

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

WRIT PETITION NO.13707 OF 2018

Murlidhar S/o Datta Kayande,
Age 32 years, Occu. Assistant Teacher,
R/o At post, Borgaon (Dhagi),
Near Hanuman Temple, Tq. Jalna,
District Jalna.

... **Petitioner**

Versus

1. The State of Maharashtra
Through its Secretary,
School Education and Sports
Department, Mantralaya, Mumbai-32
2. The Commissioner of Education,
Maharashtra State, Pune.
3. The Education Officer (Secondary),
Zilla Parishad, Jalna,
Tq. Jalna, District Jalna.
4. The Secretary,
Yoganand Shikshan Prasarak Mandal,
Tq. Partur, District Jalna.
5. The Headmaster,
Jai Bhavani Madhyamik Vidyalaya,
Jaipur, Tq. Mantha, District Jalna. ... **Respondents**

WITH

CIVIL APPLICATION NO.4249 OF 2019

In Writ Petition No.13707 of 2018

1. Dhiraj S/o Vishwasrao Solunke,
Age 33 years, Occu. Agri.,
R/o Station Road, Partur,
Tq. Partur, District Jalna.

2. Anant S/o Shriram Bagal,
Age 47 years, Occu. Agri.,
R/o Bagal Galli, Partur,
Tq. Partur, District Jalna.

... **Applicants.**

Versus

1. Murlidhar S/o Datta Kayande,
Age 32 years, Occu. Assistant Teacher,
R/o At post, Borgaon (Dhagi),
Near Hanuman Temple, Tq. Jalna,
District Jalna.
2. The State of Maharashtra
Through its Secretary,
School Education and Sports
Department, Mantralaya, Mumbai-32
3. The Commissioner of Education,
Maharashtra State, Pune.
4. The Education Officer (Secondary),
Zilla Parishad, Jalna,
Tq. Jalna, District Jalna.
5. The Secretary,
Yoganand Shikshan Prasarak Mandal,
Tq. Partur, District Jalna.
6. The Headmaster,
Jai Bhavani Madhyamik Vidyalaya,
Jaipur, Tq. Mantha, District Jalna.

... **Respondents**

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Advocate for Petitioner : Mr. V. S. Panpatte h/f Mr. B. P. Gonare
AGP for Respondents-State : Mr. S. P. Tiwari.

Advocate for Respondent Nos.4 & 5 : Mr. V. D. Sapkal (Senior
Counsel) i/b Mr. V. C. Patil.

Advocate for Applicants in CA : Mr. M. S. Deshmukh h/f Mr. S.
B. Ghute.

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WITH

WRIT PETITION NO.10039 OF 2018

1. Shri. Yoganand Shikshan Prasarak
Mandal, Partur, through its Secretary,
Mr. Prabhakar Gangadhar Dolarkar,
(Kulkarni), Age : 76 years,
Occu. Social Work and Secretary,
R/o Dolhara, Post. Babultara,
Tq. Partur, District Jalna.
2. Shri. Laxmanrao Shankarrao Patil,
Age : 85 years, Occu. President of
Shri. Yoganand Shikshan Prasarak
Mandal, Partur, Tq. Partur, District Jalna.
R/o Partur, Tq. Partur, District Jalna.
3. Shri. Laxmikant Shamrao Nimbalkar,
Age : 82 years, Occu. Legal Practitioner &
Vice President of Shri. Yoganand Shikshan
Prasarak Mandal, Partur, Tq. Partur, District Jalna.
R/o Partur, Tq. Partur, District Jalna.
4. Shri. Vishwambhar Babanrao Khose,
Age : 54 years, Occu. Headmaster
Jaibhavani Madhyamik Vidyalaya,
Jaipur, Tq. Mantha, District Jalna,
R/o As above.
5. Smt. Varsha D/o Vishwambhar Khose,
Age : 30 years, Occu. Teacher in
Jaibhavani Madhyamik Vidyalaya,
Jaipur, Tq. Mantha, District Jalna,
R/o Station Road, Partur,
Tq. Partur, District Jalna.

... **Petitioners**

Versus

1. The State of Maharashtra
Through its Secretary,
School and Education Department,

Mantralaya, Mumbai-32

2. The Commissioner of Education,
Maharashtra State, Pune.
Central Building Dr. Annie Besant Road,
Pune 411 001.
3. The Education Officer (Secondary),
Zilla Parishad, Jalna.
4. Shri. Dheeraj Vishwasrao Solanke,
Age : 33 years, Occu. Agri.,
R/o Station Road, Partur,
Tq. Partur, District Jalna.
5. Shri. Anant Shriramrao Bagal,
Age : Major, Occu. Agri.,
R/o Bagal Galli, Partur,
Tq. Partur, District Jalna.
6. Shri. Sudhakar Jagannath Puri,
Age : 65 years, Occu. Agri.,
R/o Narayandada Chowk (Gaon),
Partur, Tq. Partur, District Jalna.
7. Shri. Bapurao Ganpat Wanjolkar,
Age : 65 years, Occu. Agri.,
R/o Bhaji Mandai, Partur,
Tq. Partur, District Jalna.

... Respondents

...

Advocate for Petitioners : Mr. V. D. Sapkal (Senior Counsel) i/b
Mr. V. C. Patil.

AGP for Respondents-State : Mr. S. P. Tiwari.

Advocate for Respondent Nos.4 & 5 : Mr. M. S. Deshmukh h/f
Mr. S. B. Ghute.

Advocate for Respondent Nos.6 & 7 : Mr. P. B. Rakhunde.

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**CORAM : R. D. DHANUKA, AND
S. G. MEHARE, JJ.**

DATE : 12.04.2022

ORAL JUDGMENT (PER R. D. DHANUKA, J.) :-

1. Rule. Learned counsel appearing for the parties waive service of notice for the respondents. Rule is made returnable forthwith. By consent of the parties, both these Writ Petitions were heard together and are being disposed off together by common order.

2. By Writ Petition No.10039 of 2018, the Management and few others have prayed for a writ of Certiorari for quashing and setting aside the order dated 06.08.2018 passed by the Commissioner of Education, Pune and minutes of the order dated 24.07.2018 thereby setting aside the order of approval granted by the Education Officer in favour of petitioner No.5 in the said petition. Writ Petition No.13707 of 2018 is filed by the petitioner for quashing and setting aside the order dated 06.08.2018 passed by the Commissioner of Education.

3. It is the case of the Management as well as petitioner No.5 in Writ Petition No.10039 of 2018 and the petitioner in Writ Petition No.13707 of 2018 that petitioner No.5 and the petitioner, respectively in these two petitions are duly

appointed by the Management to the post of Assistant teacher. Those appointments were approved by the Education Officer. However, in view of the complaint filed by the father of respondent No.4 in Writ Petition No.10039 of 2018 and few others to the respondent No.2-Commissioner of Education, regarding alleged illegal approval granted by the Education Officer in favour of petitioner No.5 in Writ Petition No.10039 of 2018 and petitioner in Writ Petition No.13707 of 2018, the Commissioner of Education did not entertain those complaints. Father of respondent No.4 and few others accordingly filed a Writ Petition No.8548 of 2016 in this Court against the State of Maharashtra, the Commissioner of Education, the Assistant Divisional Commissioner, the Education Officer (Secondary), Laxmanrao Shankarrao Patil, who was President of the Management and Laxmikant Shyamrao Limbulkar, Vice President of the Management and two Head Masters.

4. By judgment dated 09.02.2018 passed by Division Bench of this Court, this Court directed the Commissioner of Education to issue notices to the petitioners therein and respondent Nos.5 to 7 therein and to file documents in support of their rival contentions and to take appropriate decisions

about grievances raised by the father of respondent No.4 in his various litigation. In paragraph No.13 of the said judgment it was, however, clarified that this Court did not express any opinion on merits of the contentions raised by the parties, either in the petitions or in replies filed by the respondents. This Court made it clear that it was for the Commissioner of Education to take decision on merits and if finds substance in the grievance raised by the father of respondent No.4 (petitioner therein), take appropriate action against the Management, however, as permissible and in accordance with law.

5. Pursuant to the said judgment delivered by this Court, the respondent No.2 - Commissioner heard some of the parties and passed the impugned order thereby setting aside the approval granted by the Education Officer in respect of the appointment of petitioner No.5 in Writ Petition No.10039 of 2018 and petitioner in Writ Petition No.13707 of 2018. Being aggrieved by the said decision, the Management as well as the affected teachers whose approval granted by the Education Officer were set aside by respondent No.2 by filing these two separate petitions.

6. Mr. Sapkal, learned senior counsel for the petitioners in Writ Petition No.10039 of 2018 submits that none of the petitioners-teachers were parties to the said complaint before respondent No.2 or parties to the Writ Petitions filed by the father of respondent No.4 in the earlier round of litigation. He submits that in any event, respondent No.2-Commissioner has no power to set aside the order passed by the Education Officer granting approval to the appointments of these teachers on the proposals submitted by the Management. He invited our attention to paragraph No.13 of the said judgment delivered by this Court dated 09.02.2018 and would submit that though respondent No.2, who was directed to take decision on merits, it was made clear that the appropriate action shall be taken against respondent Nos.5 to 7 as permissible and in accordance with law. He submits that respondent No.2 having no power to interfere with the order passed by the Education Officer granting approval on the proposals submitted by the Management, the entire order is without jurisdiction and is vitiated.

7. Mr. Panpatte, the learned counsel for the petitioner in

Writ Petition No.13707 of 2018 adopts the argument advanced by Mr. Sapkal, learned senior counsel for the petitioners in Writ Petition No.10039 of 2018.

8. Mr. Deshumkh, the learned counsel for respondent Nos.4 and 5 on the other hand opposes these petitions on the ground that the father of respondent No.4 has filed the complaint against the Management for illegal appointment of these two teachers. The Commissioner has exercised his powers pursuant to the judgment of this Court in Writ Petition No.8548 of 2016 delivered on 09.02.2018. He submits that since the order is passed by the Commissioner exercising his powers pursuant to the directions issued by this Court in the said judgment dated 09.02.2018, no interference is permissible on the ground of jurisdiction.

9. It is submitted that since the father of respondent No.4, who was the original complainant expired within a short span, the said complaint was pursued by respondent No.4. The father of respondent No.4 was a Trustee of the Management and had rightly pursued the said complaint against the illegal appointments of these two teachers before the Commissioner

of Education.

10. It is not in dispute that both these petitioners, who were appointed by the Management were not parties to the earlier petition filed by the father of petitioner No.4. This Court in the said judgment delivered in Writ Petition No.8548 of 2016 has though directed respondent No.2 to take a decision on merits, it was made clear that the said directions were issued without expressing any opinion on merits of the contentions raised by the parties, either in the petition or in the replies filed by the respondents therein. This Court also made clear that respondent No.2 shall take appropriate action against respondent Nos.5 to 7, however, as permissible and in accordance with law. We are informed that both these petitioners-teachers appeared before respondent No.2-Commissioner pursuant to the said order. The grievance of these two teachers, however, is that there was no opportunity granted to them to make their submissions before respondent No.2.

11. Be that as it may, the issue that arises for consideration of this Court is whether respondent No.2-Commissioner of

Education could have interfered with the approval granted by the Education Officer on the proposal submitted by the Management in respect of these two teachers under any of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 as well as the Rules framed under the said Act or not. The learned counsel for the respondents could not point out any provision under the said Act and the Rules empowering the Commissioner of Education to interfere with the order of approval granted by the Education Officer on the proposal submitted by the Management.

12. In our view, the power to interfere with the decision taken by any Authority by another authority has to be expressly provided under the provisions of the statute and cannot be exercised even if any illegalities are noticed by such Higher authority unless empowered. The Commissioner of Education admittedly has neither any appellate jurisdiction nor any power of review against the order of the Education Officer.

13. Insofar as the submissions of the learned counsel for the complainants that the learned Commissioner has exercised the

powers pursuant to the directions issued by this Court dated 09.02.2018 is concerned, a perusal of the said judgment clearly indicates that none of these teachers, who were granted approval by the Education Officer were parties to the said proceedings. Be that as it may, paragraph No.13 of the said judgment clearly indicates that this Court did not express any opinion on the merits of the contentions raised by the parties to the said petitions. It further indicates that respondent No.2 was directed to take appropriate action against the parties to the said proceedings and not third parties. The said order further indicates that respondent No.2 was directed to take appropriate action as permissible and in accordance with law.

14. Though this issue was specifically raised by the Management before respondent No.2 about the lack of jurisdiction of respondent No.2-Commissioner to interfere with the order of approval granted by the Education Officer, respondent No.2 did not consider such objection and acted without jurisdiction without authority of law. In our view, the said directions issued by this Court in the said judgment did not direct respondent No.2 to interfere with the order passed by the Education Officer, even if, no such jurisdiction was

conferred under any of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules. The interpretation of the said order by the learned counsel for the complainants is devoid of merits and is rejected.

15. In our view, since respondent No.2 has no power to interfere the order passed by the Education Officer, the entire order passed by respondent No.2 is without jurisdiction. We accordingly pass the following order :

ORDER

- (a) Writ Petition No.10039 of 2018 is allowed in terms of prayer Clause “B”.
- (b) Writ Petition No.13707 of 2018 is allowed in terms of prayer Clauses “A” and “C”.
- (c) The original approvals granted by the Education Officer are restored to file.
- (d) The Management is directed to submit proposal of these two teachers in furtherance of the order of approval granted by the Education Officer to

the Education Officer for grant of consequential benefits within a period of two (2) weeks from today. Upon receipt of such proposal from the Management, the Education Officer shall grant all consequential benefits including the arrears of payment of salary and other monetary benefits within a period of four (4) weeks, thereafter. The proposal shall be sent by the Education Officer to Deputy Director of Education for entering the names of these teachers in Shalarth Pranali. The Deputy Director of Education to enter their names within two (2) weeks from the date of such proposal.

- (e) It is made clear that the contentions of the complainants on merits, if any, in accordance with the provisions of M.E.P.S. Act and the Rules are kept open. This Court has not expressed any view on the maintainability of any such remedy, if available in law.
- (f) If any such proceedings are filed by any of the

respondents, the same shall be considered on its own merits and in accordance with law.

- (g) All contentions on merits of the appointments of these teachers made by the Management are kept open to be agitated before the appropriate Forum having jurisdiction to entertain such remedy.
- (h) Writ Petitions are allowed. Rule is made absolute in the aforesaid terms in both these petitions. No order as to costs.
- (i) Civil Application No.4249 of 2019 is accordingly disposed off.
- (j) Parties to act upon the authenticated copy of this order.

(S. G. MEHARE, J.)

(R. D. DHANUKA, J.)

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vmk/-