

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2443 OF 2021

Tanaji Vithoba Desai

...Petitioner

V/s.

The State of Maharashtra,
Thr. Its Secretary, School Education
& Sports Dept. & Ors.

...Respondents

Mr.Prashant Bhavake for the Petitioner.

Mr.P.V. Nelson Rajan, AGP for the Respondent-State.

Mr.Umesh Pawar for the Respondent No.6-Mangament

Mr.N.V. Bandiwadekar a/w Mr.Vinayak Kumbhar i/b A.N.
Bandiwadekar for Respondent No.7.

CORAM : C.V. BHADANG, J.

DATE : 03 OCTOBER 2022

P.C.

. Rule made returnable forthwith. The learned counsel for the respective Respondents waives service. Heard finally by consent of parties.

2. The Petitioner was duly promoted as a Headmaster being senior most assistant teacher working in the school. The Respondent-Management sent a proposal for grant of approval and the Education Officer Secondary, Zilla Parishad, Ratnagiri has granted the approval. It appears that there was a complaint

made alleging misappropriation of an amount of Rs.66,000/- by the Petitioner. It was alleged that the Petitioner has withdrawn the amount of Rs.66,000/- on 24 June 2020 from the amount of grant received from the Government for the Mid-Day Meal Scheme and did not pay the amount to the suppliers and has misappropriated the same.

3. On the basis of this complaint the Education Officer without withdrawing the approval and without granting an opportunity to the Petitioner of being heard or explaining the allegations in the complaint by the impugned order dated 2 March 2021 has entrusted the charge to Mr.Jadhav being the senior most assistant teacher w.e.f. 2 March 2021.

4. I have heard the learned counsel for the parties. Perused record.

5. It transpires during the course of hearing that the Petitioner has been duly promoted as a Headmaster in the school and even the approval was granted to the said appointment by the Education Officer (Secondary). The Education Officer (Secondary) without offering any opportunity to the Petitioner and without withdrawing the approval granted has entrusted the charge to the Senior Most Teacher Mr.Jadhav.

6. A specific query was made to the learned AGP as to the source of power vesting in the Education Officer to entrust the charge of the Headmaster to the senior most assistant teacher, that too without recalling the order of approval. No such provision has been pointed out.

7. In my considered view, the learned counsel for the Petitioner and the Respondent-Management are right that in the wake of the allegations in the complaint the matter, has initially to be left to the Management for appropriate action if found necessary and the Education Officer acting on any such complaint could not have withdrawn the charge of the Headmaster from the Petitioner and entrusted it to the other senior most teacher that too without recalling the order of approval.

8. It is now well settled, that the Education Officer, does not derive any power to review the order of approval, except in circumstances where there is fraud or misrepresentation alleged and shown on the basis of which the approval was obtained. In the present case there are no such allegations when the approval was granted by the Education Officer (Secondary) to the appointment of the Petitioner as the Headmaster.

9. In that view of the matter, the Petition is allowed. The impugned order dated 2 March 2021 and all consequent orders thereto are hereby set aside.

It is however open for the Management to take appropriate action on the basis of the complaint, if so advised and in accordance with law.

It is made clear that this Court has not examined the merits of the allegations made in the complaint against the Petitioner.

Rule is made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.