

(2022) 06 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 7482 Of 2021

Shaikh Rahimunnisa Begum

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 24-06-2022

Acts Referred:

Citation : (2022) 06 BOM CK 0100

Hon'ble Judges : C. V. Bhadang, J; Sandipkumar C. More, J

Bench : Division Bench

Advocate : D.S. Mali, R.P. Gaur, Sachin S. Deshmukh

Final Decision : Partly Allowed

Judgement

Sandipkumar C. More, J

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.

2. The petitioner is seeking direction to respondent No.4 Education Officer (Secondary), Latur to grant her permanent approval as a Headmistress of the School namely Siraj Ul-Uloom Urdu Girls High School, Ahmedpur, Taluka Ahmedpur, District Latur, which is being run by respondent Nos. 5 and 6. She also claimed release of her salary as a Headmistress after the grant of permanent approval from the date of such appointment.

3. According to the petitioner, she was appointed as an Assistant Teacher in the aforesaid school on 23 June 1997 and her appointment was approved by respondent No.4 under order dated 20 July 2001. As one Shri Kazi Mohammad Ali Bashiroddin who was Headmaster of the said School, got retired on 31 December 2019 on attaining the age of superannuation, respondent No.5 Trust as well as its employees made representations / proposals to respondent No. 5 for grant of permanent approval to the petitioner as a Headmistress. However, there was dispute between respondent No.5 Trust and respondent No.6, who is

claiming himself to be a Secretary of the Trust. So many Change Reports are also pending with the Assistant Charity Commissioner, Latur. Thus, it is yet to be decided as to who, out of respondent No.5 and respondent No.6, is having control over the Management of the school.

4. After receiving the proposal, respondent No. 4 sought opinion of the learned Assistant Charity Commissioner, Latur as to how the said proposal of the petitioner is to be dealt with in the light of the dispute between respondent No.5 and respondent No.6. The learned Assistant Charity Commissioner, Latur, by a communication dated 28 February 2020, informed respondent No.4 that though it would take time to decide the Change Reports filed by both the parties namely respondent No.5 and respondent No.6, but the proposal for granting approval to the petitioner as a Headmistress could be decided by considering her service record and relevant provisions of the law.

5. Respondent No.6, who is claiming himself as a Secretary of the Trust, has resisted the petition by filing affidavit-in-reply mentioning that one another person is the senior most teacher who is in fact entitled to be appointed as a Headmaster. He has given details of the dispute between himself and respondent No. 5 Trust and also mentioned the numbers of Change Reports which are pending before the learned Assistant Charity Commissioner, Latur.

6. On the contrary, respondent No.4 though resisted the petition, but admitted that the petitioner is entitled for appointment as a regular Headmistress and only due to ongoing dispute between respondent No.5 and respondent No.6, the grant of permanent approval cannot be conferred upon her.

7. We have gone through the entire documents on record with the assistance of the learned Counsel for the rival parties.

8. Admittedly, a dispute is going on between respondent No.5 and respondent No.6 in respect of the control over management of the Trust. Further, though respondent No.6 has claimed that another teacher is in fact eligible for being appointed as a Headmaster instead of the petitioner, but respondent No.4 in the affidavit-in-reply has stated that the petitioner being senior most lady teacher, is in fact entitled to be appointed as a Headmistress of the school which is exclusively for girls. Thus, it seems that respondent No.4 Education Officer is not having strong grievance if the petitioner is granted permanent approval for her post as a Headmistress. However, it further appears that respondent No.4 is not taking any action for granting permanent approval to the petitioner due to ongoing dispute between respondent No.5 and respondent No. 6, which is pending before the learned Assistant Charity Commissioner, Latur. It is to be noted here that respondent No.4 Education officer had also sought opinion from the said Assistant Charity Commissioner, Latur, upon which it was informed by the learned Assistant Charity Commissioner, Latur that it would take some time to decide the dispute between respondent No.5 and respondent No.6. It is extremely important to note that the learned Assistant Charity Commissioner,

Latur has also suggested that the permanent approval can be granted to the petitioner in the meantime by going through the records and considering the eligibility of the petitioner in the light of the legal provisions.

9. On perusal of the affidavit-in-reply, the Education Officer i.e. respondent No.4 has stated that the petitioner is already working as an Incharge Headmistress for which temporary approval has already been granted from time to time. However, since there was no proposal from the Management for her appointment as a Headmistress, permanent approval could not be granted to her despite her entitlement for being appointed as a regular Headmistress.

10. Considering the aforesaid aspects, we are of the opinion that the dispute between respondent No.5 and respondent No. 6 in respect of the control over the Management of the Trust may go on, but the school should not suffer because of the said dispute. The question of granting permanent approval to the appointment of the petitioner as a Headmistress can be answered independently on merits by going through the service record of the petitioner and by applying the legal provisions, irrespective of the aforesaid dispute. Respondent No.4 in the affidavit-in-reply has also found the petitioner eligible to be appointed as a Headmistress, but in the absence of any proposal from the Management seeking approval for her appointment, respondent No. 4 is not in a position to grant approval.

11. From the perusal of record, it is evident that respondent No. 5 has forwarded representations / proposals for grant of permanent approval to the post of the petitioner as a Headmistress of the school from time to time. However, respondent No. 4, considering the ongoing dispute between respondent No.5 and respondent No. 6, has granted temporary approval to the post of the petitioner. Therefore, we are of the opinion that respondent No. 4 Education Officer can be directed to take decision for grant of permanent approval to the petitioner as a Headmistress of the school independently on it's own merits and irrespective of the ongoing dispute between respondent No.5 and respondent No.6, by considering the service record of the petitioner in the light of the legal provisions as applicable. Hence, we pass the following order.

ORDER

(i) Writ Petition is partly allowed.

(ii) Respondent No.4 is directed to decide the representation / proposal forwarded by respondent No.5 regarding grant of permanent approval to the petitioner as a Headmistress of the school independently on it's own merits and in the light of service record of the petitioner and corresponding legal provisions, irrespective of the ongoing dispute between respondent No.5 and respondent No. 6, within three months from today.

(iii) Respondent No. 4 is at liberty to call for a proposal to that effect in regular format from respondent No.5, if required, and if such proposal is submitted, then

respondent No.4 shall decide the same within four months thereafter.

Rule is made absolute in above terms.