

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 721 OF 2020

Dhanraj s/o Lahanuji Rewatkar,
Aged 57 years, Occupation – Service,
R/o 419/201, Sanjivani Apartments,
Hanuman Nagar, Nagpur.

.... **PETITIONER**

VERSUS

- 1) State of Maharashtra,
through its Secretary, Department of
School Education, Mantralaya,
Mumbai – 400032.
- 2) The Deputy Director of Education,
Nagpur Division, Balbharati, Opp.
Dhantoli Park, Dhantoli, Nagpur.
- 3) The Education Officer (Secondary),
Zilla Parishad, Nagpur.
- 4) Navjeevan Shikshan Sanstha,
Bhisnur, through its President
Sau. Sunanda Dhanraj Rewatkar,
Office at 419/201, Sanjivani Apartments,
Hanuman Nagar, Nagpur.
- 5) Chandrakant Gulabrao Chaudhary,
Aged about 46 years,
Occupation – Service,
R/o Plot No. 35, Swarglok Layout,
Katol, Tahsil – Katol, District – Nagpur.
- 6) Ajay Keshavrao Charde,
Aged about 38 years, Occupation – Nil,
R/o Plot No.144, Narmada Colony,
Katol Road, Nagpur-13.

.... **RESPONDENTS**

Mr. B.G. Kulkarni, Counsel for the petitioner,
Mr. M.K. Pathan, AGP for respondents 1 to 3,
Mr. V.N. Patre, Counsel for respondents 5 & 6/intervenors.

CORAM : ROHIT B. DEO & Y.G. KHOBRADE, JJ.
DATED : 16th JANUARY, 2023

ORAL JUDGMENT : (PER : R.B. DEO, J.)

The challenge in the petition is to the order dated 02-11-2019 issued by respondent 2-Deputy Director of Education, Nagpur Division, Nagpur purporting to cancel the approval granted to the petitioner as Headmaster.

2. The petitioner was appointed as Assistant Teacher in the year 1993 with the Navjeevan Lok Vidyalaya, Isapur (Khurd), which is one of the two schools managed by respondent 4-Institution.

3. It is not in dispute that the petitioner was qualified to hold the post of Assistant Teacher. The petitioner was promoted and appointed as Headmaster in July 1998, which appointment was approved by respondent 3 vide order dated 18-3-2000. While the petitioner worked with Navjeevan Lok Vidyalaya, Isapur (Khurd) since 2009, in June he came to be transferred to Rani Chitralkhaddevi Raje Bhonsale

Secondary School, Kanhalgaon, which is the other school managed by respondent 4-Institution.

4. The petitioner contends that no questions were raised from 1998 to 2016 as regards the discharge of duties by the petitioner. It was from 2016 that due to the interference of the local politician/s that repeated visits and inspections were carried out in a predetermined manner. It further appears that some teachers including the intervenor Mr. Chaudhary lodged certain complaints against the petitioner.

5. The petitioner has vividly narrated the visits and the inspections, the correspondence addressed by the authority and the response of the petitioner. Considering that the controversy lies in an extremely narrow compass, it may not be necessary to make an elaborate reference thereto.

6. We may directly come to the show cause notice dated 19-3-2019 addressed by respondent 2-Deputy Director which levels as many as seven charges against the petitioner. The petitioner was directed to show cause why the approval granted as Headmaster not be cancelled. The petitioner submitted his response to the show cause notice supra vide letter dated 14-5-2019. The petitioner denied the allegations

emphatically and contended that it was at the behest of certain politicians that he was victimized.

7. It appears that after hearing the petitioner, the Deputy Director of Education passed the order impugned purporting to cancel the approval granted to the appointment of the petitioner as Headmaster. The order impugned makes no reference to the source of power enabling the authority to cancel the approval on the premise that the Headmaster has committed irregularities or misconduct in discharge of duties. The only reference to the statutory provisions is to Rule 22(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (Rules) which according to the authority, the petitioner violated. Rule 22(1) of the Rules spells out the duties of the Headmaster.

8. While issuing notice for final disposal vide order dated 04-2-2020, we noted that no enquiry is conducted by the Deputy Director of Education under Section 4A of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Act), and stayed the order impugned. Subsequently, vide order dated 18-4-2022 we noted that the cancellation of approval did not come into effect and the petitioner superannuated from service during the

pendency of the petition. We directed the respondents to process the papers of provisional pension of the petitioner and to release the same. We are informed that the said order is complied with and the petitioner is receiving provisional pension.

9. Mr. B.G. Kulkarni canvasses twin submissions. The first submission is that the order impugned is without jurisdiction. According to Mr. B.G. Kulkarni, while the source of power is not disclosed by the authority, the only provision which confers disciplinary jurisdiction on the authority is Section 4A of the Act. Mr. B.G. Kulkarni would submit that the mandate of sub-section (1) of Section 4A of the Act is that if there is an alleged misconduct or misbehaviour of a serious nature or moral turpitude, and the Director is of the opinion that the Enquiry Committee has unreasonably exonerated the employee, the proceedings may be called for and the decision may either be annulled, reversed, modified or confirmed or in the alternative, the Director of Education may call upon the Enquiry Committee to make further enquiry by taking such additional evidence as he may think necessary or he may himself take or authorise any other officer not below the rank of the Education Officer to record the additional evidence. Sub-section (1) further empowers the Director to direct the management to impose on the employee any of the penalties as specified in sub-section

(4). Mr. B.G. Kulkarni would submit that it is not even the case of the respondents that sub-section (1)(a) of Section 4A of the Act applies. Sub-section (1)(b) of Section 4A of the Act contemplates a situation where the management has either neglected or refused to hold an enquiry in accordance with the provisions of the Act and the Rules. In such a situation, the Director of Education is empowered to direct the management to initiate the action within thirty days, and that the enquiry be completed in accordance with the provisions of the Act and the Rules within the said period. Sub-Section (2) of Section 4A of the Act contemplates that if the management fails to initiate the action despite the direction issued in clause (b) of sub-section (1), then the Director may himself hold or direct any officer not below the rank of Education Officer to hold such enquiry.

10. Mr. B.G. Kulkarni would submit that since there was no enquiry held by the management, the Director was obligated to first direct the management to hold the enquiry. It is only in the eventuality of the management defying such direction that the enquiry could have been held by the Director, either personally or through an officer not below the rank of Education Officer. Mr. B.G. Kulkarni would emphasize that such an enquiry must conform to the procedure followed by the Enquiry Committee under the Rules framed under the Act as if the Director or

Officer authorised is the Enquiry Committee. Mr. B.G. Kulkarni would argue that admittedly the procedure stipulated in the Rules *inter alia* 36 and 37 of the Rules is not followed.

11. The other limb of the submission canvassed by Mr. B.G. Kulkarni is that in any event, the punitive order must be within the four corners of sub-section (1) of Section 4A of the Act and the only power available to impose the punishment prescribed therein. In no view of the matter, the Director has cancelled the approval of the appointment of the petitioner as Headmaster, is the submission.

12. In response, the learned Assistant Government Pleader Mr. M.K. Pathan would submit that considering that the President of the Institution was the wife of the petitioner, and the petitioner himself the Secretary of the Institution, there was absolutely no purpose in directing the management to hold the enquiry and the authority is not expected to issue directions in futility. We are afraid that the said submission does not appeal to us inspite possible that the direction which may have been issued may not have been complied with, but then, the Director was empowered, if such direction is defied, to hold the enquiry himself or to assign the enquiry to a subordinate officer not below the rank of Education Officer. In this view of the matter, the

order impugned is clearly without jurisdiction.

13. We further find formidable substance in the submission that the order is rendered in gross breach of the statutory scheme. While there is no provision mentioned in the order impugned as regards the source of power, the learned Assistant Government Pleader Mr. M.K. Pathan agrees that the order impugned is, as a fact, issued in exercise of power under Section 4A of the Act, which is also the stand on oath. If the order impugned is rendered in exercise of power under Section 4A of the Act, the enquiry must confirm to the statutory scheme of Rules 36 and 37 of the Rules. All that is done by the authority is issuing a show cause notice, asking for an explanation and then granting oral hearing to the petitioner. This, axiomatically plights in the teeth of the provisions of Rules 36 and 27 of the Rules. The blatant infraction of the provisions of sub-section (1) of Section 4A of the Act is an additional reason why the order impugned must be held bad in law.

14. The last nail in the coffin of the impugned order is the decision to title the approval which is not a punitive measure envisaged under sub-section (1) of Section 4A of the Act.

15. Viewed from any angle the order impugned is unsustainable in

law and is quashed and set aside.

16. We declare that the petitioner shall be entitled to every consequential benefits, including financial benefits consequent to the quashing of the order impugned. The benefits shall be released within the next eight weeks.

17. The petition is disposed of accordingly.

(Y.G. Khobragade, J.)

(Rohit B. Deo, J.)

adgokar