



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

WRIT PETITION NO.8014 OF 2022

Meera Laxman Jadhavar,
age 42 years, Occ. Service,
R/o Deolai, Tq. Kallamb,
District Osmanabad.

Petitioner

Versus

1. The State of Maharashtra,
through Secretary,
Education Department,
Mantralaya, Mumbai.
2. Dy. Director of Education,
Latur Region, Latur.
3. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
4. Jagruti Bahu Uddeshiya Sevabhavi Sanstha,
Latur, through Secretary,
C/o Deolai, Tq. Kallamb,
Dist. Osmanabad.

Respondents

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Mr. V.V. Bhavthankar, advocate for petitioner.
Mr P.S. Patil AGP for Respondents-State No.1 to 3.
Mr. V.G. Salgare advocate for respondent no4.
Mr. C.K. Shinde advocate for applicant in CA.

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WITH

CIVIL APPLICATION NO.12856 OF 2022

1. Balasaheb Manikrao Patil,
age 59 years, Occ. Agril
R/o Deolai, Tq. Kallamb,
District Osmanabad.

2. Babasaheb Chandrakant Bikkad,
age 37 years, Occ. Service,
Jr. Clerk, Jagruti Vidya Mandir,
Deolali, Tq. Kallam,
District Osmanabad.

Applicants.
(Third party)

Versus

1. Meera Laxman Jadhawar,
age 42 years, Occ. Service,
R/o Deolali, Tq. Kallam,
District Osmanabad.
2. The State of Maharashtra,
Through Secretary, Education Department
Mantralaya, Mumbai.
3. The Deputy Director of Education,
Latur Region, Latur
4. The Education Officer (Secondary),
Zilla Parishad, Osmanabad.
5. Jagruti Bahuuddeshiya Sevabhavi Sanstha,
Latur, Through Secretary,
R/o Deolali, Tq. Kallam,
District Osmanabad.

Respondents
(no.1 orig petitioner
no.2 to 5 orig resp. 1 to 4)

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Mr C.K. Shinde, advocate for applicants.
Mr. P.S. Patil AGP for Respondents State.
Mr. V.V. Bhavthankar Advocate for petitioner in WP.

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

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**Reserved on : 06th May, 2024.
Pronounced on : 10th June, 2024.**

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

1. Rule. Rule made returnable forthwith. Heard finally with consent of the parties at admission stage.

2. The petitioner impugns the order dated 29.6.2022 passed by the Education Officer (Secondary), Zilla Parishad, Osmanabad – Respondent no.3 by which the post of Head Master of Jagruti Vidyamandir Deolali, Kallamb, District Osmanabad has been cancelled.

3. Mr. Bhavthankar, learned advocate appearing for the petitioner submit that the petitioner was appointed as an Assistant Teacher with respondent no.4 School. Her appointment was duly approved by the Education Officer. In the year 2013, she has been promoted as Head Mistress. Education Officer has approved her appointment on the post of Head Mistress, since then, petitioner discharged her duties as per rules and regulations. There were no complaints against her as regards to discharge of her duties either as a teacher or head mistress of the school. Management of the School has never issued adverse communication or show cause notice to her nor has initiated departmental inquiry in terms of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short MEPS Rules). Surprisingly, respondent no.3 issued impugned communication dated 29.6.2022 thereby cancelling the post of Head Master held by the petitioner, giving reference to the orders passed by the Respondent No. 2-Deputy Director of Education.

4. Mr. Bhavthankar would submit that impugned order is without jurisdiction and inconsistent with the prescribed procedure.

He would submit that Rule 3 (1) (d) provides for appointment of the Head Master of Secondary School. Such post is created by the Statute and not susceptible for cancellation by respondent no.3. Education Officer exceeded jurisdiction while passing the impugned order. He would further submit that Rule 3 (6) of the MEPS Rules empowers Deputy Director of Education to direct the Management to cancel appointment made without following due procedure laid down under the rules. However, similar powers are not vested with the Education Officer. Education Officer cannot suo-moto exercise such jurisdiction. Therefore, he assailed the impugned order being ultra vires and inconsistent to the MEPS Act and Rules.

5. Per contra, Mr. P.S. Patil, learned AGP appearing for the respondent nos. 1 to 2 and Mr. V.G. Salgare learned Advocate appearing for respondent no.3, vehemently submits that the impugned order dated 29.6.2022 is mere communication by the Education Officer, as regards to the order dated 16.6.2022, that has been passed by the Deputy Director of Education, Latur, whereby approval to promotion of the petitioner as Head Mistress has been cancelled. Pertinently, the petitioner has not raised challenge to the order of Deputy Director. It is submitted that the petitioner has been promoted as a Head Mistress in Secondary School w.e.f. 1.7.2013 and approval to her promotion has been granted vide order dated 23.10.2015. On 20.12.2021 Mr. Balasaheb Manikrao Patil, r/o village Deolali made a complaint to the District Collector Osmanabad, alleging that Management of respondent no.4 School forged documents and misappropriated the salary grants. It is alleged that petitioner while discharging her duty as Head Mistress prepared forged documents depicting appointment of one Gunvant Bhagwan Raut as a Peon. He is an illiterate person, works as a labour in the field of petitioner. Documents regarding his

qualifications have been forged. Approval to his appointment has been fraudulently obtained and the amount of grant-in-aid received against salary bills in his name has been misappropriated by petitioner. In pursuance of the aforesaid complaint, inspection of the school was carried on 31.12.2021. However, Mr. G.B. Raut was absent in the school. Although, he was summoned at the time of inspection, he failed to respond. On verification of the record leading to appointment and approval of Mr. Raut, it was revealed that forged documents regarding educational qualifications were pressed into service and the amount received against salary bills has been misappropriated.

6. It is further submitted that on the basis of the aforesaid report, respondent no.2 issued notice dated 20.1.2022 and summoned the petitioner and office bearers of respondent no.4- management as well as Mr. G.B. Raut, so-called employee. Consequently, approval granted to appointment of Mr. Raut has been cancelled with further directions to recover the pay and allowances released towards his salary bills. It is further submitted that one more complaint made by school employee namely Balasaheb Bikkad was received to the office of the Education Officer. He made allegations of misappropriation of monthly salary of teaching and non-teaching staff by Head Mistress of the school. Explanation was called from the petitioner as well as Management of the School vide notice dated 24.3.2022. Thereafter, recommendation was made to the office of the Deputy Director of Education for cancellation/withdrawal of the approval accorded to the appointment of the petitioner on the post of Head Mistress.

7. In deference to said proposal, respondent no.2 Deputy Director granted an opportunity of hearing to all the concerned and

found that Mr. G.B. Raut had never attended the school. He was not qualified for the appointment on the post of Peon. Petitioner has processed his salary bills and withdrawn the amount received from the Government. Consequently, vide order dated 15.6.2022 respondent no.2 cancelled the approval to the petitioner's appointment on the post of Head Mistress.

8. Respondent No.4 filed his affidavit-in-reply and supported the petition.

9. We have heard learned advocates appearing for the respective parties. We have gone through pleadings and the record tendered into service by respective parties. Pertinently, petitioner herself is the President of Trust who runs respondent No.4 Educational Institution, whereas her husband holds the post of Secretary. The petitioner herself has been appointed as a Teacher in the School and later on occupied position as Head Mistress in the year 2013. Approval has been granted to her appointment on the post of Head Mistress.

10. It is a matter of record that Mr. Raut was appointed as Peon on the establishment of school. His appointment had been approved w.e.f. 16.6.2013 vide order dated 20.8.2014 on unaided division. It appears that subsequently, school started receiving grant-in-aid @ 20% from 19.9.2016, which has been enhanced to 40% from November 2020. Salary bills of Mr. Raut, peon were processed by the petitioner and amount towards grant-in-aid was released in the joint account. Said amount appears to have been withdrawn by the petitioner. On receipt of the complaints from the villagers, authorities of the Education Department inspected, record pertaining to appointment of Shri Raut. It was revealed that the

qualification documents of Shri Raut were forged. Consequently, show cause notice was issued to the petitioner and Management. A proposal was forwarded to the office of respondent no.2 for cancellation of the approval of Mr Raut. In deference to proposal forwarded by the Education Officer, respondent no.2 Deputy Director of Education, Latur conducted hearing in presence of Education Officer, Petitioner / Head Master of the School and Mr. Laxman Jadhavar /Secretary of the Management. Similarly, during hearing dated 27.1.2022 statement of Mr. Raut appears to have been recorded, wherein he confessed that he works as servant on agricultural field/land of Mr Laxman Jadhavar- Husband of petitioner, since last six years. He never attended the school. He is uneducated person. The Bank account in his name was opened by the Secretary, but he has not operated said account at any point of time. He never received salary as a Peon. He was never in the service of the school. The Secretary of the School / petitioners Husband accepted the fact that Mr. Raut is uneducated person. He never attended the school, however, he contends that amount received towards salary has been remitted to bank account of Mr Raut and document regarding qualification of Mr. Raut were submitted by the clerk i.e. Mr. Babasaheb Bikkad. The petitioner has also accepted the aforesaid factual aspects. Consequently, respondent no.2 vide his order dated 4.3.2022, canceled approval granted to appointment of Mr. Raut and directed recovery of the amount. Further directions were given to cause an inquiry as regard to fabrication documents and initiate appropriate action against the Head Master and Clerk of the School. In deference to aforesaid order Respondent No.3- Education Officer had issued show cause notice dated 24.3.2022 to the President, Secretary and Head Master of the School. However, they failed to offer reasonable explanation,

therefore he forwarded a proposal to withdraw approval dated 23.10.2013 granted to the appointment of petitioner as Head Mistress. The respondent no.2 heard all concern on 9.6.2022 and after considering stand of petitioner and Secretary of the school passed impugned order. The order takes note of fabrication of record and misappropriation of salary grants and directs to the Education Officer to take further steps in the matter. In deference to the aforesaid order passed by respondent no.2, the impugned communication dated 29.6.2022 had been issued by the respondent no.3-Education Officer.

11. In the aforesaid backdrop the challenge to the impugned order needs to be examined. As rightly pointed out on behalf of the respondents, the petitioner has not challenged the order dated 9.6.2022, 15.6.2022 passed by the Deputy Director of Education, Latur by which the petitioner is held responsible for financial and administrative irregularities, particularly in relation to appointment of Mr. Raut. Then impugned communication made by the Education Officer informing order passed by the respondent No. 2. Certainly, in absence of the challenge to the order of Deputy Director of Education dated 15.6.2022, challenge raised to the impugned communication cannot be sustained.

12. Be that as it may, it is submitted on behalf of the petitioner that the impugned order purports to cancel the post of Head Master which cannot be sustained in law since respondents have no authority to pass such an order. In this context, it would be necessary to refer section 4-A of the MEPS Act, 1977, which has an overriding effect on sub-section (6) of Section 4 of the Act. Although, subsection (6) of Section 4 of the Act provides that no employee shall be suspended, dismissed or removed by Management

except in accordance with the provisions of Act and Rules. Section 4-A reads as under :-

Section 4A- Director's power to hold or order holding of inquiries.

(1) Notwithstanding anything contained in sub-section (6) of section 4 or any other provisions of this Act or the rules made thereunder, where in any case of alleged misconduct or misbehavior of a serious nature or moral turpitude of an employee,—

(a) an inquiry is held by an Inquiry Committee into such allegations and the Director is of the opinion that the Inquiry Committee has unreasonably exonerated the employee, he may call for and examine the record and proceeding of such inquiry for the purpose of satisfying himself as to the correctness of the decision on the basis of its findings, and may either annul, revise, modify or confirm the said decision or may direct the Inquiry Committee to make further inquiry for taking such additional evidence as they may think necessary or he may himself take or authorize any other officer not below the rank of the Education Officer to take such additional evidence ; and while making an order under this clause, if the Director is satisfied that the charges of serious misconduct, misbehavior, or as the case may be, moral turpitude have been substantially proved, he shall direct the Management to impose on such employee any of the penalties as specified in sub-section (4):

Provided that, the Director shall not record any order under this sub- section without giving the party affected thereby and the Management an opportunity of being heard.

(b) the Management has either neglected or refused to hold an inquiry against such employee in accordance with the provisions of this Act and the rules made in that behalf, the Director shall direct the Management to initiate action within thirty days from the receipt of such direction, for holding inquiry into the allegation against such employee and to complete the same in accordance with such provisions and rules.

(2) Where there is a failure on the part of the Management to initiate action as directed under clause (b) of sub-section (1) to hold an inquiry and to complete the same within the period prescribed under the rules, the Director may himself hold, or direct any officer not below the rank of Education Officer to hold, such inquiry.

(3) While holding an inquiry the Director or the officer authorized by him shall follow the same procedure as is followed by the Inquiry Committee under the rules made under this Act as if the Director or the officer so authorized were an Inquiry Committee for the purpose of holding such inquiry.

(4) On holding such inquiry by the Director himself or on receipt of the report of the inquiry officer, if the Director is satisfied that the charges of serious misconduct, misbehaviour or, as the case may be, moral turpitude have been substantially proved, he shall, by an order in writing, direct the Management that a penalty of dismissal, removal from service, termination of service, or as the case may be, reduction in rank as he may, in the circumstances of the case deem fit, be imposed on the employee concerned:

Provided that, no such order shall be passed by the Director unless the employee and the Management concerned are given a reasonable opportunity of showing cause against the proposed order.

(5) The order of the Director under clause (a) of sub-section (1) or sub-section (4) shall be binding on both the Management and the employee and the same shall be complied with by the Management within such period as may be specified by the Director.

13. Careful reading of the aforesaid provisions shows that in specific circumstances, director is empowered to cause an inquiry as regards to misconduct of the employee particularly, when Management/School has failed to take appropriate action. Even, director is empowered to appoint any other officer not below rank of Education Officer to record evidence and after recording his own

satisfaction he can issue directions to the Management to impose penalty.

14. Sub-clause (b) provides that if the Management has either declined or refused to hold any inquiry against such employee, the Director can issue necessary directions, however, on failure of the Management to complete the inquiry within the prescribed period, the Director himself can initiate the inquiry and issue further directions. Tenor, of the aforesaid provisions would show that in exceptional circumstances, where the Management of the school failed to conduct inquiry into misconduct of the employee, director can take action in accordance with the procedure prescribed.

15. In the present case, petitioner herself is the President of the Management. Her husband is a Secretary. The Educational Institution is Managed and controlled by the petitioners family. In this background, although there is sufficient material to show that appointment of an agriculture labour, working in land held by petitioners family is shown as peon and salary grants have been misappropriated, no further action can be expected from the Management against petitioner. Pertinently, the order regarding cancellation of approval to appointment of Mr. Raut -Peon is not assailed. There is no specific denial of the factual aspects that Mr. Raut was not even qualified for appointment and forged documents were utilized while securing approval to his appointment. Salary grants were processed by the petitioner herself and amount received in the joint account has been siphoned. If these aspects are considered in light of the reply filed on behalf of the respondents, it is evident that respondent no.2 has merely withdrawn/cancelled approval granted to the appointment of the petitioner as Head Mistress after recording finding as regards to her misconduct and

unbecoming of Head Mistress. In fact no penalty is imposed under impugned order which is otherwise within domain of Management. In the aforesaid factual scenario, we are not inclined to exercise writ jurisdiction under Article 226 of the Constitution of India to entertain the challenge to the impugned order.

16. Prima facie, material placed before us depicts that the petitioner in connivance of her family members, who are in control of the Management of the School have defrauded the public exchequer and misappropriated the amount released towards grant-in-aid in the name of Mr Raut. Matter requires thorough investigation by police. Unfortunately, based on observations and findings recorded by respondent authorities alongwith material on record, further steps ought to have been taken to set criminal law in motion. Although sufficient material is available on record for that purpose, respondent authorities have failed in their duty to take matter to its logical end when fraud on public exchequer has been observed. We are, therefore, inclined to direct the respondent no.3 – Education Officer to lodge a police report as regards to alleged fabrication of documents while securing appointment of Mr. Raut and misappropriation of the amount released towards grant in aid in his name and submit report of the compliance to this Court within a period of two Months from the date of this order. Similarly, in facts of the case we find that petition deserves dismissal with exemplary cost looking to overall conduct of petitioner. Consequently, we proceed to pass the following order.

O R D E R

- i. The Writ Petition is dismissed with cost of Rs. 50,000/- (Rs. Fifty Thousand) to be deposited by petitioner within two months with High Court Legal Services Sub-Committee, Aurangabad.

- ii. Respondent No.3-Education Officer, Secondary, Zilla Parishad, Osmanabad, shall lodge a police report as regards to appointment of Mr. G.B. Raut on the post of peon on establishment of Respondent No. 4-School, based on manipulated record and consequential misappropriation of salary grants released in his name, supported by the relevant record and furnish report of compliance to this Court within a period of (2) Two Months from the date of this order.
- iii. Writ Petition is accordingly disposed off. Rule discharged.
- iv. Pending civil application also stands disposed off. No order as to costs.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

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