

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No. 2876 of 2020

Shree Maharani Radhabai Vidyarthi

Vasatigruh & anr.

... Petitioners

v/s.

State of Maharashtra & others

... Respondents

Mr Prashant Bhavake i/b Mr.Utkarsh S. Desai for the Petitioners.

Mrs. P.N.Diwan, AGP for the State.

Mr. Umesh H. Pawar for Respondent No.4.

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**CORAM : SUNIL B.SHUKRE &
G.A. SANAP, JJ.**

07th March 2022

P.C.

Heard.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. According to the learned AGP, impugned order dated 30th July 2019 is correct as it rightly relied upon clause 2.5.3.2 and clause 2.5.3.1

of the GR dated 28th August 2015. However, learned Counsel for the Petitioner submits that such reliance by the Dy. Director (Education) is misplaced. He submits that while passing the impugned order the Dy. Director of Education - Respondent No.2 has ignored the provisions made in clause 2.5.3.2 of GR dated 28th August 2015. He also submits that this was not a case of fraud or misrepresentation or suppression of material facts by the Petitioner and, therefore, the Dy. Director of Education had no power to review the approval granted to the appointment of the Petitioner as Head Mistress by the Education Officer on 3rd May 2019. Learned Counsel for Respondent No.4 supports the case of the Petitioner. On going through the GR dated 28th August 2015, we find that there is great substance in the argument of learned counsel for the Petitioner and no merit in the submissions of learned AGP.

4. The impugned order is based upon interpretation of clause 2.5.3.1 which is a part of clause 2.5.3.2 which states that in a school where the strength of students is more than 100, one post of Head Master/Head Mistress would be available.

5. Considering this provision, the Respondent No.2 concluded that based on the student's strength of the Petitioner No.1 School which was 96 in the year 1996, approval to the appointment of the Petitioner

No.2 as Head Mistress could not have been granted. In doing so the Education Officer ignored the fact that Petitioner No.1 School was existing school to which the provision made under clause 2.5.3.2 was applicable. As per this clause, if the strength of the students goes below 90 in an existing school then only post of Head Master/Head Mistress will not be available.

6. The Petitioner No.1 School being an existing school and having total strength of 96 would be governed by the provisions of Clause 2.5.3.2 and, therefore, would be the School where the post of Head Master or Head Mistress would be available. As such, the approval already granted to the appointment of the Petitioner No.2 as Head Mistress could not have been revoked or cancelled by the Respondent No.2.

7. Even otherwise, it is an admitted fact that the complaint initially made by Respondent No.4 was not based upon any misrepresentation of facts or concealment of material facts or playing a fraud by the Petitioner in securing her appointment as Head Mistress. The complaint was related to dispute between two factions of the management, with one faction disputing the authority of other faction to make appointment. Such being the nature of the dispute between two factions of management, there was no occasion for Respondent

No.2 to reopen the matter of grant of approval to the appointment of the Petitioner No.2 as Head Mistress. Clearly, the Respondent No.2 has exceeded his power in such a matter and, therefore, on this ground also the impugned order cannot be sustained in the eye of law. Even otherwise, now the dispute between the two factions of the management has been resolved as Respondent No.4 is now supporting the case of the Petitioners.

8. In the result, the Petition deserves to be allowed and it is allowed accordingly in terms of prayer clauses (a) and (b) which are reproduced as below:

“(a) By an appropriate Writ, Order, Direction this Hon’ble Court be pleased to quash and set aside the orders dated 30.7.2019 and 5.8.2019 passed by Respondent No.2 and 3 resp. and further direct the Respondent nos.2 and 3 to restore approval to Petitioners’ appointment as Head Mistress of Girls High School Radhanagri, with all consequential benefits;

(b) By an appropriate Writ, Order, Direction this Hon’ble Court be pleased to direct Respondent nos.2 and 3 to pay the Petitioner no.2 all arrears of unpaid salary and all incidental benefits like pay-scales, allowances, seniority, if any, arising from such retrospective date;”

9. We further direct that the name of the Petitioner shall be entered in the Shalarth system and Shalarth ID shall be allotted to her forthwith upon receipt of copy of this order.
10. Rule is made absolute in the above terms. No costs.

(G.A.SANAP, J)

(SUNIL B.SHUKRE, J)

Lata Panjwani, P.S.