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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1988 OF 2023

- 1] Mustafa Education Society,
Chopda, Chopda,
Taluka Chopda, Dist. Jalgaon
Through its President
Shri Asgar Ali Mehaboob Ali,
Age 84 years, Occ. Business,
R/o. Dargah Aali, Chopda,
Taluka Chopda, District Jalgaon.
- 2] Imran Khan Ahesan Khan,
Age 33 years, Occ. Service,
R/o. Dargah Aali, Chopda,
Taluka Chopda, District Jalgaon.

.. Petitioners.

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Department of Sports and School Education,
Mantralaya, Mumbai – 32.
- 2] The Deputy Director of Education,
Nashik Division, Nashik
Taluka and District Nashik.
- 3] The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
Jalgaon, Tal. And Dist. Jalgaon.
- 4] Chiragoddin Ijaboddin Shaikh,
Age 77 years, Occ. Business,
R/o. Azad Chowk, Khurshid Aali Mohalla,
Chopda, Taluka Chopda,
District Jalgaon.
- 5] The Head Mast er,
Mustafa Anglo Urdu High school, Chopda,

Chopda, Taluka Chopda,
District Jalgaon.

.. Respondents.

Mr. G.S. Rane, Advocate for the petitioners
Mr. P.S. Patil, AGP for respondent Nos. 1 to 3.
Mr. V.P. Patil, Advocate for respondent No.4.
Mr. M.C. Syed, Advocate for respondent No.5.

**CORAM : SMT. VIBHA KANKANWADI
& S.G. CHAPALGAONKAR, JJ.**

DATE : 9TH MAY , 2024.

JUDGMENT : (PER S.G. CHAPALGAONKAR, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocates for the parties.

The petitioner impugns the order dated 3.11.2022 passed by the respondent No.3 – Education Officer (Secondary), Zilla Parishad, Jalgaon and seeks to issue writ of Mandamus, directing the respondent No.3 to consider and process proposal dated 20.6.2022, submitted by respondent No.5, seeking approval to the appointment of the petitioner No.2 on the post of Assistant Teacher.

2. Mr. G.S. Rane, learned advocate for the petitioner submits that the petitioner No. 1 is a public trust and runs the educational institutions. There are disputes as regards to the election of Executive Body of the Trust. The change reports are pending for consideration before the competent authorities under the Public Trust Act. The election of the Executive Body for the period 2014-2019 were held on 30.6.2014 and change report was submitted which is pending consideration. Similarly, further elections were held on 21.9.2019 for the period from

2019 to 2024 and change reports in respect of such election is also submitted and pending for consideration before the charity authorities.

3. The petitioner no.2 has been appointed as Shikshan Sevak in the school run by Petitioner Trust for the period from 17.6.2019 to 16.6.2022 by following due process of law. He holds the requisite qualification for appointment. The respondent No.3 Education Officer, after examining the relevant legal and procedural aspects, approved appointment of the petitioner vide order dated 29.6.2019. The petitioner No.2 successfully completed the period of Shikshan Sevak. Consequently, the Head Master of the school forwarded the proposal dated 20.6.2022, seeking approval to the continuation of the services of the petitioner No.2. However, referring to the complaints made by respondent No.4, the proposal is declined consideration till the dispute inter-se in management is resolved and newly elected body is mutated on "Schedule-I".

4. Mr. G.S. Rane, learned advocate for petitioner would submit that the impugned order is contrary to the legal and factual position. The dispute between groups of management could not have been hurdle to grant approval for continuation of services of petitioner No.2. Mr. Rane refers to the communication dated 1.3.2021, issued by the Director of Education (Secondary) and Higher Secondary, Pune, whereby Divisional Deputy Directors were instructed to adopt specific modality while dealing with the proposal for appointment/transfer of the employees of educational institutions, wherein, litigation of the management groups are pending before charity Authorities. Similar, communication is addressed to the Education Officers by Divisional Deputy Director of

Education, Nasik. Mr. Rane would further place his reliance on the order passed by this Court dated 23.4.2024 in ***W.P. No. 4238 of 2024 in the matter of Nahid Kausar Malik Basheer Ahmed vs. State of Maharashtra & others*** with companion matters and urges to pass similar order.

5. Mr. P.S. Patil, learned AGP appearing for respondent Nos. 1 to 3 fairly concedes that the instructions have been issued by the office of the Director of Education to deal with the situation, where there are disputes in the rival groups of management and proposals seeking approval to appointment/transfer of the employees are placed for consideration. He accepts that merely because disputes are pending before the charity authorities, proposal seeking approval to the appointments cannot be refused consideration.

4. Mr. V.P. Patil, learned advocate for respondent No.4 justifies the order contending that the appointment of the petitioner No.2 would be invalid since the Executive Body who assumed to be in power, at the time of appointment of petitioner No.2, lost its battle and their change report has been rejected by the competent authority.

5. We have considered the submissions advanced by learned advocate for the respective parties. We have perused the record tendered into service for our consideration. It is not disputed that initially petitioner No.2 was appointed as Shikshan Sevak, for the period from 17.6.2019 to 16.6.2022 and he rendered the services on establishment of the school in pursuance of his appointment. The Education Officer had approved his appointment vide order dated 29.6.2019. The petitioner No.2's appointment and continuation in service was not subjected to

challenge at any point of time. There is no dispute that the petitioner No. 2 possesses the requisite qualification for the post of Assistant Teacher. However, the problem surfaced, when services of petitioner No.2 continued as Assistant Teacher vide order dated 18.6.2022 and Head Master of the School forwarded the proposal dated 20.6.2022 for continuation of the petitioner's services. The respondent No.4, claims that the appointment of the petitioner No.2 is not by the Executive Body. The Education Officer, without applying his mind passed the impugned order declining to consider the proposal, pending dispute of management groups.

6. The issue is no more res-intergra. The respondent No.3 could have followed the directions issued by the Director of Education under communication dated 5.3.2021 and examined the proposal of the petitioner independent of the dispute between the two groups of management. The respondent No.3 could have considered the fact that the appointment of the petitioner No.2 and approval to such appointment was never objected at any point of time. Petitioner No.2 has already completed the term of his appointment as Shikshan Sevak. Then, proposal for the purpose of continuation has been moved by Head master. In this background, litigation of management groups could not have been treated as a hurdle for deciding the proposal for approval on its own merit. It is trite that the employees of the school have nothing to do with the disputes amongst the litigating management groups and the proposal seeking approval for appointment/transfers cannot be withheld only referring the pendency of such disputes. This Court in the case of Nahid Kausar Malik Basheer Ahmed (supra) and ***Dr. Isharat Ullah Khan Vs. State of Maharashtra (WP. No. 4474 of 2012)*** held that the

Education Officer is not required to go into the inter-se dispute between the management. He is required to see as to whether teacher was entitled for grant of approval or not. In present case, when the Education Officer has already granted approval to the appointment of the petitioner No.2 as Shikshan Sevak. He could not have casually refused consideration of the proposal. In that view of the matter, the impugned order can not be sustained in law. Hence, we proceed to pass the following order :-

ORDER

[A] Writ petition is partly allowed;

[B] The impugned order / communication dated 3.11.2022 issued by respondent No.3 – education Officer (Secondary) Zilla Parishad, Jalgaon is hereby quashed and set aside;

[C] The respondent No.3 Education Officer, is directed to consider and process the proposal dated 20.6.2022, forwarded by respondent No.5 Head Master, seeking approval to the continuation of the services of the petitioner No.2, on its own merit and shall not reject the same on the ground that there is dispute as regards the Executive Body of the petitioner No.1 Trust.

[D] Rule made absolute in above terms. No costs.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-