

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

905 WRIT PETITION NO.9860 OF 2021

**SYEDA SAMEENA ANJUM SYED ATHAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Smt. U. T. Pathan, Advocate h/f Mr. T. W. Pathan, Advocate
for the petitioner

Mrs. R. P. Gaur, AGP for the respondent/State

**CORAM : RAVINDRA V. GHUGE &
S. G. DIGE, JJ.**

DATED : 21st April, 2022

PER COURT :-

1. By this petition, the petitioner who has superannuated on 31st August, 2020 and has filed this petition on 31st August, 2021, has put forth prayer clause 'B' as under:-

"B) By issuing appropriate Writ of directions or orders, the Respondent No.2 Education Officer (Secondary), Zilla Parishad, Nanded may kindly be directed to consider the proposal, seeking approval to the appointment of the Petitioner on the post of Head Mistress, Madrase Madinatul Uloom, Nanded with retrospective effect immediately."

2. Despite service of Court notice, respondent No. 3 Education Trust has chosen to keep itself away from these proceedings.

3. There is no dispute that the petitioner was appointed as an Assistant Teacher in the concerned school at Nanded on 13th October, 1988. On 25th March, 2019, as there was a dispute between the Management of the trust, the then Head Master Mr. Mohd. Iqbal tendered his resignation from the post of Head Master. The trust passed a resolution excepting the resignation and further passed a resolution on 27th March, 2019 appointing the petitioner as the Head Mistress since she was then the senior most teacher after Mr. Iqbal.

4. The Management, which claims to be administering the society, addressed the Education Officer on 26th March, 2019 informing that the petitioner is appointed as the Head Mistress who admittedly took charge on 27th March, 2019. By the said communication, the approval of the Education Officer was sought for. However, by the impugned order dated 15th April, 2019 the Education Officer granted temporary approval with effect from 27th March, 2019 until further orders. The Management did not challenge the said decision of the Education Officer before this Court. It is the petitioner who has filed this petition exactly one year after her superannuation, to assail the said

order as it impacts her salary structure as well as her pensionary benefits.

5. We found from the record that though there is a contention that there are two groups in the Management of the trust, the second group has not approached this Court raising an objection as regards the appointment of the petitioner as the Head Mistress. So also, no dispute seems to have been raised before the Education Officer in this context. As things stand today before us, the appointment of the petitioner as the Head Mistress is undisputed insofar as the two factions between the Management are concerned. It is equally undisputed that the petitioner has performed her duties as in-charge Head Mistress from 27th March, 2019 till 31st August, 2020.

6. This Court (Coram : T. V. Nalawade and Sangitrao S. Patil, JJ) has delivered a judgment on 17th February, 2017 in Writ Petition No.4273 of 2016 filed by the Managaing Committee Madarse Madinatul Uloom Education Society, Nanded, respondent No.3 herein (the same Management) by which the Education Officer was directed to consider the case of the present petitioner as well as Mohmd. Akhilullah s/o Md. Sadiquallah as Head Mistress and Head Master, respectively in respect of two schools.

7. In view of the above and considering the fact that

the petitioner is undisputedly the senior most teacher in the said school in the wake of the resignation of Mr. Iqbal, we deem it appropriate to grant the benefit to the petitioner.

8. Consequentially, this petition is allowed. The impugned order, though appears to have been cautiously passed by the Education Officer and cannot be per-se branded has been perverse, is quashed and set aside.

9. The temporary approval granted to the petitioner as an incharge Head Mistress is converted into permanent approval from the date of her joining i.e. 27th March, 2019 till her date of superannuation which is 31st August, 2020. Needless to state, the difference of salary, if any, shall be paid to the petitioner. Similarly, her pensionary benefits would be calculated on the basis of the salary scale available to a regular approved Head Mistress.

(S.G. DIGE, J.)

(RAVINDRA V. GHUGE, J.)

ssp