



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7822 OF 2019

Hanmant S/o Eknathrao Shinde,
Age : 48 years, Occu. : Service,
R/o : Sadhana High School,
Degloor, Tq. Degloor,
District – Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
Education Department, Maharashtra State,
Mantralaya, Mumbai – 32.
- 2] The Deputy Director of Education,
Latur Division, Latur
- 3] The Education Officer (Secondary),
Zilla Parishad, Nanded
- 4] Sant Gadgebaba Shikshan Prasarak Mandal,
Degloor, Tq. Degloor, District – Nanded,
Through its President / Secretary
- 5] Sadhna High School,
Degloor, Tq. Degloor, Dist. Nanded
Through its Head Master
- 6] Netaji Subhash Vidyalaya,
Tamloor, Tq. Degloor, Dist. Nanded
Through its Head Master

.. Respondents

WITH

CIVIL APPLICATION NO. 14495 OF 2019 IN WP/7822/2019

(Sanjay S/o Shriram Kirjawalekar Vs. Hanmant S/o Eknathrao Shinde and others)

AND

CIVIL APPLICATION NO. 6251 OF 2020 IN WP/7822/2019

(Pundlik Ganpatrao Thakur Vs. Hanmant Eknathrao Shinde and others)

...

Mr. P.D. Bachate, Advocate for petitioner
Mr. P.S. Patil, Addl. G.P. for respondents no. 1 to 3
Mr. V.D. Gunale, Advocate for respondent no. 4
Mr. A.N. Sabnis, Advocate for respondent no. 5
Respondent no. 6 served – absent.
Mr. V.P. Kadam, Advocate for applicant in CA/14495/2019
Mr. Yogesh B. Bolkar, Advocate for applicant in CA/6251/2020

...

WITH
CONTEMPT PETITION NO. 513 OF 2021 IN CP/249/2020 IN WP/7822/2019
 (Hanmant S/o Eknathrao Shinde Vs. The State of Maharashtra and others)

...
 Mr. P.D. Bachate, Advocate for petitioner
 Mr. P.S. Patil, Addl. G.P. for respondent no. 2
 Mr. A.N. Sabnis, Advocate for respondent no. 3
 ...

WITH
WRIT PETITION NO. 5167 OF 2020

Hanmant S/o Eknathrao Shinde,
 Age : 48 years, Occu. : Service,
 R/o : Sadhana High School,
 Degloor, Tq. Degloor, District - Nanded .. Petitioner

Versus

- 1] The State of Maharashtra,
 Through its Secretary,
 Education Department, Maharashtra State,
 Mantralaya, Mumbai – 32
- 2] The Deputy Director of Education,
 Latur Division, Latur
- 3] The Education Officer (Secondary)
 Zilla Parishad, Nanded
- 4] Sant Gadgebaba Shikshan Prasarak Mandal,
 Degloor, Tq. Degloor, District Nanded
 Through its President / Secretary
- 5] Sadhna High School,
 Degloor, Tq. Degloor, Dist. Nanded
 Through its Head Master
- 6] Netaji Subhash Vidyalaya,
 Tamloor, Tq. Degloor, Dist. Nanded
 Through its Head Master .. Respondents

WITH
CIVIL APPLICATION NO. 6256 OF 2020 IN WP/5167/2020
 (Sanjay Shriram Kirjawalekar V. Hanmant Eknathrao Shinde and others)

...
 Mr. P.D. Bachate, Advocate for petitioner
 Mr. P.S. Patil, Addl. G.P. for respondents no. 1 to 3
 Mr. V.D. Gunale, Advocate for respondent no. 4
 Mr. A.N. Sabnis, Advocate for respondent no. 5
 Mr. Umakant B. Deshmukh, Advocate for applicant in CA/6256/2020
 ...

**WITH
WRIT PETITION NO. 1626 OF 2021**

Vitthal Bandu Umate,
Age 52 years, Occu. Service,
R/o. Nath Nagar, Rampur Road,
Tal. Degloor, District – Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai.
- 2] The Director of Education (Secondary),
Maharashtra State ,
Dr. Anni Besant Road, Central Building,
Pune-1.
- 3] The Education Officer (Secondary),
Zilla Parishad, Nanded,
Taluka and District Nanded.
- 4] Shri Sant Gadge Baba Shikshan
Prasarak Mandal, Sadhna High School,
Taluka Degloor, District – Nanded
Through its Secretary
Sangram Bandappa Malge,
Age 48 years, Occu. Agri.,
At post Gojegaon, Taluka Mukhed,
District Nanded.
- 5] Hanmant s/o. Eknathrao Shinde,
Age 48 years, Occu. Service,
R/o. Sadhna Nagar, Degloor,
Taluka Degloor, District Nanded.

.. Respondents

....
Mr. A.N. Sabnis, Advocate for petitioner
Mr. P.S. Patil, Addl. G.P. for respondents no. 1 to 3
Mr. V.D. Gunale, Advocate for respondent no. 4
Mr. P.D. Bachate, Advocate for respondent no. 5
...

**WITH
WRIT PETITION NO. 1750 OF 2021**

Shri Sant Gadge Baba Shikshan
Prasarak Mandal, Degloor,
District – Nanded
Through its Secretary
Shri Sangram S/o. Bandappa Malge,

Age : 48 years, Occu : Agri.,
R/o. Gojegaon, Tq. Mukhed,
Dist. Nanded

.. Petitioner

Versus

- 1] The State of Maharashtra,
Through its Secretary,
School Education and Sports Department,
Mantralaya, Mumbai – 32.
- 2] The Director of Education,
Maharashtra State (Secondary),
Dr. Anni Besant Road, Central Building,
Pune-1.
- 3] The Education Officer (Secondary),
Zilla Parishad, Nanded,
District Nanded.
- 4] Hanmant s/o. Eknathrao Shinde,
Age 48 years, Occu. : Service,
Now transfer at Netaji Subhash Vidyalaya,
Tambloor, Tq. Degloor, Dist. Nanded.

.. Respondents

...
Mr. V.D. Gunale, Advocate for petitioner
Mr. P.S. Patil, Addl. G.P. for respondents no. 1 to 3
Mr. P.D. Bachate, Advocate for respondent no. 4
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 12 JUNE 2024
PRONOUNCED ON : 21 JUNE 2024**

JUDGMENT (MANGESH S. PATIL, J.) :

Rule. Rule in all these matters. Rule is made returnable forthwith. Learned AGP and learned advocate for the respective respondents waive service. At the joint request of the parties, all these matters are taken together for final disposal at admission stage in order to avoid rigmarole.

2. In order to avoid confusion, the individual parties would be hereinafter referred to by their surnames.

3. Shorn of unnecessary details, the facts leading to filing of these petitions can be summarized as under:-

(a) Shri Sant Gadgebaba Shikshan Prasarak Mandal is a trust which has been running five schools in and around Degloor town of Nanded district (hereinafter referred to as the management). The management purportedly issued transfer orders in the light of provisions of rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to as '**the Rules**') framed under the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (hereinafter referred to as '**the Act**'). The Education Officer (Secondary) Zilla Parishad, Nanded by the communication dated 29-05-2019 granted approval to three such transfers with effect from beginning of the academic year 2019-2020. Mr. Shinde who was serving in Sadhna High School was transferred to Netaji Subhash Vidyalaya. Mr. Birajdar who was serving in Netaji Subhash Vidyalaya was transferred to Madneshwar Vidyalaya and Mr. Umate who was serving in Madneshwar Vidyalaya was transferred to Sadhna High School.

(b) Mr. Shinde filed writ petition no. 7822 of 2019 and alleging that he was not served with the order of transfer and in-fact there was no order of transfer issued by the management still by the impugned order the Education Officer on 29-05-2019 granted approval to the transfer.

(c) While directing notice to be issued on the first date of hearing, by order dated 27-06-2019, *status-quo* as on that date was directed to be maintained.

(d) On 09-12-2019, Mr. Shinde agitated before the Court that the Education Officer had issued transfer order and he was not being paid salary. It was directed that if he was working with the institution, to forward his salary bills and the interim order was continued.

(e) Mr. Shinde complained before the Court on 24-02-2020 that the direction of the Court dated 09-12-2019 was not complied with and he was not being allowed to work in the original school. The matter was directed to be listed on 23-03-2020 and the interim order was continued.

(f) Mr. Shinde then filed Contempt Petition no. 249 of 2019 for the alleged disobedience but after going through the affidavit filed on behalf of the management which was arrayed therein as respondent no. 3, by order dated dated 13-01-2021 the contempt petition was

disposed of. However, a direction was given for expediting payment of salary to him.

(g) In the meanwhile the Education Officer by communication dated 25-06-2020 directed Mr. Shinde to resume the duty in Netaji Subhash Vidyalaya on the ground that pursuant to the transfer order, Mr. Umate had joined Sadhna High School on 17-06-2019 and in spite of the Headmaster of Sadhna High School having relieved him, he had refused to accept the relieving order and the order granting approval to transfer.

(h) Alleging that the Education Officer had no right to direct him to resume duty in the new place of posting, Mr. Shinde preferred Writ Petition no. 5167 of 2020 on 15-07-2020. By the order dated 17-07-2020, again status-quo as on that day was directed to be maintained and the matter was directed to be heard along with Contempt Petition no. 249 of 2020 wherein Mr. Shinde was alleging breach of the directions of the Court issued in Writ Petition no. 7822 of 2019 and non payment of salary.

(i) While this first writ petition no. 7822 of 2019 was being prosecuted and contested, the Education Officer, by communication dated 17-11-2020 addressed to the Headmaster of Sadhna High School, informed that though Mr. Shinde was transferred from Sadhna

High School to Netaji Subhash Vidyalaya and he had granted approval to it, Mr. Birajdar was not relieved by the Headmaster of Netaji Subhash Vidyalaya and he had refused Mr. Shinde to join. He also mentioned that Mr. Shinde had preferred Writ Petition no. 7822 of 2019 and stating that subject to the final outcome of the writ petition, and as per the request of Mr. Shinde, the approval granted to his transfer stood recalled and directed the Headmaster to accommodate him in the vacant post that was available and further directed the Headmaster to forward the salary bills from June 2019 onwards and to report compliance.

(j) Mr. Umate and even the management through its Secretary have been alleging the subsequent decision taken by the Education Officer dated 17-11-2020 cancelling the approval granted to the order of transfer of Mr. Shinde, by filing Writ Petition no. 1626 of 2021 and 1750 of 2021, respectively.

(k) Mr. Shinde has filed Contempt Petition no. 513 of 2021 in Contempt Petition no. 249 of 2020 alleging wilful disobedience of the order passed by the Court in Contempt Petition no. 249 of 2020 dated 13-01-2021 and the afore-mentioned different orders dated 27-06-2019, 09-12-2019 and 24-02-2020 passed in Writ Petition no. 7822 of 2019.

4. Mr. Bachate for Mr. Shinde would vehemently submit that the order of the Education Officer dated 29-05-2019 purportedly granting approval to the transfer order itself is dubious. In-fact, no order of transfer was ever passed by the management and still the Education Officer had granted approval. He would advert our attention to the absence of date in the reference column of this impugned communication purportedly regarding the letter received from the management. According to him, this circumstance is clinching and would justify the allegations of Mr. Shinde that in-fact, no order of transfer was ever passed and the Education Officer had suo motu acted hand in gloves with one of the factions of the management. There has been long standing dispute in the management and in order to harass Mr. Shinde that the impugned approval was granted by the Education Officer. Mr. Bachate would submit that there is absolutely nothing to demonstrate that the order of transfer was ever served to the petitioner.

5. Mr. Bachate would then submit that realizing the error / mistake, the Education Officer has rectified it by taking a subsequent decision communicated to the Headmaster of Sadhna High School dated 17-11-2020 thereby recalling the approval granted to the transfer of Mr. Shinde and further directing him to be accommodated against the vacant post that was available in Sadhna High School. No error or illegality is committed by him.

6. Mr. Bachate would then submit that in spite of direction of this Court to maintain the status-quo and further direction to forward and process the salary bills from Sadhna High School, the directions were wilfully disobeyed by the Headmaster and he is liable in contempt.

7. Mr. Gunale would submit that it is the prerogative of the management to effect transfer of the teachers in the light of rule 41. In exercise of such right, Mr. Shinde and two other teachers were transferred and the Education Officer had granted approval. Mr. Shinde refused to accept the order of transfer and even the order of being relieved from Sadhna High School. Attempt was made to serve him but he refused to accept it. A panchanama was drawn. Even the attempt was made to effect service by registered post acknowledgment due but he did not claim it. Therefore, Mr. Shinde himself is to be blamed for the mess created. Pursuant to the order, Mr. Umate was already relieved by the earlier school and had joined Sadhna High School in place of Mr. Shinde and his salary bills were being processed through that school.

8. Mr. Gunale would then submit that the Secretary who had effected the transfer is in actual management of the trust and working as such to the knowledge of the Charity Commissioner's office. Some individuals who have been unable to take over the management have

been obstructing the management without there being any right. Question of dispute in the management cannot be a ground for refusing to grant approval to the transfer effected under rule 41 as has been laid down in the matter ***Dr. Ishrat Ullah Khan V. The State of Maharashtra*** (Writ Petition no. 4474 of 2012) followed in ***Narsinha Shikshan Prasarak Mandal V. The Education Officer (Secondary), Zilla Parishad, Kolhapur*** in Writ Petition no. 1847 of 2012 and ***Nita Pandurang Chavan V. The State of Maharashtra and others; 2021 SCC OnLine Bom 2978***.

9. Mr. Gunale would then submit that though Education Officer admittedly has never raised any dispute regarding the order of transfer rather he granted approval to the order of transfer and once having done so, he became *functus officio*. He had no power of review and still perhaps apprehending some adverse observations by the Court, has indulged in illegality of cancelling the approval granted by him earlier to the transfer of Mr. Shinde. He had no such power and jurisdiction and the subsequent communication dated 17-11-2020 is liable to be struck down on that count.

10. Mr. Gunale would, lastly, submit that it is the prerogative of the management to effect transfer and it was obligation on the part of Mr. Shinde to honour the order of transfer duly approved by the Education Officer. He had already worked in the same school for

almost 25 years and was adamant in not obeying the order. The place of new posting in a different school was barely within a distance of 20 km from Sadhna High School and this conduct should dis-entitle him from getting any relief.

11. As far as the alleged contempt is concerned, Mr. Gunale would submit that the direction issued by this Court was to maintain status-quo as on the date the order was passed. Mr. Shinde was already relieved albeit he had not accepted the communication. The further direction of the Court was to process the bill if at all he was serving in Sadhna High School through that school. He would therefore submit that it is not a matter of contempt as is being alleged.

12. Mr. Sabnis who appears for the headmaster of Sadhna High School supports the stand being taken by the management and the submissions of Mr. Gunale. In addition, he would advert our attention to the affidavit in reply filed by the headmaster in Writ Petition no. 7822 of 2019 and particularly, several annexures to point out the fact that though some doubt is being created due to absence of specific date in the reference column regarding the communication received by the Education Officer, in the order granting approval, office copy of the communication dated 02-05-2019 addressed to the Education Officer on behalf of the management informing about transfer effected and soliciting the approval is annexed to the affidavit in reply of the

headmaster and conspicuously bears the signature of the inward clerk of the Education Department (Secondary) Zilla Parishad, Nanded bearing the same date i.e. 02-05-2019. He would, therefore, submit that mere absence of mentioning the date in the order granting approval cannot be made capital of in the light of such proof regarding the communication addressed to the Education Officer dated 02-05-2019. He would further advert our attention to the copy of the relieving order addressed to Mr. Shinde and even the panchanama dated 17-06-2019 conducted by the headmaster inter alia mentioning that on 16-06-2019, when attempt was made to serve the order of transfer to Mr. Shinde by reaching his house, he refused to accept it and stated that he would receive it on the next day i.e. 17-06-2019 but again he refused to accept it on 17-06-2019 as well. He would further advert our attention to the copy of the joining report of Mr. Umate in Sadhna High School and the copies of the salary bills processed by the headmaster of all the employees including Mr. Umate but not that of Mr. Shinde. He would also advert our attention to the copies of the envelopes containing the relieving order sent to Mr. Shinde by registered post and returned with endorsement to the effect that intimation was delivered but it was being returned to the headmaster as unclaimed.

13. Mr. Sabnis would reiterate that the direction of which wilful dis-obedience is being alleged was only to process the salary bills if the petitioner i.e. Mr. Shinde was working with the respondent - institution i.e. Sadhna High School. Since he was not so working when the order was passed, there was no question of any compliance with the directions. Mr. Shinde was relieved from Sadhna High School on 17-06-2019 and had never worked thereafter.

14. Learned AGP would support both the orders; the first order granting approval for effecting transfer and the subsequent order recalling it to the extent of Mr. Shinde. He would submit that no illegality has been committed by the Education Officer and the petitions of both the sides be dismissed.

15. Learned advocates for the intervenors would submit that there has been a long standing dispute in the management and the individual who claims to be the secretary, has effected the transfer illegally.

16. We have considered the rival submissions and perused the papers.

17. At the outset, it is necessary to observe that so far as the powers of management are concerned, rule 41 and after amendment

rule 41-A which has been inserted, govern the filed. There has been no dispute about the fact that the Education Officer has granted approval to the transfer effected by the management by the communication dated 29-05-2019. Although some doubt is being created due to the absence of details in respect of the date of order of transfer in the reference column of this impugned order, as is evident from the office copy annexed to the affidavit in reply filed by the headmaster in Writ Petition no. 7822 of 2019, the approval was solicited by express communication dated 02-05-2019 which was duly received and acknowledged by the inward clerk of the Education Department of the Zilla Parishad. Even its copies were addressed to the respective headmasters of the three schools. There being no denial about these annexures by filing any rejoinder by Mr. Shinde, one can safely proceed on the premise that the doubt being created by Mr. Shinde stating that there was no order of transfer passed by the management and the Education Officer had granted approval straightaway without there being transfer order, is factually incorrect.

18. Again, when the Education Officer in his affidavit in reply, has expressly mentioned about having received the transfer order soliciting approval and he having granted the approval for such transfer has also gone without any demur. We, therefore, discard the submission of Mr. Bachate regarding absence of any transfer order and

alleging that the Education Officer has granted approval without any order of transfer.

19. Again, it is the specific stand of the management and the headmaster of Sadhna High School, as mentioned herein-above about Mr. Shinde having refused to accept the order of transfer and a panchanama was required to be conducted to that effect and even a copy was sent to him by registered post acknowledgment due and in spite of intimation, he did not claim it as per the endorsement on the envelope returned to the headmaster and copies of which are also annexed to his affidavit in reply. Even these facts remain uncontroverted.

20. Similarly, even the stand of the management and the headmaster about Mr. Umate having been relieved from the earlier school and was allowed to join in Sadhna High School in place of Mr. Shinde and such joining report annexed to the affidavit in reply of the headmaster, also remain uncontroverted. Even the stand of the headmaster about having processed the salary bills since June 2019 onwards including name of Mr. Umate and excluding Mr. Shinde has not been disputed by filing any rejoinder.

21. In view of above state-of-affairs, in our considered view, there is enough material to demonstrate that the management had

effected the transfer not only of Mr. Shinde but other two employees Mr. Birajdar and Mr. Umate by the same order and the Education Officer having granted approval to it. Similarly, there is enough material to demonstrate that Mr. Shinde avoided to receive the order but was still relieved from Sadhna High School and in his place Mr. Umate had resumed the charge and since thereafter, Mr. Shinde had not worked in Sadhna High School.

22. Consequently, when the direction of this Court of which dis-obedience is being alleged expected his salary bills to be processed if he was working in Sadhna High School and, therefore, would constitute contempt, is without any substance.

23. Assuming for the sake of arguments but not intending to indulge into the dispute regarding there being some disharmony amongst the members of the management, neither the order granting approval issued by the Education Officer nor his subsequent order recalling the approval to the extent of Mr. Shinde expressly adverts to any such controversy regarding the dispute in the management. The interevenors are merely seeking to intervene and apparently have not made any attempt to independently challenge the order of transfer on the ground that the person who had effected the transfer posing himself to be the secretary, was not in-fact, working and recognized by the office of the charity commissioner as the secretary.

24. Besides, as is clear from several decisions referred to hereinabove, this Court has consistently held that approval to the transfer effected under rule 41 cannot be refused on the ground of there being a dispute amongst the members of the management.

25. Consequently, we do not find any merit in the two writ petitions and one contempt petition filed by Mr. Shinde.

26. So far as the legality and sustainability of the subsequent communication being impugned by the management and Mr. Umate dated 17-11-2020 whereby the Education Officer recalled the approval granted to the transfer of Mr. Shinde and directing the headmaster to allow him to resume in Sadhna High School, we have no manner of doubt that it suffers from a vice of absence of any power in the Education Officer. Once it is found that it is the prerogative of the management to effect transfers of the teachers under rule 41 and once having granted approval to such transfer by communication dated 29-05-2019, he had become functus officio. The power of review has not been conferred upon him by the statute and once having granted approval for effecting transfer of Mr. Shinde, he had no power to recall it. The issue is no more *res integra* in view of the judgment ***Mrs. Shivane Prasanna Deshpande V. The State of Maharashtra and others*** (Civil Writ Petition no. 10133 of 2016 dated 01-08-2017).

27. We also are surprised by the fact that in spite of specific stand of the management and the headmaster before this Court in all these petitions to which the Education Officer has been a party, that pursuant to the order of transfer Mr. Shinde was relieved from Sadhna High School on 17-06-2019 and obviously, since thereafter, he was not allowed to and did not discharge the work in Sadhna High School. The Education Officer directed the headmaster by the impugned communication dated 17-11-2020 to continue Mr. Shinde in Sadhna High School and to forward his salary bills in view of the vacancy that was available in the school. It is highly objectionable that in spite of having not discharged the work as Assistant Teacher in Sadhna High School from June 2019, the Education Officer by the impugned communication dated 17-11-2020 directed his salary bills to be processed which is a period of around 1-½ year. We strongly deprecate such a conduct firstly, of petitioner Mr. Shinde in not obeying the order of transfer, the relieving order and still Education Officer directing his salary to be paid. We, therefore, do not have slightest of hesitation to quash and set aside the communication dated 17-11-2020 of the Education Officer.

28. It is quite surprising that Mr. Shinde who is appointed on a pious job of teaching has been able to work in the same school for more than two decades, and feels aggrieved if he is transferred to

another school of the same management stated to be barely within 20 km from the existing school. His failure to join at the new place certainly would have adversely affected not only the management but even the students studying in that school. It would be a permanent loss for the students who have been deprived of education by the teacher who was supposed to teach them English. Even if he had some grievance, that should not have been at the cost of the effective working of the school. He could have resumed at the place of his new posting and could have continued to fight the battle. Instead, he did not resume at the new posting and was not allowed to continue in the previous school meaning thereby only because of his such stubbornness that the mess has been created and his such conduct, in our considered view, disentitles him from getting any relief under Article 226 of the Constitution of India.

29. Writ petition no. 7822 of 2019 and writ petition no. 5167 of 2020 are dismissed.

30. Contempt petition no. 513 of 2021 is closed.

31. Writ petition no. 1626 of 2021 and writ petition no. 1750 of 2021 are allowed.

32. The impugned order of the Education Officer dated 17-11-2020 is quashed and set aside.

33. All pending civil applications are disposed of.

34. Rule is made absolute in the above terms.

35. By way of clarification, we direct that if petitioner Mr. Shinde is ready and willing to join at Netaji Subhash Vidyalaya, Tamloor, Taluka - Degloor, District - Nanded, he may be allowed to do so.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/