



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3098 OF 2017

1. Tukaram s/o Bharat Dudile
Age: 33 years, Occu.: Service as
Assistant Teacher, Shri. Ganesh
Vidyalaya, Shivankhed,
Taluka Chakur, District Latur.
2. Ramrao s/o Shesherao Gitte,
Age: 35 years, Occu.: Service as
Assistant Teacher, Shri. Ganesh
Vidyalaya, Shivankhed,
Taluka Chakur, District Latur.

.. PETITIONERS

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Latur.
3. Shivankhed Shikshan Prasarak
Mandal, Shivankhed, Tq. Chakur,
District Latur,
Through its Secretary,
Madhavrao s/o Shankarrao Sake.
4. Shri. Ganesh Vidyalaya, Shivankhed,
Taluka Chakur, District Latur,
Through its Headmaster,
Narsing s/o Dnyanoba Bawache.
5. Vyankat s/o Kisanrao Kasle
Age: Major, Occu.: Agri.,
R/o. Shivankhed, Taluka Chakur,
District Latur.

.. RESPONDENTS

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Mr. S. S. Thombre, Advocate for the petitioners.

Mr. V. M. Jaware, AGP for respondent Nos.1 and 2 – State.

Mr. M. S. Karad, Advocate for respondent Nos.3 and 4.

Mr. S. S. Jadhavar, Advocate for respondent No.5.

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

DATE : 31st JANUARY, 2024.

JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-

. Rule. Rule made returnable forthwith. Heard learned Advocate for the appearing parties finally by consent.

2. Both the petitioners are assailing the order passed by respondent No.2 on 07.02.2017, thereby he had confirmed his own order dated 15.10.2015 by holding that the petitioners were appointed after the Government Resolution dated 02.05.2012 and their appointments were without getting no objection from the Education Officer, there was dispute in the management and in pursuant to the letter dated 16.01.2017 issued by the Commissioner of Education, Maharashtra State, Pune, the Commissioner of Education has directed not to grant approval till the surplus teachers are absorbed in the service.

3. The petitioners came to be appointed after following due process of law and they are working as assistant teachers. They have completed more than three years. In fact, earlier also the Education

Officer had cancelled their approval granted on 30.07.2015 by order dated 15.10.2015 and therefore, the petitioners had approached this Court by filing Writ Petition No.11233 of 2015. This Court set aside the said order dated 15.10.2015 by order dated 29.09.2016 and directed the Education Officer to decide the proceedings afresh. It was also directed that the concerned Headmaster should submit the salary bills within three weeks and the Education Officer was supposed to process the same within a period of four weeks thereafter. Though the Headmaster had forwarded the bills to the Education Officer, yet the Education Officer has not forwarded the said salary bills further. Petitioners have stated that they intend to initiate contempt proceedings against the Education Officer, however thereafter on 07.02.2017, the Education Officer, who was directed by this Court under the earlier round of litigation, confirmed his own order dated 15.10.2015. The said order is unjust arbitrary and non-est.

4. Affidavit-in-reply has been filed on behalf of respondent No.2. Needless to say that he supports his own order. Respondent No.5, who claimed to be the founder member of respondent No.3 Trust, has filed affidavit-in-reply, thereby giving history regarding the dispute in the management. It appears that once again there is affidavit-in-reply on behalf of respondent No.2 by one Ukirde Audumbar Sampatrao serving as Education Officer (Secondary), Zilla Parishad, Latur, who

reiterates same facts and he also reiterates that the staffing pattern was approved, however, due to dispute in the management, no regular promotion has been given to the post of Headmaster by the management. Additional affidavit has been filed on behalf of respondent No.5, who supports the order passed by the Education Officer –respondent No.2.

5. Heard learned Advocate Mr. S. S. Thombre for the petitioners, learned AGP Mr. V. M. Jaware for respondent Nos.1 and 2 – State, learned Advocate Mr. M. S. Karad for respondent Nos.3 and 4 and learned Advocate Mr. S. S. Jadhavar for respondent No.5.

6. Learned Advocate for the petitioners has taken us through all the documents. It appears that the Headmaster had given application to the Education Officer (Secondary) on 25.06.2012 allowing him to fill up the two posts of Shikshan Sevak and one post of Clerk. Thereafter advertisement was published in Dainik Ekmat on 01.07.2012 and thereafter the petitioners came to be appointed by order dated 14.07.2012. After the proposal for approval of their appointment was forwarded on 26.10.2012, it appears that respondent No.2 had granted approval by order dated 30.07.2015. Thereafter, it appears that respondent No.5 had made complaint with respondent No.2 and it appears that respondent No.2 *Suo Moto* initiated inquiry and thereafter the order dated 15.10.2015 came to be passed, thereby

cancelling the approval granted on 30.07.2015. The petitioners approached this Court by filing Writ Petition No.11233 of 2015 and after the order dated 15.10.2015 was set aside, Education Officer was directed to decide the proposal afresh and thereafter, the impugned order came to be passed. The learned Advocate for the petitioner has raised following points :-

(i) Respondent No.2 has no review powers and therefore, he could not have reopened the matter and set aside his own order. Learned Advocate for the petitioner relied on the decision in **Mrs. Shivaneesh Prasanna Deshpande Vs. The State of Maharashtra and others**, decided by this Court in Writ Petition No.10133 of 2016 and companion matters on 01.08.2017].

(ii) As regards the dispute in the management is concerned, the petitioners were not responsible. He relied on the decisions in **Navnath Vs. State of Maharashtra and Others, [MANU/MH/0923/2021]** and **Nitin Bhatusingh Thakur Vs. The State of Maharashtra and others**, decided by this Court in Writ Petition No.5975 of 2017 on 25.09.2018.

(iii) He also submits that by circular dated 19.11.2001 guidelines have been given that if there is dispute amongst the members claiming to be in the management, then the Headmaster is empowered to make appointment and, therefore, the appointment orders in the present case passed by the Headmaster are legal. Due

procedure was followed and, therefore, approval ought to have been granted. He relied on the decisions in **Allauddin Kondaji Chaudhari Vs. The Education Officer, (Secondary), Zilla Parishad, Latur and others, [Writ Petition No.644 of 2015 and companion matters decided on 28.11.2016], Gopal Siddheshwar Akhade and Ors. Vs. State of Maharashtra and Ors., [MANU/MH/2590/2013], Adarsh Vidyalaya Shikshan Samiti and Ors. Vs. State of Maharashtra and Ors., [2015(4) Bom. C.R. 584] and Chembur Trombay Education Society and others Vs. D. K. Marathe and others, [2002 (3) Bom. C.R. 161].**

7. Per contra, learned AGP for respondent Nos.1 and 2 as well as learned Advocate for respondent No.5 submit that proper procedure has not been followed. There was ban on the recruitment. The appointments are made without taking no objection from the Education Officer, there was dispute in the management and the letter by Commissioner of Education dated 16.01.2017 was binding on respondent No.2.

8. The first and the foremost fact that is required to be highlighted is that the officer by name Dr. Ganpat More was the Education Officer (Secondary), Zilla Parishad, Latur on 30.07.2015, when he accorded approval to the petitioners. Without even going further, we can say that he had not found those reasons, which he has now given on 07.02.2017. When he had granted the approval on 30.07.2015,

digging for reasons at a later point of time is not expected. The another glaring mistake or erroneous act on the part of the said Education Officer was to reopen the case or take it for review on the basis of complaint filed by respondent No.5, as held by this Court in **Ms. Shivani Deshpande (Supra)**. There are no powers of review conferred upon respondent No.2 and therefore, he could not have reopened the same. In that case the order passed by the Predecessor was reviewed by the subsequent respondent – Education Officer, but here, in the present case, it has been reopened by the same Education Officer Dr. Ganpat More. Again, he has then dug out the reasons. In fact, we reiterate that the Education Officer has no power of review. When the said order dated 15.10.2015 passed by him according approval to the employees working in the private schools was challenged before this Court, it was brought to notice of this Court that the said order was passed without giving opportunity of hearing to the petitioners and therefore, the matter was relegated. Opportunity was given to the petitioners to take part in the process and the Education Officer was directed to take a decision afresh. Thereby, the impugned order dated 15.10.2015 was set aside.

9. After hearing the parties, the impugned order has been passed on 07.02.2017 by the same Education Officer Dr. Ganpat More. Now, in all four reasons have been assigned, first is ban imposed in view of Government Resolution dated 02.05.2012. This Court has already

taken a view that the said ban was not applicable to reserve category and teachers teaching subject of Marathi, English and Mathematics. Here, one of the petitioner has been appointed for subject Marathi and the other is from reserved category. This point can also be considered from another angle. The Headmaster, other officials and the Secretary had given letter dated 25.06.2012 seeking permission to fill up the posts. The said letter bears the acknowledgment of the office of respondent No.2. Respondent No.2 is not explaining as to why he had not responded to the same. He has neither granted the approval, nor rejected it, but simply kept quiet. The observations from **Gopal Siddheshwar Akhade and others (Supra)** would be applicable here. The respondent authorities in that case also had not responded pursuant to which the advertisement was given and then the appointments which were made, were held to be as per procedure. Here also when the same Education Officer Dr. Ganpat More had accorded sanction on 30.07.2015, had not found any fault or was not of the opinion that the appointments were without prior permission, merely because now this Court has relegated the matter to him, he was not supposed to excavate the reasons and see that there was ban and the no objection was not taken prior to the appointment.

10. As regards the dispute in the institution is concerned, we need not go much into the details, though judgments and orders passed by the Charity Commissioner and other authorities are produced on

record. Suffice it to say that it is stated that change report was not accepted, but it appears that the matter is further pending. In **Allauddin Kondaji Chaudhari (Supra)**, it is observed that circular dated 19.11.2001 lays down that if there is dispute amongst the members claiming to be in the management, then the Headmaster is empowered to make appointment. That circular is definitely binding on respondent No.2. So also, the decision in **Navnath (Supra)** says that the Assistant Teachers have not concerned with the dispute between the management of the institution and therefore, that cannot be a ground to refuse the approval. Further reference is in respect of letter dated 16.01.2017 issued by the Commissioner of Education. Important point to be noted is that the proposal to approve the appointment was given by the institution to respondent No.2 on 16.10.2012 and, therefore, the subsequent letter of the Commissioner of Education, ought not to have been made applicable by respondent No.2. That ground was in fact not available to respondent No.2, as he was dealing with the proposal dated 26.10.2012. The said letter was accompanied with *Sansamanyata* i.e. staffing pattern.

11. Thus, taking into consideration all the facts and the reasons stated above, the impugned order dated 07.02.2017 is illegal and deserves to be set aside. In fact, when this Court had in the earlier round of litigation set aside the order dated 15.10.2015, Education Officer (Secondary) in his order dated 07.02.2017 could not have

confirmed the said order, as the wordings those have been used by him, are objectionable. When he was directed to decide the proposal afresh, then the fresh decision was expected which had nothing to do with the earlier set aside order. The entire action of the named Education Officer (Secondary) is without the powers of review in the first place and secondly, it was not his job to search for the reasons to reject at a later point of time, when he had not found or arrive at the finding at the earlier time. The petition therefore deserves to be allowed. Hence, the following order :-

ORDER

- I) The Writ Petition stands allowed in terms of prayer clauses 'B' and 'The release of salary of the petitioners since July 2012 should be in phased manner to be divided between two equal installments of having duration of six months and the first installment would be due on 01.04.2024.C'
- II) The release of salary of the petitioners since July 2012 should be in phased manner to be divided between two equal installments of having duration of six months and the first installment would be due on 01.04.2024.
- III) Rule is made absolute in the above terms.
- IV) No order as to costs.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm