



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

WRIT PETITION NO. 1481 OF 2023

1. Mahatma Bahu-uddeshiya Sanstha, Nagpur,
through its President, Plot No.31,
New Sneh Nagar, Tah. and Dist. Nagpur.
2. Mrs. Dipali Dinesh Bhande,
aged about 48 years, Occ. The Headmistress,
Smt. Dalerbai Mancharsha Awari High School,
Somalwada, Wardha Road, Nagpur – 25.

PETITIONERS

.....VERSUS.....

1. The State of Maharashtra,
through its Secretary to the Department
of School Education and Sports,
Mantralaya, Mumbai.
2. The Deputy Director of Education,
Nagpur Division, Nagpur.
3. The Education Officer (Secondary),
Zilla Parishad, Nagpur.

RESPONDENTS

Shri Anand Parchure and Shri R.M. Vaidya, Counsel for the petitioners.
Shri A.S. Fulzele, Additional Government Pleader for the respondents.
Shri C.B. Dharmadhikari, Counsel for the intervenors (CAW No. 1175/2023).

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : SEPTEMBER 29, 2023

ORAL JUDGMENT : (PER : A.S. CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned Counsel for the parties.

2] The petitioners have challenged the order dated 27/2/2023 passed by the Education Officer (Secondary), Zilla Parishad, Nagpur by which directions have been issued to enquire into the conduct of petitioner no.2 who is working as Headmistress at the School being run

by petitioner no.1 – Society. A direction has also been issued that petitioner no.2 should handover charge of the School records in favour of the officiating Headmaster.

3] It is the case of the petitioners that the Education Officer (Secondary) has no jurisdiction whatsoever under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “Act of 1977”) to constitute an Enquiry Committee and issue directions to the Management to take action on the basis of such enquiry. A reference is made to the provisions of Section 4A of the Act of 1977 to urge that it is only the Director who has been empowered to hold an enquiry, that too when there is a failure on part of the Management to initiate action in terms of Section 4A(1)(a) of the Act of 1977. Petitioner no.2 having been appointed by the Management, it alone had the authority and jurisdiction to enquire into her conduct and not the Education Officer (Secondary). It is the further case of the petitioners that the Education Officer (Secondary) after passing the aforesaid order has himself constituted an Enquiry Committee of which he is shown as head. The three-member Committee thus constituted is without jurisdiction. Since the Education Officer (Secondary) is interested in holding of an enquiry and he himself is a part of such Enquiry Committee, it was clear that the petitioners would not be treated in an unbiased manner. On the basis of false and frivolous complaints, the aforesaid action was being initiated. The order dated 27/2/2023 was liable to be set aside.

4] On behalf of the Education Officer (Secondary), it is sought to be urged that since various complaints were received with regard to the conduct of the Headmistress levelling serious allegations against her, the Education Officer (Secondary) was required to take action on the said complaints. Though the Management had an opportunity to take action against the Headmistress, it had failed to do so and hence there was no

option whatsoever with the Education Officer (Secondary) to pass the impugned order. After granting an opportunity of hearing to the petitioners on 7/2/2023 and making them aware of the reason for grant of such hearing, the impugned order was passed. The allegation that as the Education Officer (Secondary) was a Member of the Enquiry Committee the enquiry would not be fair, was without any justification.

5] An application for intervention has been filed by the applicants who claim to be the complainants on the basis of which the impugned action has been taken. Along with the application, various complaints are annexed with a prayer to enquire into the conduct of petitioner no.2. On their behalf, reliance is placed on the judgment of the Full Bench in *Namdeo Vs. The State of Maharashtra & Ors. [2023(2) Mh.L.J. 598]* to urge that there was no illegality in directing such an enquiry.

6] We have heard the learned Counsel for the parties and we have perused the documents on record. It is seen that the Education Officer (Secondary) was in receipt of various complaints from the Members of the staff of Dalerbai Manchasha Awari High School where petitioner no.2 is serving as Headmistress. The allegations pertain to certain illegal demands made by petitioner no.2 from the Members of the staff of the School. Considering the nature of grievances made by the Members of the teaching and non-teaching staff of the said School coupled with the fact that it was also the grievance of the said Members of the staff that the Management had failed to take cognizance of such complaints, the Education Officer (Secondary) proceeded to consider the said grievances by issuing notice to the President and Secretary of the Society, petitioner no.2 – Headmistress and various complainants. Their grievances were heard on 7/2/2023 and it was noticed that there were various aspects that required attention of the concerned Authorities but no cognizance of the same was taken. It is for this reason that the

Education Officer (Secondary) thought it fit to constitute an Enquiry Committee to enable it to look into the matter and submit its report.

To this extent, we do not find that the decision taken by the Education Officer (Secondary) to consider the complaints made by the Members of the teaching and non-teaching staff is an action that requires to be interfered with at this stage. *Prima facie*, though the grievances pertain also to discharging duties in a manner that could affect imparting of instructions to the Students, this direction issued by the Education Officer (Secondary) to constitute an Enquiry Committee does not call for any interference. The enquiry however would be restricted to matters referred to in the complaints and not on issues relating to unsatisfactory discharge of duties as Head for which the Management is competent to initiate action.

7] It is however to be noted that having decided to hold an enquiry into the affairs of the Headmistress of the School, the Education Officer (Secondary) has himself constituted the Enquiry Committee consisting of three Members of which he is to act as its Head. To this extent, we find that the Education Officer (Secondary) having himself *prima facie* recorded his satisfaction of the need to conduct an enquiry, it would be in the fitness of things that such enquiry is conducted independently without the Education Officer (Secondary) being a Member of the Enquiry Committee. In this regard, we find that the Deputy Director of Education, Nagpur Division, Nagpur being a superior Authority can be conferred the responsibility of constituting an appropriate enquiry on the basis of hearing conducted on 7/2/2023 of which the Education Officer (Secondary) would not be a Member. This would facilitate the matter to be considered afresh by such Enquiry Committee.

The other direction to keep the order of approval of petitioner no.2 on the post of Head in abeyance till the enquiry report is received and the direction issued to confer administrative and financial powers to the seniormost teacher also does not call for any interference.

8] For the aforesaid reasons, the following order is passed :

ORDER

a] The order dated 27/2/2023 bearing Outward No. 2242/2023 passed by the Education Officer (Secondary), Zilla Parishad, Nagpur directing constitution of an Enquiry Committee on the points stated therein is partly modified. The scope of enquiry would be restricted to the complaints made to the Education Officer (Secondary) and not with regard to unsatisfactory discharge of duties by petitioner no.2 as Head. The Management is free to take cognizance of any grievance with regard to unsatisfactory discharge of duties by petitioner no.2.

b] The communication dated 27/2/2023 bearing Outward No. 2241/2023 is set aside. Instead the enquiry report prepared by the Education Officer (Secondary), Zilla Parishad, Nagpur be forwarded to the Deputy Director of Education, Nagpur Division, Nagpur. The Deputy Director, Nagpur Division, Nagpur shall consider constitution of an Enquiry Committee. However, the Education Officer (Secondary), Zilla Parishad, Nagpur who has passed the order dated 27/2/2023 shall not be part of that Enquiry Committee.

9] The Writ Petition is disposed of in the aforesaid terms. Rule accordingly with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

Sumit