



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

WRIT PETITION NO. 7703 OF 2024

Smt. Shobha Ravindra Chaudhari
Age : 55 years, Occu. : Assistant Teacher
R/o. Panzara Housing Society
At Post Kusumbe, Tal & Dist. Dhule.

..PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Principal Secretary,
Sports and Education Department,
Mantralaya, Mumbai-32.
2. The Director of Education,
Secondary and Higher Secondary Division,
Maharashtra State, Pune.
3. The Deputy Director of Education,
Nashik Division, Nashik.
4. The Education Officer (Secondary),
Zilla Parishad, Dhule
5. Social and Cultural Association,
Kusumbe, Tal. & Dist. Dhule.
Through it's President.
(Shri. Suresh Mahadu Chaudhari,
Age : 60 years, Occu. : President,
R/o. Galli No. 3, Jain Galli,
Kusumbe, Tal. & dist. Dhule.)
6. Social and Cultural Association,
Kusumbe, Tal. & Dist. Dhule.
Through it's Secretary.
(Shri. Ravindra Mahadu Chaudhari,
Age : 62 years, Occu.: Secretary,

R/o. Panzara Housing Society,
At Post Kusumbe, Tal. & Dist. Dhule.)

7. Social and Cultural Association,
Kusumbe, Tal. & Dist. Dhule.
Through it's President.
(Shri. Anil Mahadu Chaudhari,
Age : 51 years, Occu.: Service (Librarian),
R/o. N.N.C. Senior College,
Kusumbe, Tal. & Dist. Dhule.)
8. Social and Cultural Association,
Kusumbe, Tal. & Dist. Dhule.
Through it's Secretary
(Smt. Dipikatai Anil Mahadu Chaudhari,
Age : 41 years, Occu.: Service,
R/o. Adarsh High School & Junior College,
Kusumbe, Tal. & Dist. Dhule.)
9. Adarsh High School and Junior College,
Kusumbe, Tal. & Dist. Dhule.
Through it's In-Charge H.M./Head Master.

..RESPONDENTS

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Advocate for Petitioner : Mr. Ramesh I. Wakade
AGP for Respondent Nos. 1 to 4 : Ms. P. J. Bharad
Advocate for Respondent Nos. 5 & 6 : Mr. Vivek Dhage
Advocate for Respondent Nos. 7 to 9 : Mr. V. D. Hon, Senior Advocate
i/by Mr. Ashwin V. Hon

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**CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.**

RESERVED ON : 15.01.2025

PRONOUNCED ON : 28.01.2025

JUDGMENT (MANGESH S. PATIL, J.) :

. Heard. Rule. Rule made returnable forthwith.

2. Learned AGP waives service of notice for respondent nos. 1 to 4, Mr. Vivek Dhage, Advocate waives service of notice for respondent nos. 5 and 6 and Mr. V. D. Hon waives service of notice for respondent nos. 7 to 9. At the joint request of both the sides, the matter is heard finally at the stage of admission.

3. The petitioner is invoking the powers of this court under Article 226 of the Constitution, and comes with following prayers:-

- A) ...
- B) *The Hon'ble High Court held and declared that the constitution of the enquiry committee is without any authority void ab initio and further may kindly be quashed and set aside the proceedings of respondent No.7-Anil Mahadu Chaudhari as enquiry initiated against petitioner.*
- C) *By issuing writ of mandamus, or any other appropriate writ, order or directions in the like nature, the impugned charge sheet dated 12.03.2024 may kindly be set aside by directing respondents not to conduct enquiry against petitioner and not create any hindrance to petitioner while discharging the duties as Assistant Teacher in respondent No. 9-School.*
- D) *By issuing writ of mandamus, or any other appropriate writ, order or directions in the like nature, the respondents may kindly be directed to promote the petitioner and allow her to discharge the duties as 'Head Mistress' of Adarsha High School, Kusumbe, Tal. & Dist. Dhule without creating any hindrance.*

4. Learned advocate Mr. Wakade would take us through the papers and would submit that the petitioner was appointed by the respondent – Management, by following due process against a sanctioned post way back in the year 1995. Her appointment was duly approved by the Education Officer. Her service record has been

unblemished and at no point of time, any adverse remark was made in the service record. He submitted that there has been a long-standing dispute in the management. Its one faction is of respondent nos. 5 and 6 and the other being that of respondent nos. 7 and 8. Successive change reports filed under Section 22 of the Maharashtra Public Trust Act, 1950 (for brevity, '**M.P.T. Act**'), have been pending with the office of the Assistant Charity Commissioner, Dhule.

5. Mr. Wakade would further submit that the regular headmaster of the respondent – school retired on 30.06.2023. The petitioner, being the senior most teacher, requested for promotion to the post of headmistress as per Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 (for brevity, '**M.E.P.S. Rules**'). Ignoring the seniority, respondent no. 7 granted promotion to respondent no. 8, who is his wife, on 01.07.2023. He would submit that since the petitioner was claiming promotion to the post, respondent no. 7 started harassing her with a malicious intention. He initiated a disciplinary enquiry on his own. She was served with a charge-sheet. She promptly replied to the charges. Since the enquiry was initiated *mala fide* while there has been a long-standing dispute in the management, the enquiry is not sustainable in law. In spite of her objection, respondent nos. 7 and 8 persisted with the enquiry, having no authority in law. He would advert our

attention to the reply given by the Assistant Charity Commissioner concerned, whereby he intimated respondent nos. 7 and 8 that in the wake of the fact that several change reports have been pending with his office, nothing could be said as to which faction was in power. He would submit that the faction of respondent nos. 7 and 8, is in minority and still, unilaterally, they have set up a disciplinary enquiry, having no power and concurrence of the managing committee.

6. Mr. Wakade would also submit that on petitioner's grievance, respondent no. 4 – Education Officer even directed not to proceed with the enquiry and still it has been proceeded with. In spite of the order of this Court granting *ad interim* stay to the disciplinary enquiry, respondent nos. 7 and 8 allowed it to continue. He, therefore, submitted that the disciplinary enquiry having been initiated *mala fide*, without concurrence of an approved managing committee and in a vindictive manner, is liable to be quashed and set aside.

7. So far as the petitioner's claim for appointment to the post of headmistress, Mr. Wakade, learned advocate for the petitioner would submit that in the wake of the ongoing dispute and particularly, the request of the petitioner for appointment to the post of headmistress on the basis of seniority, respondent no. 8 tendered

her resignation from the post of headmistress on 19.08.2023, which has been accepted by respondent no. 7 on 11.09.2023.

8. Lastly, Mr. Wakade would advert our attention to the decision of a division bench of this Court in the matter of ***Sayyed Yusuf Sayyed Moosa V/s. The State of Maharashtra and Ors.*** (Writ Petition No. 9268/2017 – decided on 20-07-2018). He would submit that in similar set of facts where there was a dispute in the management and the change reports were pending before the office of the Assistant Charity Commissioner, this Court had quashed and set aside the disciplinary enquiry and had directed the change reports to be decided.

9. Mr. Dhage, learned advocate for respondent nos. 5 and 6, one of the factions in the management, would support the petitioner.

10. Mr. Hon, learned senior advocate for respondent nos. 7 to 9 would raise a preliminary objection regarding maintainability of the petition on the ground that the petitioner has already participated in the disciplinary enquiry and is now estopped from questioning its *vires*. He would also submit that in light of the decision of the full bench of this Court in the matter of ***Namdeo S/o. Vishnu Sase V/s. State of Maharashtra and Others; 2023 (2) Mh.L.J. 598***, the petitioner has the alternate remedy of preferring an appeal against

the decision in the disciplinary enquiry under Section 9 of the Maharashtra Employees of the Private Schools (Conditions of Services) Regulation Act, 1977 (**M.E.P.S. Act**) and therefore, she is not entitled to invoke the powers of this Court under Article 226 of the Constitution.

11. Mr. Hon would further submit that according to the Public Trust Register (PTR), name of respondent no. 7 is appearing and it cannot be said that he is not in the power and authority as a secretary of the trust and to direct the disciplinary enquiry.

12. We have considered the rival submission and perused the papers.

13. Taking up the issue regarding maintainability of the writ petition, in our considered view, merely because the petitioner replied to the notice and even participated in the disciplinary enquiry, will not estop her from questioning its sustainability, particularly in light of the fact that, admittedly, there has been a long-standing dispute in the management and several change reports have been pending adjudication in the office of the Assistant Charity Commissioner. It would be a matter of authority of the trustees like respondent no. 7, to initiate the disciplinary enquiry. Even there is nothing on record, placed by respondent nos. 7 and 8, to demonstrate that the issue regarding initiation of the disciplinary

enquiry was ever taken to the managing committee much less duly authorizing and approving initiation of the enquiry. Therefore, it cannot be said that merely by participating in the enquiry, the petitioner has waived her right to question its *vires*.

14. As far as availability of alternate and efficacious remedy in the form of an appeal under Section 9 of the M.E.PS Act, 1977 is concerned, that remedy would be available to an employee if and when she is met with some punishment. When admittedly, the disciplinary enquiry against the petitioner is still to reach to that stage, she cannot prefer an appeal under that provision. Therefore, even this line of submission of Mr. Hon is not legally sustainable.

15. As regards the merits are concerned, obviously this Court will have its own limitation in undertaking any scrutiny about sustainability of the charges, more so, when the disciplinary enquiry is still to be concluded. Precisely for this reason, in our considered view, no objective scrutiny about sustainability of the charges can be undertaken.

16. We are merely concerned with the authority of respondent – Management, to initiate the disciplinary enquiry, particularly in light of the fact that admittedly, there has been a dispute in the management and there is nothing on the record to

conclusively decide as to which of the factions is legally holding the management.

17. In this regard, the communication dated 14.06.2024 of the office of Assistant Charity Commissioner at Dhule, addressed to the Education Officer is material. Apart from the proceedings under Sections 41-A and 51 of the M.P.T. Act, as many as eleven (11) change reports right from the years 2012-2017 filed by either side, have been pending adjudication. This communication expressly mentions that in light of the pendency of numerous change reports, even the Assistant Charity Commissioner was unable to make any comment as to which of the factions was holding the management of the trust. It is, therefore, evident that even the office of the Charity Commissioner is unable to inform about the authorized managing committee.

18. Conspicuously, though the *affidavit-in-reply* of respondent nos. 7 to 9 mentions that they are controlling the management, it has not been mentioned as to which of the change reports filed by them have been accepted by the Assistant Charity Commissioner. Even it is conspicuously silent about the decision to initiate the disciplinary enquiry against the petitioner was ever taken to the managing committee and it resolved to initiate it. This makes it evident that even the inquiry has been initiated against the petitioner

without taking up the agenda to the managing committee leading to some resolution.

19. Exactly in similar fact situation, when several change reports were pending with the office of the Charity Commissioner and still the disciplinary enquiry was initiated by one of the factions, in the matter of ***Sayyed Yusuf Sayyed Moosa*** (*supra*) a division bench of this Court quashed and set it aside on the ground that in absence of any authorized managing committee, no such enquiry could have been initiated.

20. Under these circumstances, when admittedly, no change report has been accepted by the Assistant Charity Commissioner, it cannot be said that respondent nos. 7 and 8 could have initiated the disciplinary enquiry in a lopsided manner. It is liable to be quashed and set aside.

21. So far as the claim of the petitioner to the post of headmistress is concerned, the aforementioned reasons would apply with equal vehemence, inasmuch as, in the absence of any authorized management, even no writ of *mandamus* can be issued directing the management to consider her case for grant of promotion to the post of headmistress, being the senior most teacher.

22. In the light of above, the Writ Petition is partly allowed.
23. The impugned disciplinary enquiry is quashed and set aside.
24. The rival factions shall approach the Assistant Charity Commissioner and may solicit order for provisional acceptance of a change report in the light of Section 22(2) proviso. It is clarified that this order shall not be treated as exoneration of the petitioner from the charges/imputation.
25. Rule is made absolute in above terms.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

jhs/-