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wp 12884.16 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12884 OF 2016

Phoenix Bahuuddeshiya Gramin Yuvak Vikas
Mandal, Khalangri, Tq. Renapur, Dist. Latur,
through its Secretary
Balaji s/o. Vitthalrao Kalwade
age 56 years, Occ. Agriculture/Secretary,
R/o. Khalangri, Tq. Renapur, Dist. Latur.

.. Petitioner.

Versus

1. The State of Maharashtra
through its Principal Secretary,
Sports and Education Department,
Mantralayla Mumbai 32.
2. Deputy Director of Education,
Deputy Director Office,
Latur, Dist. Latur.
3. Education Officer (Secondary)
Zilla Parishad, Latur, Dist. Latur.
4. Antram s/o. Tukaram Mane,
Age 43 years, Occ. Service as H.M.
R/o. Khalangri, Tq. Ranapur,
Dist. Latur.
5. Ganesh S/o. Narayan Bolange,
Age 42 years, Occ. Member of Petitioner Sanstha,
R/o. Khalangri, Tq. Ranapur,
Dist. Latur.
6. Ganpatrao S/o. Bhagwantrao Mane,
Age 65 years, Occ. Retired Employee &

President of Petitioner Sanstha,
R/o. Lecture Colony, Ahmedpur,
Dist. Latur.

.. Respondents.

Mr. R.D. Biradar, Advocate for petitioner
Mr. S.K. Shirse, AGP for respondent Nos. 1 to 3
Mr. P.M. Shinde, Advocate for respondent Nos. 4 and 5
Mr. P.B. Jadhav, Adv. For respondent No.6.

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

DATE : 24th JANUARY, 2024.

Judgment (per S. G. Chapalgaonkar, J.) :-

1. The petitioner approached this court under Article 226 of the Constitution of India seeking the following reliefs.

“[B] To quash and set aside the communication dated 3.9.2016 and confirm the order dated 22.12.2015 passed by the petitioner Society as per the Inquiry Report and letter dated 16.12.2015 of respondent No.3.

[C] Kindly be directed to the respondent No.3 to act as per the inquiry report dated 8.7.2015 submitted by the inquiry officer/Deputy Education Officer (Secondary), Zilla Parishad, Latur.

[D] Kindly be directed to initiate the inquiry against the Respondents No.3 and 6 for submitting illegal proposal dated 2.7.2007 of respondent NO.4 for the post of Head Master and granting the approval dated 10.7.2007 on the said illegal proposal.”

2. The facts leading to the present petition can be summarized as under :-

The respondent No.4 was working as a teacher in a school run by the petitioner institution. He was promoted as Head Master of the school as per the order issued by the management. Mr. Satish Salve, who is another teacher working in the same school, filed W.P. No. 6363 of 2006 before this Court challenging the approval granted to the appointment of respondent No.4 on the post of Head Master. This Court, after hearing the parties disposed of the writ petition with direction to the Education Officer to decide the seniority between the respondent No.4 and Mr Satish Salve. The Education Officer caused detailed inquiry and passed an order dated 18.6.2007 holding that respondent No.4 is the senior most teacher and as such entitled to be appointed as Head Master.

3. It appears that the dispute between the management groups of petitioner trust was pending before the Charity Commissioner at Latur. The change report submitted by the group of management came to be rejected vide order dated 27.8.2012 in Inquiry No. 134 of 2006. On the basis of such decision of the Charity Commissioner, the other group of the management moved the proceeding before the Education Officer to recall the approval granted in favour of the respondent no.4 since the proposal for his approval was initiated by the unauthorised person i.e. whose name is not appearing as Secretary in Schedule I of the Trust. The Education Officer informed that it is for the management to take appropriate decision in the matter. The management passed an order thereby reverting the respondent No.4 from the post of Head Master and made representation to the Education Officer to act upon their proposal seeking reversal of respondent no.4 and appointment of Mr. Satish Salve on the post of Head Master. The Education Officer caused inquiry into the representation submitted by Bahujan Adhikari and Karmachari Mahasangh as well as the petitioner. In that inquiry, it has been opined

that the respondent No.5 can not be treated as Secretary of the Trust in view of the decision given by the Charity Commissioner. Therefore, the proposal that was moved by him seeking approval to the appointment of the respondent No.4 as Head Master would be inappropriate.

4. In this background, the petitioner made representation seeking direction to revert respondent No.4. The Education Officer made communication with Deputy Director as regards to representation of petitioner. The petitioner also made request to the Deputy Director of Education to confirm the reversion order passed by so called management and accord proposal to grant approval as Head Master in favour of Mr. Satish Salve. However, on 18th March, 2016, the Education Officer refused to accede with the request of the petitioner quoting the reason that the dispute is pending between the groups of management in respect of the election/appointment of Trustee/Secretary.

5. Mr. Biradar, learned counsel for the petitioner would submit that the appointment of respondent No.4 on the post of Head Master was not by authorized management. Even, the proposal for approval to his appointment was moved by the unauthorized person. However, the Education Officer granted approval in favour of the respondent No.4 vide impugned order dated 10.7.2007 in collusion with the respondent Nos. 5 and 6. He would submit that in view of the order passed by the learned Charity Commissioner in Change report Inquiry No. 134 of 2006 dated 27.8.2012, the respondent No.5 was not authorized person to submit the proposal for approval of respondent No.4 on the post of Head Master. He was not Secretary as per Schedule I. Therefore, the order of appointment of respondent No.4 and consequential approval granted in his favour is illegal. He would submit that as per the Inquiry Report dated 8.7.2015

submitted by education officer, the aforesaid facts have been confirmed. However, respondent authorities have not acted upon the aforesaid inquiry report and proposal moved by the petitioner for reverting respondent No.4 and granting approval in favour of Mr. Satish Salve as Head Master. He would, therefore, submit that the impugned order dated 3.9.2016 by which Education Officer refused to entertain the proposal of the petitioner is liable to be quashed and set aside.

6. The learned advocates appearing for the respondents submit that since there is continuous dispute between the two groups of management, allegations and counter allegations are made and the Education Officer has already decided the issue of seniority amongst Mr Satish Salve and respondent No.4. Respondent No.4 was the senior-most teacher in the school and he has been rightly appointed as Head Master.

7. We have considered the submissions advanced on behalf of the respective parties and also perused the record tendered into service before us. It is a typical case of dispute among the trustees and consequential efforts to overpower each other by interfering in the administration of the school. Apparently, respondent No.4 has been promoted as Head Master in the year 2007 on the basis of proposal forwarded to the Education Officer on behalf of Secretary of the petitioner trust, the Education Officer approved the appointment of respondent No.4 on the post of Head Master. However, one of the employees of the school Mr. Satish Salve filed writ petition before this court raising the objection to appointment of respondent No.4 on the post of Head Master, asserting that he is the senior most teacher entitled for appointment as Head Master. As directed by this Court Education Officer conducted the inquiry and concluded that the respondent No.4 is

the senior most teacher. Thereafter, there was no dispute as regards the seniority of the respondent No.4 and his entitlement for appointment to the post of Head Master. Nothing is placed before us to show that Mr. Satish Salve has challenged the aforesaid decision of the Education Officer on the point of seniority or such decision being reversed by any competent authority. We are, therefore, inclined to hold that respondent No.4 was seniormost teacher in the school and entitled for appointment on the post of Head Master.

8. It appears that when the aforesaid position was settled in the year 2007, after 5 years, in view of the decision rendered by the Charity Commissioner, Latur dated 27.8.2012 in Inquiry No. 134 of 2006, the change report submitted by the Respondent No. 5 was turned down. On the basis of such decision the other group of management (now petitioner before this court) appears to have moved for reversion of respondent No.4 from the post of Head Master quoting the reason that his appointment and approval is on the basis proposal of unauthorized group of management. Although, some inquiry was caused, on such representation and report dated 22.12.2015 was submitted to the Education Officer, no further action is taken on the ground that the dispute between the management groups is still pending.

9. In the aforesaid facts and circumstances of the case, we find that in case of dispute between the management groups, the Education Officer was justified in not interfering in the appointment and approval of respondent no.4 that is subsisting since year 2007, particularly, when respondent No.4 was held to be seniormost teacher and entitled to be appointed as Head Master. We are satisfied that the appointment of respondent No.4 as Head Master is in accordance with the provisions of

the Maharashtra Employees of Private Schools (Conditions of Service) Rules. There is no dispute as regards to the qualification and seniority of respondent No. 4 to hold the post of Head Master. In such background, no case is made out to cause interference in the impugned order passed by the Education Officer in exercise of writ jurisdiction under Article 226 of the Constitution of India. Resultantly, the petition fails and is dismissed.

[S.G. CHAPALGAONKAR, J]

[SMT. VIBHA KANKANWADI, J]

grt/-