

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 3484 OF 2020

Moreshwar S/o Pandurang Wazade ... Petitioner

- Versus -

The Director of Education and Others ... Respondents

Mr. R.S. Parsodkar, Advocate for the Petitioner.

Mr. A.A. Madiwale, Assistant Government Pleader for
Respondent Nos. 1, 2, 4 & 6.

Mr. A.C. Dharmadhikari, Advocate for Respondent No.3.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 25 MARCH 2022

P.C. :

Heard learned Counsel for the parties.

2. The Petitioner has sought a direction to quash and set aside the action of the Respondent Management dated 10 June

2020, continuing the departmental enquiry as per the charge-sheet served on the Petitioner.

3. On 17 December 2020, while issuing notice to the Respondents, Division Bench of this Court has directed that any enquiry is conducted, no adverse orders shall be passed against the Petitioner.

4. As regards the scope to interfere the ongoing departmental enquiry in writ jurisdiction, the same is extremely limited. As regards the merits of the charges against the Petitioner, the same will be subject matter of the enquiry.

5. The issue that is sought to be raised by the Petitioner that since an Administrator is appointed on the Respondent No.3 Management by the State Government under the provisions of the Maharashtra Education Institutions (Management) Act, 1976 (for short, "the Act of 1976") by order dated 9 January 2018, the Respondent No.3 Management is not competent to continue the enquiry and impose a penalty.

6. As regards the order of appointing the Administrator, the Respondent No.3 Management had filed an Appeal before the State Government and by order dated 12 February 2020, the same was dismissed by the State Government. The Respondent No.3 Management has filed a Writ Petition bearing

No.1279 of 2021, which is pending before the learned Single Judge.

7. On 9 March 2021, the learned Single Judge issued notice to Respondents and directed that the implementation of the order dated 12 February 2021 is stayed till the next date of hearing, which order has been continued.

8. It is the contention of the learned Counsel for the Petitioner that what has been stayed by the learned Single Judge is only the order of dismissing the appeal, there is no stay to the appointment of the Administrator.

9. On the other hand, it is the contention of the learned Counsel for the Respondent No.3 that in light of the scheme of the Act of 1976, the order of appointment of Administrator is subject to the order of the State Government and since the order of the State Government has been stayed in Appeal, it would amount to stay to the appointment of the Administrator.

10. We have been shown the stand taken by the State before the learned Single Judge that the appointed Administrator has not yet assumed charge. Based on this statement, it is submitted by the learned Counsel for the Respondent No.3 that Section 2(b) of the Act of 1976 provides that till the Administrator has actually taken charge, management of the

educational institution would not vest in the Administrator. According to the Petitioner, it is the Respondent No.3 Management, which is hindering taking over of charge by the Administrator and, therefore, they cannot take advantage of the same.

11. As regards the appointment of the Administrator and the effect of the provisions of the Act of 1976, the issue is pending before the learned Single Judge. In that Petition, the first order was passed by the learned Single Judge a year ago on 9 March 2021, yet, both the parties have not got a clarification as to the effect of the interim order or clarification of the aspect of the Administrator from the learned Single Judge. We had adjourned the hearing of this Petition twice but the parties have not placed any clarification on the record.

12. According to us, since the dispute is pending before the learned Single Judge, it would not be proper for us to comment on the merits of the appointment of the Administrator. If the Writ Petition filed by the Respondent No.3 Management is allowed, the order would be quashed, and if it is dismissed, the order of appointment of Administrator will come into effect. In this Petition the issue that arises is whether in these facts the permission should be granted to the Respondent No.3 to take the enquiry to the logical end.

13. Learned Counsel for the Respondent No.3 submitted that the Petitioner is due to retire on superannuation on 31 March 2022 and since the enquiry is concluded and it is found in the enquiry that the Petitioner is guilty, they be allowed to impose punishment as the same cannot be done after his superannuation.

14. Considering the totality of the circumstances and after the perusal of the order passed in Appeal and that the Petition is pending before the Single Judge, we permit the Respondent No.3 Management to proceed further and pass necessary order for the purpose of record, however the effect of the same shall be kept in abeyance till the decision of the proceedings pending before the learned Single Judge. We make it clear that if Respondent No.3 Management succeeds in their challenge before the learned Single Judge, the order that is kept in abeyance by our order will come into effect from the date of order passed by the Respondent No.3 Management against the Petitioner. If the Respondent No.3 Management fails in their challenge, then consequence would ensue.

15. The contention of the learned Counsel for the Respondent No.3 that after the order is passed against the Petitioner, the Petitioner would have a remedy of Appeal would arise for consideration at the appropriate stage as above.

16. In view of these clarifications, it is not necessary to keep the Writ Petition pending.

17. The Writ Petition is accordingly disposed of.

(ANIL L. PANSARE, J.)

(NITIN JAMDAR, J.)

Kirtak