IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6307 OF 2021

Dnyanodaya Mandal, Anturli,
Tq. Muktainagar, Dist. Jalgaon,
Through its Chairman,
Senu S/o. Ananda Bhoi,
Age : 33 years, Occu. : Agril.,
R/o. As above .. Petitioner

Versus

1. Radha Govind Dnyanodaya Vidyalaya,
Karki, Tq. Muktainagar, Dist. Jalgaon,
Through its Head Master.

2. Nitin Tukaram Mahajan
Age : 46 years, Occu. : Service
R/o. Karki, Tq. Muktainagar,
Dist. Jalgaon.

3. Education Officer (Secondary),
Zilla Parishad, Jalgaon.

4. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai-32. .. Respondents

WITH
CIVIL APPLICATION NO. 6503 OF 2021
IN
WRIT PETITION NO. 6307 OF 2021

Pundlik Sakharam Dhayale .. Applicant

Versus

Nitin Tukaram Mahajan and others .. Respondents

Mr. L. V. Sangit, Advocate for the Petitioner.
Mr. S. R. Barlinge, Advocate for Respondent No. 1.
Mr. Ajay Talhar, Advocate for Respondent No. 2.
Mr. R. S. Wani, AGP for Respondent Nos. 3 & 4.
Mr. Vinod P. Patil, Advocate for Applicant in C.A. No. 6503/2021.

CORAM : KISHORE C. SANT AND
JITENDRA JAIN, JJ.

Date on which reserved for order : 27th August 2026

Date on which order pronounced : 27th October 2026

FINAL ORDER *(PER KISHORE C. SANT, J.)* :-

1. Heard learned advocates for the parties. By consent taken up for final disposal at the stage of admission.

2. The management of the school through Chairman has filed this writ petition challenging an order dated 27.01.2021 passed by the learned Education Officer (Secondary), Zilla Parishad, Jalgaon thereby setting aside order of termination of respondent No. 2 working in respondent No. 1 school.

3. Civil application for intervention is filed seeking intervention in the petition. The applicant in the application claims to be trustee of the trust. His name also appears in Schedule 1 of the trust. Being member of the trust he has filed application as interested person. It is his case that the Chairman of respondent

No. 5 i.e. petitioner in writ petition had no authority to pass order on behalf of the trust. He was elected as a Chairman on 30.12.1998. Since thereafter there are no elections held to the trust. It is further case that the Chairman of the Trust passes only orders to harass the employees of the school. The interest of the Chairman is to appoint his nephew on the post of respondent No. 2 in the petition. It is also a case that since Chairman is involved in various illegal activities of the trust, writ petition filed by him deserves to be dismissed for want of authority.

4. Respondent No. 1 is the school through its Headmaster run by the petitioner. Respondent No. 2 was working as a Clerk in the said school, respondent No. 3 is Education Officer (Secondary), Zilla Parishad, Jalgaon and respondent No. 4 is the State of Maharashtra through Secretary, Education Department, Mantralaya, Mumbai.

5. The facts in short as stated in the petition, giving rise to the present petition are as below :

6. The respondent No. 2 was appointed by the petitioner management as a Senior Clerk in respondent No. 1 school. The

management by order dated 27.10.2020 transferred respondent No. 2 to one Dnyanpurna Vidyalaya & Junior College, Icchapur, Nimkhedi (BK) run by the petitioner. The Education Officer by communication dated 21.10.2020 approved the said transfer order. The Headmaster, however, issued a communication to the petitioner that if respondent No. 2 is transferred it would adversely affect the functioning of the school and requested not to transfer respondent No. 2. On the same date i.e. on 29.10.2020 the Education Officer wrote to the management that the transfer of respondent No. 2 is cancelled on a letter by the Headmaster. The petitioner, however, again passed an order on 02.11.2020 directing respondent No. 2 to join the place of transfer. The Headmaster was directed to relieve respondent No. 2. On 03.11.2020 the management again wrote even to the Education Officer requesting not to cancel the transfer already made by the management.

7. On this the Headmaster again by communication dated 04.11.2020 communicated to the management that the transfer order of respondent No 2 is cancelled by the Education Officer. The Education Officer also communicated cancellation to the

management by letter dated 12.11.2020. Since transfer order came to be cancelled respondent No. 2 did not join at transferred school.

8. The management issued letter dated 16.11.2020 asking respondent No. 2 to join at transferred school. It was specifically mentioned that as per rule 41 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (M.E.P.S. Act) and rules thereunder (M.E.P.S. Rules) the Education Officer has no authority to cancel a transfer. It was stated that if he fails to join at the place of transfer he would be terminated. On 02.12.2020 the management even wrote to the Headmaster that though it was duty of the Headmaster to implement the orders of the management still the Headmaster did not relieve respondent No. 2. The Headmaster was given knowledge of orders of the management. The Chairman of the School Co-oridation Committee, Dnyanoday Mandal, Anturli also wrote to the petitioner institution and recommended termination of respondent No. 2. Respondent No. 2 again approached the Education Officer. The Education Officer on 14.12.2020 communicated the Chairman of the School Coordination Committee, Anturli that the transfer of respondent No. 2 is stayed.

9. Noticing all these acts of indiscipline by respondent No. 2 the petitioner decided to terminate respondent No. 2. On 13.01.2021 the petitioner terminated the services of respondent No. 2. On 27.01.2021 the petitioner directed the Headmaster not to sent salary bills of respondent No. 2 as his services are terminated. On the same day the Education Officer was also informed that since respondent No. 2 is terminated his salary grants be stopped.

10. The Headmaster instead of acting on the order of termination, on 28.01.2021 wrote letter to the President of the petitioner that since there is a dispute in the management the termination order is not as per rules and therefore, is treated to be cancelled. In all this the Education Officer on 27.01.2021 again wrote to the Chairman of the school committee that since there is a dispute between the management the order of termination is cancelled by giving reference of rules 28 (5), 33 and 35 of the M.E.P.S. Rules. The President on this made a complaint to the Police and lodged FIR. That proceeding is separately going on.

11. The petitioner on all this has approached this Court challenging an order of the Education Officer cancelling the order

of termination. It is main ground that against the order of termination remedy provided is under section 9 of the M.E.P.S. Act. The Education Officer does not have any power to set aside orders passed by the management as regards termination or disciplinary action. The action of the Education Officer is arbitrary and without any authority under law.

12. Learned advocate Mr. Sangit for the petitioner vehemently argued that the M.E.P.S. Act is a complete code in itself which provides for appointment of the staff and termination of the staff. The remedies in the cases of termination, suspension, supersession etc. Section 9 of the M.E.P.S. Act provides for a right to appeal to School Tribunal established under section 8 of the Act. He submits that in the Act no power is given to the Education Officer to interfere in the orders passed by the management. Even rule 41 of the M.E.P.S. rules dealing with the transfers does not give any role to the Education Officer. It is for the management to transfer its employees from one school to another on administrative grounds, promotion or at the request of employee concerned if it is administratively convenient to do so. There is no question of Education Officer having any power to pass any order cancelling order of transfer passed by management. He thus, submits that

the petition deserves to be allowed by setting aside the orders passed by the Education Officer of cancelling the transfer order as well as termination order.

13. Learned advocate Mr. Barlinge for respondent No. 1 argued that the Headmaster had not relieved respondent No. 2 as it would have affected functioning of the school. Later on, the Education Officer himself cancelled the order of termination. After cancelling of termination order there was no question of relieving respondent No. 2. So far as termination is concerned, the Education Officer had cancelled the termination. Being Headmaster, respondent No. 1 only obeyed the order of the Education Officer. As respondent No. 2 was not relieved and was working in the school the Headmaster sent pay bills. No fault can be found with the Headmaster. He has acted as per the directions/orders passed by the Education Officer. He also supports the order of the Education Officer and prays for dismissal of the petition.

14. Learned advocate Mr. Talhar for respondent No. 2 vehemently argued that the Education Officer has every control over the school. The representations are provided under the rules

before the Education Officer. This shows that it is the Education Officer who has some role to play to redress the grievances of the employees. Education Officer has perfectly acted as per law. He has not exceeded his jurisdiction.

15. His further argument is that the termination order is totally illegal. No procedure is followed before termination as provided under rules 32, 33 of the M.E.P.S. rules. No inquiry committee was established to hold an inquiry under rule 36 and there is also no procedure followed as prescribed under rule 37. He thus submits that, the order passed by the management is on the face of it is totally illegal. Looking to the arbitrary manner in which the termination order was passed the Education Officer has rightly cancelled the same. He submits that even the transfers of respondent No. 2 were made in arbitrary manners and without following any procedure. He submits that, no transfer can be effected except when it is required for administrative exigencies and promotion. So far as representation is concerned he relies upon rule 24 which provides for representations to be made to the management.

16. Learned A.G.P. only submits that the Education Officer on

coming to conclusion that the transfers are arbitrarily made, has rightly cancelled the orders. The termination was only because the respondent No. 2 did not join the transferred post that cannot be said to be a ground of termination. No inquiry was held prior to issuance of termination order. He thus justifies the order of the learned Education Officer.

17. This Court has heard the submissions. A basic question in the present petition is as regards the power of the Education Officer to set aside the termination order. The M.E.P.S. Act is an Act providing for the appointment, disciplinary action and termination of the employees. It gives the power to the management to terminate the services of an employee. An appeal is provided under section 9 to the School Tribunal. Section 9 of the M.E.P.S. Act reads as under :

> **"9.** Right of appeal to Tribunal to employees of private schools —
>
> (1) Notwithstanding anything contained in any law or contract for the time being in force, [any employee in a private school —
>
> **(a) who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management; or**
>
> (b) who is superseded by the Management while making an appointment to any post by promotion, and who is aggrieved, shall have a right of appeal and

> may appeal against any such order or supersession to the Tribunal constituted under section 8]:
>
> Provided that no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a Court of competent jurisdiction or is pending before such Court, on the appointed date or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the Management at any time before the 1st July 1976.
>
> (2) …….
>
> (3) …….
>
> (4) …….

18. It is thus clear that, it is only School Tribunal which can go into the question as to whether termination order is legal or illegal. It is the Tribunal vested with the power to direct reinstatement of an employee in case appeal is allowed. In the entire scheme there is no role of the Education Officer. Once the termination order is passed it can be set aside only by a School Tribunal. Nothing is pointed out to show that the Education Officer has the power to cancel the transfer and further that the Education Officer can even cancel the termination order.

19. In the judgment in the case of ***Janta Shikshan Sanstha, Pune Vs. State of Maharashtra***[1], an employee did not challenge the transfer order in any competent Court of law, but approached the

1 AIROnline 2021 BOM 5127.

Education Officer seeking intervention and to cancel the transfer order. It is held that the Education Officer has no power to set aside order of transfer effected after complying the provision of M.E.P.S. Rules. It was held that the employee ought to have filed an appropriate proceeding to challenge transfer order. It is clearly held that the Education Officer (Secondary) is not a competent authority to adjudicate upon the rival contentions of the parties on the issue of transfer. It is thus clear that the Education Officer could not have granted stay to the transfer orders and also the order of termination.

20. So far as conduct of the Headmaster is concerned, the same also requires to be noted in the present case. The Headmaster is supposed to obey the orders of the management as he is also an employee of the management and also for smooth functioning of the school. He has no reason not to obey the orders of the management and to suggest the management to cancel its own orders. In the present case, not only the Headmaster refused to obey the orders and refused relieve respondent No. 2 from the school, but he even wrote to the management that transfer of respondent No. 2 would cause disturbance in the functioning of

the school and has written back to the institution. The Headmaster also had no reason to send a communication to the Eduction Officer to cancel transfer of respondent No. 2.

21. The Education Officer is an officer appointed to do the functions which comes within his powers. In the present case, the Education Officer has not referred to any provision or section under which he has used his power to stay or to cancel the order of termination or even the transfers. He has stayed two transfer orders and this is on the background that when he had initially approved the transfer order issued by the management by letter dated 02.10.2020. It is not clear as to what made him to cancel the transfer orders. From the orders it only appears that on receiving letters of the Headmaster he cancelled the transfer orders. When management has passed order transferring an employee Education Officer has no reason to cancel the same that too on a request of Headmaster. This action of Education Officer is certainly without any justifiable reason. This is not only a case that he has exceeded the power or he has exercised the power in irregular manner, but this is a case where he has acted totally without jurisdiction in a rash manner.

22. It is further shockingly seen that though termination order is there and though the management had directed the Headmaster not to submit salary bills still he has submitted the salary bills. The Education Officer in spite of specific communication still accepted the salary bills and released salary amount to respondent No. 2. This is totally in contravention of the law. Certainly necessary action is required to be taken against the concerned.

23. This Court has considered the intervention application. This Court does not find that the applicant has any *locus standi* to take part in the proceedings of the writ petition. Even otherwise, this Court has considered the question of legality of the order passed by the Education Officer cancelling the order passed by the management. Even the intervener accepts that the person filing petition in the capacity of Chairman of the petitioner trust was elected as Chairman. His only case is that he also happens to be a Vice Chairman of the trust. Thus it is not denied that the petitioner happens to be Chairman of the trust. For all these reasons the application is without any merit and deserves to be dismissed.

24. In this case the Education Officer has acted in totally

arbitrary manner without jurisdiction. His recklessness is clear on the face of record. Because of his action respondent No. 2 is being paid salary from 13.01.2021. This has caused loss to public exchequer. This Court holds that the petition is rightly filed by the Chairman of the trust. This Court therefore directs Zilla Parishad to make an inquiry and initiate disciplinary action against the concerned Education Officer. Secondly, if necessary the management also can initiate an action against the Headmaster for not obeying the orders of the management.

25. At the same time it is also needs to be kept in mind that even action of the management *prima facie* appears to be arbitrary.

26. In the present case, therefore, this Court holds that the action of the Education Officer cancelling the termination order dated 13.01.2021 by its letter dated 27.01.2021 is totally illegal. An order cancelling the termination order by the Education Officer is thus quashed and set aside.

27. It is open for Zilla Parishad to recover the amount of salary paid to respondent No. 2 from 13.01.2021 till date as he is

working in spite of his termination. It would be open for the respondent No. 2 to challenge the termination order. This Court is conscious of the fact that the limitation to challenge the termination order has lapsed long back. However, in peculiar facts of the case it is kept open for respondent No. 2 to approach the School Tribunal. We expect the School Tribunal to consider the time spent before this Court in prosecution of the present writ petition. The limitation would start from the date on which the order is uploaded on the Website. However, to challenge the termination the respondent No. 2 has to file specific undertaking that he would not claim the salary from the date of termination till now and till the order is passed in the appeal. It is for the School Tribunal to direct the management to pay salary to respondent No. 2 for this period if termination order is set aside.

28. The writ petition stands allowed and disposed of accordingly.

29. In view of disposal of writ petition, civil application for intervention also stands disposed of.

(JITENDRA JAIN, J.) **(KISHORE C. SANT, J.)**

P.S.B.