



(This judgment is corrected as per speaking to minutes order dated 23.04.2024)

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

WRIT PETITION NO.8161 OF 2022

Yogesh S/o Shrikrushna Sambre
Age: 44 Years Occu: Service,
Bharatmata Vidyalay, Phulambri,
Tq. Phulambri Dist. Aurangabad,
R/o: Plot No. 14, Maruti Nagar,
Opp. Datta Mandir, Jadhavwadi,
Harsul, Aurangabad.

..Petitioner

Versus

1. The Deputy Director of Education,
Aurangabad Region, Aurangabad
Near Bhadkal Gate, Aurangabad.
2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
3. The State of Maharashtra,
(Through its Secretary),
School Education & Sports Department,
Mantralaya, District Mumbai.
4. Padmakar S/o Vinayak Ingale,
Age: 59 Years, Occu: Claiming
himself as President of Prabhodhan
Bahavidh Sanstha, Raigad Nagar
N-9, M-2, R 26/79 Mhada,
CIDCO Aurangabad.
5. Manoj S/o Shridharrao Mule,
Age: 50 Years, Occu: Claiming
himself as Secretary,
Prabhodhan Bahavidh Sanstha,
R/o: H.No. L.B/31, N-11 Jijau Building
Yadav Nagar, Hudco Aurangabad.

..Respondents

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Mr. R. J. Godbole, Advocate for the Petitioner.
Dr. Kalpalata B. Patil Bharaswadkar, AGP for Respondent Nos.1
to 3.
Mr. C. K. Shinde, Advocate for Respondent No.4.
Mr. N. P. Patil Jamalpurkar, Advocate for Respondent No.5.

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

JUDGMENT RESERVED ON :- 02nd APRIL 2024.

JUDGMENT PRONOUNCED ON :- 15th APRIL 2024.

JUDGMENT (Per: S. G. Chapalgaonkar, J.):

1. Rule. Rule made returnable forthwith. With the consent of the parties, matter is taken up for final hearing at the stage of admission.

2. The petitioner approaches this Court under Article 226 of the Constitution of India impugning order dated 23/24.06.2022 passed by respondent no.1-Deputy Director of Education, Aurangabad Region, Aurangabad.

3. The petitioner contends that he has been appointed as Assistant Teacher with Bharatmata Vidyalay, Phulambri w.e.f. 11.02.2004. Thereafter, on 01.04.2009 he has been promoted as Headmaster of the school. Accordingly, respondent no.2-Education Officer granted approval to his appointment as Headmaster w.e.f. 01.02.2009 (although the petitioner joined on 03.04.2009). Since there are disputes between two groups of the Management, headed by Mr. Padmakar Ingale and Mr. Manoj Mule, they are litigating to take over control of the Management. Such disputes are pending before the Charity Commissioner and other courts.

4. Mr. Manoj Mule had raised objection to Education Officer against approval granted to petitioners appointment as Headmaster, accordingly, Education Officer canceled the approval. Meanwhile, co-teachers in the petitioners school, Mr. Rajendra Jadhav and Mr. Suryakant Ubale had raised a dispute regarding seniority. This court, in Writ Petition No.524/2015, filed by Mr. Rajendra Jadhav had issued direction to respondent no.1-Deputy

Director of Education to decide the *interse* seniority. The respondent no.1 after hearing the respective parties declared petitioner to be senior most teacher. Consequently, the proposal for the petitioner's appointment as Headmaster was forwarded and it was granted by respondent no.2-Education Officer vide order dated 23.02.2017 w.e.f. 11.02.2009. The respondent no.5-Mr. Manoj Mule again raised objection with respondent no.1-Deputy Director of Education regarding approval order dated 23.02.2017. The respondent no.1 canceled the approval vide impugned order dated 23/24.06.2022 recording various reasons. According to petitioner order impugned is contrary to law and facts , hence deserves to be quashed.

5. The respondent nos.1 and 2 filed affidavit-in-reply and supported the impugned order contending that the petitioner was remanded to Judicial Custody for the period from 29.07.2008 to 13.08.2008 in pursuance to the complaint lodged by Mr. Manoj Mule and consequential registration of offenses punishable under Sections 420, 467, 468, 471, 34 of the Indian Penal Code. Considering the initial date of appointment of the petitioner, coupled with period of his Judicial Custody from 29.07.2008 to 13.08.2008, his service falls short of 5 years till 11.02.2009. The said fact was suppressed when proposal was forwarded seeking approval to the appointment of the petitioner as Headmaster.

6. The respondent nos.4 and 5 filed respective affidavits. The respondent no.4 in a way supported the petitioner, whereas respondent no.5 supported the impugned order and points out that Mrs. Swati Bhagwantrao Joshi has been appointed as Headmistress after cancellation of the approval of the petitioner. She is not added as party to the petition. Consequently, prayers in

the petition cannot be considered. The petitioner is not senior most teacher and his appointment as Headmaster was illegal and suffers from suppression of the material facts. Further there are criminal cases pending against the petitioner. The service record of the petitioner cannot be considered as satisfactory in view of the pending criminal cases.

7. We have heard Mr. Godbole, learned Advocate appearing for the petitioner, Dr. Bharaswadkar, learned A.G.P. for respondent nos.1 to 3, Mr. Shinde, learned Advocate for respondent no.4 and Mr. N.P. Patil Jamalpurkar, learned Advocate for respondent no.5.

8. Admittedly, the petitioner has been appointed as an Assistant Teacher on 11.02.2004. His services were approved by the Education Officer, initially for the period of two years on probation. Under the same order, other teachers of the school were also granted approval. Apparently, considering the dates of appointments petitioner appears to be the senior most teacher. Management had promoted the petitioner as Headmaster w.e.f. 11.02.2009. However, the approval to his appointment was withdrawn vide order dated 14.09.2010 on the basis of the objection raised by Mr. Manoj Mule. The order dated 14.09.2010 depicts that the only reason for withdrawal of the approval was the dispute between two groups of Management. Pertinently, the dispute as regards to the seniority amongst the teachers working in the school was referred to respondent no.1 under order of this Court dated 20.01.2016. The respondent no.1 after deliberation with all concern given verdict declaring the petitioner to be the senior most teacher in the school. It appears that, meanwhile Mr. Manoj Mule lodged a criminal complaint against his rival Mr. Padmakar Ingale

and the petitioner. Consequently, offence was registered vide Crime No.280/2008. However, on investigation a closure report in terms of Section 169 of the Code of Criminal Procedure has been filed by the police. The said litigation is still pending. Pertinently, till this date no charge-sheet is filed against the petitioner.

9. In deference to decision of respondent no.1 regarding seniority among teachers in the school, the petitioner's approval as Headmaster from the date of his initial appointment was restored, however, again on complaint made by Mr. Manoj Mule, respondent no.1 passed the impugned order of withdrawal of the approval. The order impugned, depicts that respondent no.1 had arranged hearing of all the concerned and recorded his conclusions as under:

- (i) The Resolution of the Management Committee is dated 01.04.2009, however, he is shown to have assumed the charge of Headmaster on 11.02.2009. The Resolution depicts that the promotion has been granted retrospectively w.e.f. 11.02.2009.
- (ii) Mr. Jadhav worked as in-charge Headmaster during the period from 15.10.2010 to 23.02.2017. However, no explanation offered by Management or the petitioner.
- (iii) In pursuance of the order dated 28.01.2016 passed by this Court, the Deputy Director of Education, Aurangabad fixed the seniority vide his communication dated 07.07.2016 holding that the petitioner is working as regular teacher w.e.f. 11.02.2004. As such, he is senior most teacher. Based on such decision, the Institution submitted the proposal dated 01.02.2017 seeking approval to the appointment of the petitioner as Headmaster.

Accordingly, vide order dated 23.02.2017 the Education Officer granted approval.

- (iv) Although the petitioner and Mr. Padmakar Ingale were in the Judicial Custody during the period from 29.07.2008 to 13.08.2008, and break in the service of the petitioner is not condoned, said period is considered in five years experience for appointment on the post of Headmaster.

10. Pertinently, the aforesaid conclusions recorded in the impugned order, nowhere depict that the petitioner was either disqualified to be appointed as Headmaster or approval to his appointment was obtained by exercise of fraud or misrepresentation. The conclusion that can be drawn from the reasons recorded in the impugned order is that the withdrawal of the approval is owing to the dispute between the two groups of the Management. It cannot be disputed that the petitioner is the senior most teacher and going by the provisions of Rule 3 of MEPS Rules, qualifies to be appointed as Headmaster. Pertinently, the seniority is finalized and approved by respondent no.1 himself under orders passed by this Court. None of the teacher in the school had ever challenged seniority fixed by respondent no.1. Even going by initial approval granted to the appointment of the petitioner and other teachers, the petitioner is the senior most teacher. Therefore, once the petitioner is held to be the eligible for appointment on the post of Headmaster, there is no reason to decline approval to his appointment.

11. There is nothing on record to demonstrate that the petitioner had incurred disqualification for appointment or continuance as Headmaster, nothing is discernible from the reasons recorded in the impugned order. It is the matter of record

that on the complaint made by Mr. Manoj Mule an offence was registered against the petitioner and Mr. Padmakar Ingale consequently, they were remanded to Judicial Custody. However, that itself would not be disqualification for petitioner's appointment as Headmaster. Pertinently, till this date, no charge-sheet is filed in any Court based on complaint or allegations made against the petitioner. In fact, investigating agency has filed closure report under Section 169 of the Code of Criminal Procedure. True that the said dispute is still pending, however, from the record placed before us, petitioner's disqualification to continue as Headmaster cannot be inferred. Hence, withdrawal of the approval cannot be justified.

12. Although it is sought to be contended that the petitioner had not completed five years service before his appointment as Headmaster, we are not inclined to accept such contentions. The petitioner is appointed as an Assistant Teacher on 11.02.2004. The Management passed the Resolution dated 01.04.2009 to promote him on the post of Headmaster w.e.f. 11.02.2009. He joined on the said post on 03.04.2009. Although his joining report depicts the date as 11.02.2009, it is submitted that, he had addressed corrigendum to correct the date of his joining to respondent no.4-President. Even assuming that the petitioner was promoted on 11.02.2009 and joined on the same date, he had five years service at his credit. Nothing is brought before us to depict that the period under Judicial Custody cannot be counted as the service period. Therefore, merely on that factual aspect the petitioner cannot be treated as disqualified or incompetent for appointment on the post of Headmaster.

13. One more question that arose for our consideration is as to whether respondent no.1-Deputy Director of Education has authority to cancel the approval granted by the Education Officer. It is true that respondent no.1 being an officer in higher rank can exercise administrative control over the orders passed by the subordinate officer. However, such exercise may be permissible when the order is obtained by exercise of fraud or misrepresentation or same is glaringly in conflict with the legal position. In the present case, merely because litigating groups of Management makes a complaint to respondent no.1-Deputy Director of Education, he cannot assume the authority as if sitting in appeal. Further without finding any legal defect in the order, he could not have set aside approval granted to the appointment of the petitioner as Headmaster. We do not find that in the facts of the case that such exercise was warranted.

14. Once it is held that petitioner is senior most teacher and management has passed the Resolution to appoint him, there is no reasons to withdraw the approval granted by the Education Officer to such appointment. Consequently, we proceed to pass the following order:

ORDER

- a. Writ Petition is allowed.
- b. The impugned order dated 23/24.06.2022 passed by respondent no.1-Deputy Director of Education, Aurangabad Region, Aurangabad is hereby quashed and set aside.
- c. The consequential order dated 12.07.2022 issued by respondent no.2-Education Officer is also quashed and set aside. The order of approval dated 23.02.2017 passed by the respondent

no.2-Education Officer (Secondary), Zilla Parishad, Aurangabad be restored with consequential benefits to petitioner.

d. Writ Petition is disposed of.

e. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE