

DATE : 1st March, 2022

PER COURT:

1. By this petition, the petitioners have put forth prayer clauses 12-A, 12-B and 12-C as under :

“A) By a writ of certiorary, or any other appropriate writ, or order or directions in the like nature, the impugned order dated 18th December, 2018, passed by the Deputy Director of Education, Nasik Division, Nasik, may kindly be quashed and set aside.

B) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the respondents be directed to continue the petitioners in service and pay their salaries regularly.

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C) Pending hearing and final disposal of this writ Petition, the operation and execution of the impugned order dated 18th December, 2018, passed by the Deputy Director of Education, Nasik Division, Nasik, may kindly be stayed.”

2. We have considered the submissions of the learned Advocate for the petitioners and the vehement objections raised by the learned A.G.P. on behalf of respondent Nos.1, 2 and 3, and the learned Advocate on behalf of respondent No.6. Despite service of notice, the Management, respondent Nos.4 and 5 have failed to cause an appearance, either in person or through an Advocate.

3. Considering the order that we intend to pass, we are not advertent to the details of the submissions of the learned Advocates for the respective sides, for the reasons that the impugned order is self explanatory. The competent authority, which has delivered the impugned order, records therein that, none is present for the Management and the next date would be allotted so as to hear the Management. However, in the same order, the proceedings are concluded and final orders are passed.

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4. While issuing notice on 15/02/2019, this Court has recorded the submissions of the petitioners, which are summarized in paragraph Nos.2 and 3 as under :

“2. The petitioners challenged the order of Deputy Director of Education, Nashik Division, Nashik dated 18th December, 2018.

3. The submission of Mr. Barlinge, learned Counsel is, the Deputy Director of Education, on receiving some complaints and without any opportunity of hearing to the necessary parties, such as management, has passed the order. He submitted that though the order states that the Deputy Director heard all the necessary parties, there is nothing in the order to show that the management was heard. Interestingly feature is brought to our notice by learned Counsel for the petitioners that in the order though Deputy Director of Education states that all the necessary parties are heard, in the very order, the Deputy Director also observed that the management was not present before him and then further states that next date would be intimated to the management and thus, without hearing the management, Deputy Director proceeded further and passed the order.”

5. From the impugned order, we do not find reference made to any submission on behalf of the petitioners. Admittedly, the

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Management was absent. The Respondent No.2 competent authority records in the order that an opportunity would be granted to the Management by posting the matter to some other date and yet the impugned order has been passed. So also, while referring to the report of the Education Officer (Secondary), respondent No.2 observed that, on the next date, the said authority should also remain present.

6. In view of the above, it is apparent that respondent No.2, on the one hand, thought of adjourning the matter so as to consider the submissions of the then Education Officer (Secondary), Zilla Parishad, Jalgaon, as well as the Management, and on the other hand, proceeded to deliver the impugned order.

7. Considering the above, this petition is partly allowed.

8. The impugned order dated 18/12/2018, passed by respondent No.2, is quashed and set aside, with the following directions :-

(a) The petitioners as well as respondent Nos.1 and 3, and respondent No.6 shall appear before respondent No.2 on 21/03/2022 at 2.00 p.m.;

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(b) Respondent No.2 shall forthwith, issue notice only to the Management, respondent Nos.4 and 5, who have not caused appearance before us in this proceedings and direct them to appear before him on the said date and time;

(c) All the parties are at liberty to address the mind of respondent No.2 and submit written note of submissions in addition thereto, until 01/04/2022;

(d) If any party remains absent in such hearing and fails to make it's submissions until 01/04/2022, Respondent No.2 shall close the matter for orders and no further request of such abstaining party would be entertained;

(e) Thereafter, respondent No.2 shall pass a reasoned order, which would be pronounced on 22/04/2022 at 5.00 p.m.;

(f) Copies of the order that would be delivered shall be kept ready, so as to be supplied to the litigating parties on payment of requisite fees, if any.

9. Needless to state, all contentions of the litigating parties are kept open.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)