
(2022) 04 BOM CK 0018

In the Bombay High Court

Case No : Contempt Petition No.297 Of 2020 In Writ Petition No.12448 Of 2019,
5245, 5933 Of 2020, 291, 1625 Of 2021

Nalini Uttamsing Patil And Others

APPELLANT

Vs

Education Officer (Secondary), Zilla Parishad And Others

RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 04 BOM CK 0018

Hon'ble Judges : R. D. Dhanuka, J;S. G. Mehare, J

Bench : Division Bench

Advocate : Surekha P. Mahajan, A. R. Kale, V. D. Salunke, V. S. Panpatte, A. N. Nagargoje, A. S. Shelke, S. V. Dixit

Final Decision : Dismissed

Judgement

R. D. Dhanuka, J

1. By consent of parties all these proceedings were heard together and are being disposed of by a common order.

2. Rule in Writ Petition No.5245/2020, 5933/2020, 1625/2021 and 291/2021. Rule is made returnable forthwith.

3. The respondents appearing in the matters waive notice. Rest of the respondents are absent though served.

4. In Contempt Petition No.297/2020 the petitioner Nalini Uttamsing Patil seeks action against respondent nos.1, 2 and 3 therein under the provisions of the Contempt of Courts Act, 1971 alleging wilful disobedience of the order dated 04.03.2020 passed by this Court in Writ Petition 12448/2019. She seeks an order and direction against respondent nos.1, 2 and 3 to comply with the said order passed by this Court forthwith.

5. By the said order dated 04.03.2020 this Court in the said Writ Petition

No.12448/2019 filed by Nalini Uttamsing Patil directed the management to forward salary bill of the petitioner therein to the Education Officer expeditiously and preferably within a period of four weeks from the date of the said order and further directed the Education Officer to process such salary bills on receipt of the same from the management immediately. The approval for transfer of the petitioner in the said Contempt Petition from unaided post to aided post was rejected by the Education Officer. The petitioner filed Writ Petition bearing No.6127/2016 alongwith other employees. By an order dated 04.07.2019 the Division Bench of this Court quashed and set aside the orders passed by the Education Officer rejecting the approvals of the petitioners therein. The said order disposed of four writ petitions filed by different employees. This Court while allowing the said petition directed as under:

“Upon confirming about the adherence to the seniority list that is those who are transferred to aided post are senior most amongst those working on unaided post and that the roster is maintained, so also their appointments are approved on unaided post, the Education Officer shall grant approvals to their appointments. If the assistant teachers who have been transferred from unaided to aided posts had not completed three years while working on unaided post, then they will be granted approvals as Shikshan Sevaks for a period they would complete three years from the date of their initial appointments and thereafter as assistant teachers. Of course, upon satisfying about the seniority and roster. However, the Education Officer shall not reject the proposal on the ground of circular dated 28.06.2016 and that there is availability of surplus teachers. The Education Officer will have to consider that services of these petitioners are approved on unaided posts.”

6. Pursuant to the said order, the management paid the current salary to the petitioner-Nalini U. Patil. It is a case of the management that, since the name of the petitioner was not included in the Shalarth Pranali, the management could not pay the salary of the petitioner for the past period. There appears to be internal dispute between two groups of the management.

7. The learned counsel for the petitioner pointed out that, once the Education Officer had already granted approval to the appointment of the petitioner, the management ought to have submitted the proposal of the petitioner to the Education Officer which was to be forwarded to the Deputy Director of Education for entering the name of the petitioner in the Shalarth Pranali for the purpose of making payment of the balance amount and for further salary to the petitioner. It is submitted that, the respondents have not complied with the said order dated 04.03.2020.

8. Mr. Salunke, learned counsel for the respondent nos.2 and 3 on the other hand would submit that, his clients have not willfully disobeyed the order passed by this Court by not releasing the arrears of the salary if any to the petitioner, since her name has not been included in the Shalarth Pranali. He submits that, seniority list on which the petitioner had been relied upon is seriously disputed

by his clients.

9. It is submitted that, till the disposal of the petition filed by the other employees i.e. in case of Writ Petition No.1625/2021 and 291/2021, no action under the provisions of the Contempt of Courts Act, 1971 can be initiated against his clients.

10. In view of the fact that the petitioners in Writ Petition No.1625/2021 and 291/2021 have challenged the order of the Education Officer rejecting the approval to the appointment of those petitioners which have bearing on the appointments of the petitioner which is the subject matter of the Contempt Petition No.297/2020 and in Writ Petition No.5245/2020, we have directed the parties in the other writ petitions which are on board today to address this Court first and decided to pass appropriate order in the Contempt Petition depending upon the outcome of the Writ Petition No.5245/2020, 1625/2021 and 291/2021.

Facts and submissions in Writ Petition No.5245/2020:

11. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for Writ of Mandamus directing the New English School, Jamner, respondent no.4 herein to submit necessary proposal for inclusion of the names of petitioners in the post configuration with effect from 17.06.2013, 01.07.2013 and 17.06.2013 before Education Officer (Secondary) forthwith and further directions against respondent no.2 to take necessary action for releasing salary including the arrears of all the petitioners as permissible as Shikshan Sevak with effect from 17.06.2013 to 16.06.2016 and 01.07.2013 to 30.06.2016, 17.06.2013 to 16.06.2016 respectively with effect from 17.06.2016, 01.07.2016, 17.06.2017 as Assistant Teachers forthwith.

12. It is the case of the petitioners in this petition that, these petitioners were appointed in respondent no.4 unaided school as Assistant Teachers by following due procedure of law on 14.06.2013. Since 2012-2013 the said school is running on 100% grant-in-aid from standard 1st to

12 th. The said school, however, in the year 2012-2013 received permission of running 35 new divisions on non-grant-in-aid basis. The vacancies of unaided divisions came to be filled in by following due procedure established by law.

13. It is the case of the petitioners that, on 02.11.2015 vacancies arose due to the superannuation. Upon considering the academic career of the students and considering the fact that the petitioners who were approved teachers and were working on unaided divisions, the respondent nos.3 and 4 transferred the petitioners on the aided divisions vacant posts.

14. On 05.05.2016, the Education Officer issued a communication stating that, the approval to the transfer of the teachers from unaided to aided divisions could not be granted because there would be academic loss of the students from aided divisions. The Education Officer also relied upon the Government Resolution dated 20.06.2014 prescribing a ban in filling up the vacancies because of

absorption of the surplus teachers.

15. The petitioners filed Writ Petition bearing No.6127/2016 alongwith other employees impugning the said rejection of approval by the Education Officer vide order dated 05.05.2016. On 04.07.2019 a Division Bench of this Court while disposing of the said Writ Petition issued certain directions to the Education Officer to consider the seniority of incumbents, roster etc. while granting approval to the teachers from unaided posts to aided posts. It is the case of the petitioners that, on 06.09.2019 the Education officer after scrutiny, granted approval to transfer of petitioners from unaided to aided divisions.

16. On 13.09.2019, the respondent no.2/Education Officer issued an order to the petitioners stating that, in view of the letter submitted by the management before the Education Officer and upon considering the point nos.1 and 2 of the said letter, as per the judgment and order dated 04.07.2019, the approvals granted to the petitioners were cancelled.

17. It is the case of the petitioners that, one of the employee challenged the said order dated 13.09.2019 before this Court by filing Writ Petition No.12448/2019. The Education Officer restored the approval order dated 06.09.2019 in view of the order dated 13.09.2019 passed by the respondent no.2 during the pendency of the Writ Petition bearing No.12448/2019. The said Writ Petition came to be disposed of by this Court with a direction to the management to submit salary bills of the petitioners therein.

18. On 29.06.2020, in view of the order dated 04.03.2019, the petitioners submitted application to the respondent no.2 requesting him to take steps in respect of the inclusion of the names of the petitioners in the post configuration. However, there was no action taken on the said application filed by the petitioners by respondent no.2. These petitioners thus filed Writ Petition No.5245/2020 for Writ of Mandamus for issuing various directions against the Education Officer.

19. Ms. Mahajan, learned counsel for petitioners invited our attention to the seniority list prepared by the management and would submit that, all these petitioners were entitled to be transferred from unaided divisions to aided divisions on the basis of the seniority list and also qualifications. She submits that, one of the petitioner was granted approval for the subjects Mathematics and Science, whereas another petitioner was granted approval for the subjects Marathi and History.

20. Learned counsel invited our attention to the letters addressed by the Education Officer to the Headmaster of the school requesting to send the proposals of the petitioners for including their names in the Shalarth Pranali. She also relied upon some of the averments made by the Education Officer in the affidavit-in-reply filed in this Writ Petition on 02.11.2020 stating that, the management had not sent the proposals of the petitioners for including their names in the Shalarth Pranali. The salary thus could not be released by the

Education Officer in view of the Headmaster of the school not having sent proposals for inclusion of the names of the petitioners in the Shalarth Pranali in furtherance of the order of approval already granted by the Education Officer.

21. It is submitted by the learned counsel for the petitioners that, the said approval which was granted to transfer all these petitioners from unaided divisions to aided divisions of New English School, Jamner came to be withdrawn by the Education Officer illegally and subsequently by another order restored the earlier order granting approval to the appointment of these petitioners for transfer from unaided divisions to aided divisions in respondent no.4-school.

22. It is submitted that, the management could not have refused to submit the proposal of these petitioners for entering their names in the Shalarth Pranali to the Education Officer and in turn the Education Officer could not have refused to transfer such proposals that would have been received from the management to the Deputy Director of Education for inclusion of the petitioners' names in the Shalarth Pranali.

23. The learned A.G.P. for the State on the other hand submits that, the order of approval passed by the Education Officer granting approval to the transfer of the petitioners from unaided divisions to aided divisions was opposed by the petitioners in the Writ Petition Nos.1625/2021 and 291/2021. He submits that, though the management was called upon by the Education Officer to submit the copy of the seniority list which was a common seniority list prepared for the two schools run by the same management, did not get any co-operation from the management by supplying the copies of common seniority list. The Education Officer thus could not have waited for long time and allowed the proposals sent by the management and granted approval to the transfer of the petitioners from unaided divisions to aided divisions.

Facts and submissions in Writ Petition No.5933/2020:

24. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks Writ of Mandamus and for directions to the Education Officer to modify the order dated 06.09.2019 and to grant approval to the services of the petitioner as Assistant Teacher with effect from 02.11.2015 in the pay scale of Rs.9300-34800+Grade pay on aided basis in the respondent no.3 school, instead of as Shikshan Sevak from 01.07.2016 to 30.06.2016 and as Assistant Teacher from 01.07.2016 onwards and to release the arrears of the salary of the petitioner from 02.11.2015. The petitioner also seeks direction to include the name of the petitioner in the Shalarth Pranali and to submit salary bill of the petitioner to the Education Officer.

25. It is the case of the petitioner that, the petitioner is possessed of MA, B.Ed and belongs to SC category. The petitioner was appointed against a clear, vacant and sanctioned post reserved for SC category as Assistant Teacher on no grant basis in unaided division of respondent no.4-school. On 14.08.2013, the Education Officer granted approval to the appointment of the petitioner to the

said post of Assistant Teacher.

26. It is the case of the petitioner that, on account of retirement of earlier permanent teachers in the aided divisions, some of the posts in those aided divisions became vacant. The management accordingly passed Resolution on 07.09.2015 for transfer of the teachers including the petitioner from unaided division to aided division to the vacant posts from 02.11.2015. On 31.10.2015 the management appointed the petitioner on vacant post on aided division with effect from 02.11.2015 alongwith other teachers. On 11.03.2016 the Education Officer, however, refused to grant approval to the transfer of the petitioner from unaided division to aided division of the respondent no.3-school by relying upon the Government Circular dated 28.06.2016.

27. The petitioner and other teachers filed Writ Petition bearing No.6127/2016 before this Court. A Division Bench of this court passed an order on 04.07.2019 directing the Education Officer to grant approvals to their transfers by deciding the proposals afresh by considering the seniority of the teachers of unaided posts and directing not to reject the proposals on the ground of Circular dated 28.06.2016.

28. On 06.09.2019, the Education Officer (Secondary) granted approvals to the transfer of the petitioner and other teachers from unaided divisions to aided divisions as Shikshan Sevak instead of Assistant Teachers in regular pay scale. However, on the basis of the complaints of other teachers of respondent no.3-school, the Education Officer without affording any opportunity being heard to the petitioner and other teachers, passed an order on 13.09.2019, thereby cancelling the approvals granted to the petitioner vide order dated 13.09.2019.

29. It is the case of the petitioner that, one of the teacher namely Ganesh Mali preferred a Writ Petition bearing No.14174/2019 challenging the order dated 13.09.2019. By order dated 18.02.2020 this Court quashed the order dated 13.09.2019. Another teacher namely Nalini Patil also challenged the said order dated 13.09.2019 by filing Writ Petition No.12448/2019. In the meanwhile, the Education Officer withdrew the cancellation order and confirmed the order dated 06.09.2019 granting approval to the transfer of the petitioner on aided division.

30. On 04.03.2020, this Court passed an order directing respondent nos.3 and 4 management to forward the salary bill of the petitioner to the Education Officer and further directed the Education Officer to process such salary bill immediately.

31. It is the case of the petitioner that, the petitioner and the other teachers requested respondent no.3 to take necessary steps for their pay fixation on the aided posts and for entering their names in the Shalarth Pranali. No action was taken by respondent no.3 pursuant to the said letter dated 06.09.2019 and pursuant to the representation made by the petitioner and other teachers. The respondent no.2 vide communication dated 23.03.2020 directed the management to take necessary action for including the names of the petitioner and other teachers in the Shalarth Pranali. The respondent no.3, however, did not

take any steps to include the name of the petitioner in the Shalarth Pranali and for releasing her salary. The petitioner, therefore, filed this Writ Petition for various reliefs.

32. Mr. Panpatte, learned counsel for the petitioner invited our attention to some of the documents annexed to the petition and submits that, the petitioner has worked all throughout from the date of her transfer from unaided division to aided division. He submits that, though approval was granted by the Education Officer on the said proposal sent by the management for approval of the transfer of the petitioner from unaided post to aided post, the management deliberately did not submit any proposal for entering the name of the petitioner in the Shalarth Pranali to the Education Officer till date.

33. The learned A.G.P. for the Education Officer (Secondary) submits that, his client had submitted and sent various reminders to the Headmaster of the school to send the proposal of the petitioner on the said application for approval for transfer of the petitioner from unaided division to aided division. The management for some reasons did not send the said proposal and thus name of the petitioner could not be entered into the Shalarth Pranali. The salary bills have not been received from the respondent nos.3 and 4 by the Education Officer.

Facts and submissions in Writ Petition No.1625/2021:

34. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a Writ of Certiorari for quashing and setting aside the orders dated 11.12.2019, 06.09.2019 passed by the Education Officer and transfer order dated 31.10.2015 passed by the respondent no.3-Jamner Taluka Education Society.

The petitioners also prayed for a Writ of Mandamus against respondent no.3 to transfer the services of the petitioners from unaided divisions to aided divisions of the school being run by the respondent no.3.

35. The petitioners amended the writ petition and prayed for a Writ of Certiorari for quashing and setting aside the impugned order dated 23.06.2020 passed by the Education Officer granting approval to the transfer of respondent nos.6 to 11 (petitioners in Writ Petition No.5245/2020) and further prayed for directions against the management to forward the proposal of the petitioner nos.2 to 4 to the Education Officer for getting approval to the transfer of the petitioner nos.2 to 4 from unaided posts to aided posts with further directions to respondent no.2 to grant approval to the transfer of the said petitioner nos.2 to 4 from the date of their respective transfers alongwith all consequential benefits.

36. It is the case of the petitioners that, these petitioners were appointed as Assistant Teachers vide orders dated 04.12.2012 and 17.06.2013 on unaided basis in the school run by the respondent no.3. The Education Officer granted approval to the appointment of these petitioners on the said posts of Assistant Teachers on unaided posts. It is the case of the petitioners that, management

maintains the common seniority list of all schools which includes all the teachers. According to the said seniority list as on 01.06.2016, the petitioners in this petition are senior to the respondent nos.6 to 11.

37. It is the case of the petitioners that, sometime in the year 2015, near about 13 posts fell vacant in aided divisions on account of retirement of some of the teachers. It is the case of the petitioners that, though the petitioners are the senior most teachers, by ignoring their legitimate claim, on 31.10.2015, respondent no.3-management transferred respondent nos.6 to 11 from unaided divisions to aided divisions.

38. The management submitted the proposal of respondent nos.6 to 11 for approval for transfer from unaided divisions to aided divisions. According to the petitioners the respondent no.2 vide impugned order dated 11.12.2019 and 06.09.2019 granted approval to the said transfers of respondent nos.6 to 11 without verifying the seniority list of any of the teachers while considering the proposal for approval.

39. Mr. Nagargoje, learned counsel for the petitioners invited our attention to some of the exhibits annexed to the petition and submits that, though his clients are the senior most teachers and much senior to respondent nos.6 to 11, his clients are not being transferred from unaided divisions to aided divisions according to their seniority. He submits that, even if respondent nos.6 to 11 are excluded, there are more than six vacancies in aided division in which petitioners could be accommodated by the management.

40. It is submitted that, when these petitioners were appointed as Assistant Teachers, they were appointed after following due procedure i.e. by issuing advertisement and by following the reservation policy etc. There was no question of following any roster again while effecting the transfer from unaided to aided divisions. He submits that, there are various posts lying vacant and therefore, if there is any backlog, that can be cleared by appointing the person of particular category on the said vacancy.

41. The learned counsel submits that, respondent nos.6 to 11, however, have been issued transfer orders dated 31.10.2015 which is signed by the alleged Secretary of the management and without any resolution of the management committee to that effect on record to transfer those respondents from unaided divisions to aided divisions. He submits that, entire process of passing an order of transfer of respondent nos.6 to 11 from unaided divisions to aided divisions was totally illegal and bad in law.

42. It is submitted by the learned counsel that, respondent no.2 had rightly corrected his mistake by issuing order dated 13.09.2019, thereby recalling the order of approval granted in favour of respondent nos.6 to 11 and the said order dated 13.09.2019 could not have been withdrawn or cancelled by subsequent order dated 11.12.2019 and thereby maintaining original order dated 06.09.2019. The respondent no.2 had no jurisdiction to withdraw the order dated

13.09.2019. The respondent no.2 did not verify as to whether the seniority was followed while effecting transfers.

43. It is submitted by the learned counsel that, the proposal of the petitioner nos.1 and 6 to transfer these two petitioners from unaided divisions to aided divisions were forwarded on 23.05.2020 to respondent no.2 for grant of approval on the vacant posts on account of retirement of the teachers in aided divisions, the respondent no.2, however, passed an order dated 23.06.2020 rejecting the said proposal on the ground that there was dispute in the management and as such the approval could not be granted.

44. It is submitted that, the proposal of petitioner no.5 was also forwarded on 26.05.2020 to respondent no.2 for grant of approval to the transfer of the petitioner no.5 from unaided post to aided post, which was fallen vacant on account of retirement of the teachers in the aided divisions. The said proposal was also rejected by respondent no.2 vide order dated 23.06.2020 on the ground that, there was dispute in the management. It is submitted that, the Education Officer cannot reject the proposal or approval of the appointment or transfer on the ground that there is dispute in the management.

45. It is submitted by the learned counsel that, the Education Officer did not consider the issue of seniority and various other aspects directed to be considered by order dated 04.07.2019 in Writ Petition No.1493/2018 and other companion writ petitions filed by various petitioners. The impugned orders passed by the Education Officer granting approval to the appointment of respondent nos.6 to 11 are in gross violation of said order and judgment dated 04.07.2019 delivered by the Division Bench of this Court. The order of rejection passed by respondent no.2 refusing to grant approval to the appointment of the petitioners on the ground of alleged dispute in the management is also contrary to the law and contrary to the principles laid down by this Court.

46. Ms. Mahajan, learned counsel for respondent nos.6 to 11 opposed this petition on the ground that, seniority list prepared by the management is not disputed by any of the teachers including petitioners in this Writ Petition. She invited our attention to the said seniority list and would submit that the Education Officer while granting approval to the appointment of her clients had in fact considered the seniority list and other aspects directed to be considered by this Court by order dated 04.07.2019 and thus the said order granting approval to the transfer of her clients from unaided divisions to aided divisions cannot be challenged by these petitioners. She submits that, the said order granting approval has attained finality.

47. The learned counsel invited our attention to various averments in the affidavit-in-reply filed by the Education Officer and also filed by her clients and would submit that, it is an undisputed position and her clients were seniors to the petitioners in this petition and thus approval was rightly granted by the Education Officer and proposals of the management regarding the petitioners in

this case have been rightly rejected by the Education Officer. There would be no purpose of remanding the matter back at this stage after so many years.

Facts and submissions in Writ Petition No.291/2021:

48. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned order dated 31.10.2015 issued by the alleged Secretary of the management thereby transferring respondent nos.6 to 11 from unaided divisions to aided divisions and also impugning the order of approval order dated 06.09.2019 issued by respondent no.2 in favour of respondent nos.6 to 11. The petitioners have also prayed for Writ of Certiorari for quashing and setting aside the order dated 23.06.2020 passed by the Education Officer rejecting the proposal submitted by the management for transfer of the petitioners from unaided divisions to aided divisions and seeks Writ of Mandamus to grant approval to the transfer of the petitioners from unaided post to aided post from the date of their respective transfers alongwith all consequential benefits.

49. On 04.12.2012, the respondent no.3 appointed the petitioner no.1 on unaided section of respondent no.4 and received approval on 29.04.2013 to such appointment. The petitioner no.2 was initially appointed on 04.12.2012, however, no appointment order was issued in his favour at that point of time. The petitioner no.2 was again appointed on 17.06.2013 by following due procedure at respondent no.5-school. The said appointment has been approved by the Education Officer.

50. It is the case of the petitioners that, respondent nos.6 to 11 were illegally appointed or transferred from unaided to aided section by the management on 31.10.2015. Though the said proposal was initially rejected by the Education Officer was subsequently granted by him. The order withdrawing the order of approval to the appointment to the transfer of the respondent nos.6 to 11 was subsequently withdrawn by another order thereby restoring the original order of granting approval. He submits that, respondent no.2 could not have withdrawn the order of withdrawal of earlier order and have acted without jurisdiction.

51. It is submitted that, though the Headmaster of respondent no.5 had informed the Education Officer vide letters dated 11.09.2019, 13.09.2019 and 18.02.2020 that the seniority list had not been followed and the roster was also not available, the Education Officer restored the original order of approval granted in favour of respondent nos.6 to 11.

52. It is submitted by the learned counsel that, the proposals of the petitioners were forwarded to the respondent no.2 by the management for grant of approval to the transfer of the petitioners from unaided posts to aided posts which had fallen vacant on account of retirement of the teachers in aided divisions. The Education Officer, however, by order dated 23.06.2020 rejected the said proposal on the ground that, there was dispute in the management and as such the approval could not be granted. The said order, however, was not communicated

to the petitioners.

The petitioners came to know about the said order only when the said order was annexed to the affidavit-in-reply filed by the Education Officer.

He submits that, the proposal for appointment/transfer of the petitioners from unaided posts to aided posts could not have been rejected on the ground of dispute in the management. The impugned decision is totally contrary to the principles laid down in catena of Judicial Pronouncements. He submits that, at the same time the Education Officer could not have granted any approval to the transfer of the respondent nos.6 to 11 from unaided divisions to aided divisions without following directions issued by this Court on 04.07.2019.

53. Mr. Dixit, learned counsel for the petitioners submits that, his clients are also senior to the respondent nos.6 to 11. He adopted the rest of the submissions of Mr. Nagargoje, learned counsel for the petitioner in Writ Petition No.1625/2021.

54. The learned A.G.P. in all these petitions tried to justify the impugned orders passed by the Education Officer which are subject matter of these petitions and submits that, no interference with these orders are warranted.

55. When this Court called upon the learned A.G.P. to demonstrate from the impugned orders passed by the Education Officer granting approval to the appointment of the respondent nos.6 to 11 whether the Education Officer has considered the seniority list prepared by the management and other directions issued by this Court by order dated 04.07.2019, the learned A.G.P. stated that, since the management did not forward a copy of the seniority list to the Education Officer, though repeatedly called upon, the Education Officer accepted the proposals submitted by the management in respect of respondent nos.6 to 11 without considering the seniority list. He submits that, Education Officer may be directed to consider the entire issue including the issue of seniority and other directions issued by this court on 04.07.2019 in these petitions.

56. The learned A.G.P. could not point out any provision of law permitting the Education Officer to reject the approval on the ground of there being any dispute in the management.

57. Ms. Mahajan, learned counsel for respondent nos.6 to 11 submits that, since there is no dispute about the seniority list maintained by the management and it can be demonstrated from the affidavit filed by the parties that, her clients were much senior to the petitioners in Writ Petition No.1625/2021 and 291/2021, this Court shall direct the management to submit proposal for inclusion of names of her clients in the Shalarth Pranali to the Education Officer and who shall be directed to submit proposal to the Deputy Director of Education for inclusion of the names of her clients in the Shalarth Pranali for releasing the payments to her clients forthwith.

Reasons and conclusions:

58. The Contempt Petition No.297/2020 has been filed by the petitioner namely Nalini Uttamsing Patil for an action against respondent nos.1 to 3 for alleged violation of the order dated 04.03.2020 passed by this Court in Writ Petition No.12448/2019. Writ Petition No.5245/2020 is filed by the petitioners for an order and directions against respondent no.4-management to submit necessary proposal for inclusion of the names of the petitioners in the post configuration in furtherance of the approval granted by the Education Officer to their appointments by order dated 06.09.2019. Writ Petition No.5933/2020 is filed by the petitioner for modification of the order dated 06.09.2019 and to grant approval to the services of the petitioner as an Assistant Teacher.

59. Writ Petition No.1625/2021 is filed by the petitioners inter alia praying for Writ of Certiorari for quashing and setting aside the orders dated 11.12.2019 and 06.09.2019 passed by the Education Officer granting approval to the appointment of the petitioners in Writ Petition No.5245/2020 and rejecting the proposal submitted by the management for approval. Similarly, Writ Petition No.291/2021 is filed by the petitioners impugning the order dated 31.10.2015 issued by the alleged Secretary of the management thereby transferring respondent nos.6 to 11 (petitioners in Writ Petition No.5245/2020) from unaided divisions to aided divisions and also impugning the order of approval dated 06.09.2019 passed by the respondent no.2 in their favour. The petitioners in that matter have also prayed for setting aside the order of rejection of proposal submitted by the management for transfer of those petitioners from unaided divisions to aided divisions.

60. Since some of the teachers have impugned the order dated 06.09.2019 passed by the Education Officer granting approval to the appointment of the petitioners in Writ Petition No.5245/2020 and Contempt Petition No.297/2020 filed for enforcement of the said order, we shall first deal with the submissions advanced by the learned counsel for the parties in Writ Petition Nos.1625/2021 and 291/2021.

61. It is admitted position that, some of the teachers had filed Writ Petition bearing No.6127/2016 impugning rejection of approval to the order of transfer from unaided divisions to aided divisions before this Court. On 04.07.2019, the Division Bench of this Court while allowing the writ petition specifically directed the Education Officer that, Upon confirming about the adherence to the seniority list i.e. those who are transferred to aided post are senior most amongst those working on unaided post and that the roster is maintained, their appointments shall be approved.

62. Pursuant to the said order dated 04.07.2019, the Education Officer passed an order on 06.09.2019 granting approval to the proposal for transfer of the petitioners in Writ Petition No.5245/2020 without recording any reasons and without considering the seniority list and roster as directed by this Court by order dated 04.07.2019. The said order dated 06.09.2019 was subsequently withdrawn by letter/order dated 13.09.2019 cancelling the order dated 06.09.2019. The

said order dated 13.09.2019 was subsequently withdrawn by the Education Officer and restored the approval order dated 06.09.2019.

63. The learned A.G.P. urged before this Court that, though the office of the Education Officer had repeatedly called upon the management to furnish copy of the seniority list maintained by the management in respect of these teachers to enable the Education officer to comply with the order dated 04.07.2019 passed by this Court, the management did not furnish copy of the seniority list and did not co-operate with the Education Officer in complying with the order passed by this Court. The Education Officer thus considered the proposals of the petitioners in Writ Petition No.5245/2020 as sent by the management and approved it. The learned A.G.P. also urged before this Court that, if this Court remand the matter back to the Education Officer, at this stage the Education Officer will consider the seniority list and other issues directed to be considered by order dated 04.07.2019 passed by this Court in Writ Petition No.6127/2016.

64. The learned counsel for the petitioners in Writ Petition Nos.5933/2020 and 291/2021 also invited our attention to the impugned order passed by the Education Officer on 06.09.2019 and also order dated 04.07.2019 passed by this Court and would submit that, the said order dated 06.09.2019 is totally in the teeth of the said order dated 04.07.2019. It is their case that, they are seniors to the petitioners in Writ Petition Nos.5245/2020 and 1625/2021. The impugned order passed by the Education Officer thus deserves to be quashed and set aside.

65. It is also urged by the petitioners in those two matters that, the Education Officer has at the same time rejected the proposals submitted by the management for granting approval to the appointments of those petitioners and has refused to grant approval on the ground that, there was dispute inter se in the management.

66. Per contra, Ms. Mahajan, learned counsel for the petitioner vehemently relied upon the seniority list prepared by the management and strenuously urged that, the said seniority list not having been disputed by other petitioners who have now impugned the order of the Education Officer passed in favour of her client cannot be allowed to urge that the Education officer did not consider the seniority list and wrongly granted approval of transfer of her clients from unaided division to aided division. She relied upon the seniority list and also various averments made in the affidavit filed by the Education Officer and by her client.

67. Though, the learned counsel for the petitioners in Writ Petition No.5245/2020 and for petitioner in Contempt Petition No.297/2020 invited our attention to the seniority list and various averments in the affidavit, learned counsel could not point out from the impugned order dated 06.09.2019 passed in favour of her client whether the order dated 04.07.2019 passed by the Division Bench of this Court directing the Education Officer to pass order of approval only after considering the seniority list and roster has been complied with or not.

68. In our view, seniority list which is relied by the petitioners in Writ Petition

No.5245/2020 and the averments made in the affidavit-in-reply filed by the Education Officer or by the petitioners in that writ petition cannot be read as the reasons in the impugned order dated 06.09.2019. The order itself should speak the reasons. The reasons cannot be supplanted by the affidavits or by the documents or evidence not considered by the Education Officer in the impugned order. This Court cannot probe into the mind of the Education Officer to ascertain whether the seniority list as well as the issue of roster had been considered in the impugned order while granting approval to the proposal of transfer of the petitioners from unaided divisions to aided divisions or not.

69. The learned A.G.P. for the Education Officer and the State clearly admitted before this Court that, in view of the alleged non-cooperation on the part of the management not furnishing the seniority list though repeatedly called upon, the Education Officer granted the approval to the proposal of transfer of the petitioners from unaided divisions to aided divisions as submitted by the management. In our view, the submissions of the learned counsel for the petitioners in Writ Petition No.5245/2020 is thus contrary to the impugned order passed by the Education Officer and also record.

70. In our view, the impugned order dated 06.09.2019 passed by the Education Officer granting approval to the proposal of the management to transfer the petitioners in Writ Petition No.5245/2020 from unaided divisions to aided divisions is in the teeth of the order dated 04.07.2019 passed by this Court and thus deserves to be quashed and set aside.

71. The learned counsel for the petitioners in the said Writ Petition No.5245/2020 vehemently relied upon the averments made by the Education Officer in affidavit-in-reply and the letters addressed by the Education Officer to the management to submit proposal of the petitioners for entering their names in the Shalarth Pranali. In our view, since the approval granted by the Education Officer on 06.09.2019 on the proposal submitted by the management for transfer of the petitioners in that matter from unaided divisions to aided division itself is in the teeth of the order dated 04.07.2019, the Education Officer cannot be directed to enter the names of those petitioners in the Shalarth Pranali at this stage. We accordingly cannot direct the management to submit the proposal of these petitioners to the Education Officer for entering their names in the Shalarth Pranali at this stage.

72. In so far as the petitioner in Writ Petition No.5933/2020 is concerned, this petitioner also cannot be granted any relief for modification of the order dated 06.09.2019 and to grant him approval as an Assistant Teacher instead of Shikshan Sevak or for inclusion of her name in the Shalarth Pranali on the same ground.

73. The petitioners in Writ Petition Nos.1625/2021 and 291/2021 have rightly impugned the order dated 06.09.2019 passed by the Education Officer rejecting the proposal submitted by the management in their case. For the reasons already recorded aforesaid, the petitioners in those two matter are entitled to

succeed in praying for quashing and setting aside the order dated 06.09.2019 passed by the Education Officer.

74. The Education Officer at the same time in these two petitions rejected their approvals on the ground that, there was dispute in the management. In catena of decisions delivered by this Court it has been held that, the Education Officer cannot refuse to grant approval to the appointment of the teachers on the ground that, there is dispute in the management. In our view, the impugned orders passed by the Education Officer in both these matters also thus deserve to be quashed and set aside on this ground.

75. In so far as Contempt Petition No.297/2020 is concerned, the said petition is seriously pressed by the learned counsel for the petitioner on the ground that, though the Education Officer has granted approval to the appointment of the said petitioner by order dated 06.09.2019, the management has not submitted the salary bills for the arrears and also for inclusion of their names in the Shalarth Pranali.

76. In our view, since the order dated 06.09.2019 passed by the Education Officer granting approval to the transfer of the petitioner therein is illegal and is in the teeth of the order dated 04.07.2019 passed by this Court, no action under the provisions of Contempt of Courts Act, 1971 can be initiated against the management or the Education Officer in the said contempt petition.

77. We are inclined to accept the submission of the learned A.G.P. for the State and the Education Officer that, the order dated 04.07.2019 passed by this Court directing the Education Officer to consider the seniority list, roster and various other issues while granting approval to the appointment of the teachers can be considered in right perspective.

78. We accordingly pass the following order:

ORDER

a. The impugned orders dated 06.09.2019 and 11.12.2019 passed by the Education Officer are quashed and set aside.

b. The order dated 23.06.2020 passed by the Education Officer rejecting the proposal submitted by the management for transfer of the petitioners in Writ Petition No.291/2021 is quashed and set aside.

c. Various proposals submitted by the management for granting approvals to the appointments/transfers of the petitioners in Writ Petition Nos.5245/2020, 5933/2020, 1625/2021 and 291/2021 are restored to file before the Education Officer.

d. The Education Officer shall consider those proposals submitted by the management on its own merits and after complying with the directions issued by this Court by order dated 04.07.2019 in Writ Petition No.6127/2016 within a period of eight (08) weeks from the date of communication of this order after

granting personal hearing to these petitioners and also the management without being influenced by the observations made and the conclusion drawn in the impugned orders.

e. The order that would be passed by the Education Officer shall be communicated to the petitioners as well as to the management within a period of one (01) week from the date of passing such order.

f. If the approval is granted on any of the proposals submitted by the management, the same shall not be implemented for a period of three (03) weeks from the date of communication of such order. If any of the proposal is rejected by the Education Officer, the aggrieved party would be at liberty to file appropriate proceedings.

79. For the reasons recorded aforesaid, the Contempt Petition No.297/2020 is dismissed.

80. Rule is accordingly made absolute in above terms in Writ Petition Nos.1625/2021 and 291/2021. Rule is discharged in Writ Petition Nos.5245/2020 and 5933/2020. No orders as to costs. Parties to act on authenticated copy of this order.