



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.12492 OF 2021

- 1) The Suburban Education Society,
Aurangabad,
Through its Secretary,
Jayant S/o Sadashiv Lalsare,
Age-69 years,
Occu:Secretary of the Education Society,
R/o-Plot No.8, Naiknagar, Beed-bye pass,
Satara Parisar, Aurangabad,
Tq. and Dist.-Aurangabad.
- 2) Sanskar Prabodhini Prashala,
Shiv Shankar Colony, Aurangabad,
Through its Head Master,
Sunil s/o Abhiman Nikam,
Age-52 years, R/o-Deogiri Hills,
Shivaji Nagar, H-60, Aurangabad,
Tq. and Dist.-Aurangabad.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Additional Secretary,
School Education & Sports Department,
Mantralaya, Mumbai-32,
- 2) The Additional Chief Secretary,
Finance Department,
Mantralaya, Mumbai-32,
- 3) The Commissioner of Education,
Maharashtra State, Pune Central Building,
Pune-1,
- 4) The Director of Education,
(Secondary & Higher Secondary),
Maharashtra State, Pune Central Building,
Pune-1,

5) The Director of Education (Primary),
Maharashtra State, Pune Central Building,
Pune-1

...RESPONDENTS

...
Mr. V.G. Salgare Advocate for Petitioners.
Dr. Kalpalata Patil-Bharaswadkar, A.G.P. for
Respondent Nos. 1 and 2.
Respondent Nos. 3 to 5 are served.

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

DATE OF RESERVING JUDGMENT : 20th MARCH 2024

DATE OF PRONOUNCING JUDGMENT : 23rd APRIL 2024

JUDGMENT [PER SMT. VIBHA KANKANWADI, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel appearing for the respective parties finally, by consent.

2. The petitioner No.1 is the society and petitioner No.2 is the school run under the management of petitioner No.1. They are challenging the Government Resolution dated 11th December 2020 whereby respondent No.1 fixed the staffing pattern of Class-IV employees under secondary and higher secondary schools run under the State of Maharashtra. As per the said

Government Resolution dated 11th December 2020 contractual employees are to be appointed to perform the work of Class-IV employees in place of regular appointed Class-IV employees and respondent No.1 will grant peon allowance to the schools for such contractually appointed employees. The said Government Resolution abolishes the sanctioned and regular posts of Class-IV employees, but while making a provision for contractual employees, providing for a meager peon allowance and changing the ratio of number of students to the number of Class-IV employees is said to be detrimental to the interest of the schools and students. Further, it is also contrary to the provisions of Equal Remuneration Act, 1976 as the regular employee would get salary as per the pay-scale and the contractual employee doing the equal work will not get equal pay and therefore, it is violative of Article 14 and 16 of the Constitution of India. It is also said that the said Government Resolution is contrary to the provisions under the Secondary School Code, Maharashtra Employees of Private Schools (Conditions of service) Act, 1977 (for short "MEPS Act") and Rules framed thereunder of 1981 as well as contrary to Maharashtra Primary Education Act, 1949. The said Government Resolution is totally a departure from the earlier staffing pattern of Class-IV employees provided under the

previous Government Resolutions which have proved to the test of time till today. The petitioners are praying that the earlier Government Resolution dated 28th June 1994 under which, on the basis of Chiplunkar Committee, regular pay scales are provided under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (for short "MEPS Rules") with amendments from time to time be implemented as before. The petitioners have quoted the data of the students from their school from the academic year 2017-2018 on-wards and submits that in all eight posts of non-teaching employees were sanctioned to petitioner No.2 school.

3. It is also the case of the petitioners that one Smt. Kokilabai Wani, who is the widow, was working as Class-IV employee out of the four employees, on admissible post since 2000 on temporary basis. She was appointed on sanctioned post on 1st August 2017 for the probation period of three years. Thereafter petitioner No.2 submitted proposal for the approval of her appointment on the said post, however it was rejected by the Education Officer (Secondary), Zilla Parishad, Aurangabad. The said employee Smt. Wani had then approached this Court by filing Writ Petition No.2820 of 2020. As per the orders passed by

this Court on 17th February 2020, the Education Officer processed the proposal and the Deputy Director of Education condoned over age of the said employee and the said proposal was to be decided on the lines of the Judgment in the case of *Ravindra Ghansing Sonwane vs. State of Maharashtra, decided on 11th February 2019 in Writ Petition No.2906 of 2018*. However, by referring to the Government Resolution dated 11th December 2020, the Education Officer rejected the proposal of Smt. Wani by order dated 3rd February 2021.

4. According to the petitioners, initially petitioner No.2 was entitled to have six posts of Class-IV employees as per the Secondary School Code and the Government Resolution dated 28th June 1994 but only four posts were sanctioned for Class-IV employees and in spite of several representations and proceedings before this Court, two additional posts of Class-IV employees were not sanctioned on the ground that no staffing pattern for Class-IV employees is decided by respondent No.1. Now, in view of the rejection of approval to the appointment of Smt. Wani and the Government Resolution dated 11th December 2020, the posts sanctioned to petitioner No.2 school for Class-IV employees would be further reduced by two. It would be

injustice to petitioner No.2 to carry on the school with inadequate staff of Class-IV employees and now the posts of Class-IV employees would get abolished. The allowance that is fixed under the said Government Resolution is very meager and there would be very few persons who would come forward to perform said duties. In Central Schools the staffing pattern is different and sufficient posts of Class-IV employees are sanctioned. The said Government Resolution is also discriminatory as the schools run by the Zilla Parishad and Municipal Corporation have regular and sanctioned posts of Class-IV employees till today. Therefore, the discrimination with the schools run by the private institutions is violative of Article 14 and 16 of the Constitution of India.

5. There is no reply given by the respondents, however, oral submissions have been made on behalf of respondent Nos.1 and 2.

6. Heard learned Advocate Mr. V.G. Salgare appearing for the petitioners and learned AGP Dr. Kalpalata Patil-Bharaswadkar appearing for respondent Nos. 1 and 2.

7. The learned Advocate for the petitioners has reiterated all the contents from the Petition which have been referred above as part of his argument. He has taken us through the MEPS Act, MEPS Rules, School Service Code, 2019, Equal Remuneration Act, 1976 and Maharashtra Primary Education Act, 1949. He submitted that this Court while deciding *Writ Petition No. 5959 of 2015 on 4th May 2018 (Sanskar Prabodhini Secondary School, Through its Head Mistress vs. the State of Maharashtra and others)*, observed that:-

“ By now, it is well settled that the Secondary School Code has a statutory force and is not merely an administrative instruction. The Secondary School Code will have its operation limited to the secondary and higher secondary schools and may not apply to the primary schools.”

8. Learned Advocate for the petitioners submits that the Secondary School Code prescribes the staffing pattern. So far as the staffing pattern of Class-IV employees is concerned, Learned Advocate refers to the provisions of Rule 57.7 of the Secondary School Code, which reads thus:-

“ 57.7 the number of full-time lower grade staff admissible to a school shall be as under:

- | | |
|---|---|
| 1) School with one class | 2 |
| 2) Schools having upto 6 full-fledged classes | Upto 4 |
| 3) Schools with more than 6 classes | One for every set of 6 classes or a part thereof, excluding the first 6 classes |

N.B. - (1) The staffing pattern with regard to the non-teaching staff as on 1st June 1963. If already approved, may be continued.

N.B. -(2) If any school maintains a lift used exclusively for school purpose, the liftman appointed by it will be admissible provided the post of liftman is one of the lower grade staff admissible as per above Rules."

9. Further, learned counsel for the petitioners submits that Schedule "C" of the MEPS Rules lays down the staffing pattern and pay-scales of non-teaching staff including lower grade staff, which includes laboratory attendants, naik, mali, oilman, machine attendant, peon, watchman or night watchman or chawkidar, sweeper, call woman, kamathi, attendant, laboratory hamal of lower grade. Therefore, according to him, when provisions are in the Act and Rules, then the Government Resolutions, Circulars and Government instructions cannot supersede them. The Government Resolution dated 11th December 2020 being contrary to the Secondary School Code,

MEPS Act and MEPS Rules, is ultra vires and needs to be quashed and set aside.

10. Learned AGP for respondent Nos.1 and 2 has submitted that the staffing pattern is always settled by the Government since the opening of the school. When a school is allowed to be opened then the staffing pattern is settled and allotted to the said school under which different posts are prescribed. The staffing pattern is controlled by MEPS Act and Secondary School Code, respectively and along with the MEPS Act, the MEPS Rules would govern the field. Even when the staffing pattern was initially declared as per the MEPS Act, MEPS Rules and Secondary School Code, thereafter also the change as per the Chiplunkar Committee regarding creation of additional posts was effected by way of Government Resolution dated 28th June 1994. Therefore, it will not lie in the mouth of the petitioners that by Government Resolutions the Government cannot make changes in the staffing pattern. The petitioners cannot say that when the staff is increased or additional posts are created then it cannot be taken away by the Government by way of Government Resolution. Only favourable things cannot be so projected. After the Government Resolution dated 28th June 1994 was issued by

which in view of Chiplunkar Committee report additional posts were created, thereafter also Government Resolution dated 25th November 2005 was issued, by which changes were suggested by the committee which was then freshly appointed. There was no challenge to any of the stipulations in the said Government Resolution. All the posts which were differently named in Schedule "C" of the MEPS Rules were brought under one nomenclature i.e. "Class-IV employees". However, it appears from further Government Resolution dated 23rd October 2013 that many institutions had raised objection with the Government and therefore the Government could not implement the Government Resolution dated 25th November 2005. So also it gave rise to some litigation and therefore once again high level committee was appointed under the chairmanship of the Principal Secretary to the State. In view of the report of the said committee, post-wise number was fixed / posts were sanctioned. By Government Resolution dated 12th February 2015, the staffing pattern as decided in Government Resolution dated 23rd October 2013 was accepted as it is and appointment to the further post was prohibited. Thereafter by Government Resolution dated 28th January 2019, improved staffing pattern for other non-teaching staff was sanctioned. But as regards Class-IV employees are

concerned, it was stated that it would be considered separately and was not fixed and thereafter the impugned Government Resolution was passed on 11th December 2020. Learned AGP pointed out Clause No.4 from the said Government Resolution dated 11th December 2020, which runs thus:-

"४. वरील निकषानुसार ज्या शाळेत अपेक्षित पेक्षा जास्त चतुर्थ श्रेणी कर्मचारी पूर्वीच्या मंजूर पदांवर कार्यरत आहेत व सक्षम प्राधिका-यांकडून मान्यताप्राप्त आहेत, तेथे अतिरिक्त होणारी चतुर्थश्रेणी कर्मचा-यांची पदे त्याच संस्थेत सदरचे कर्मचारी त्या पदावर सेवानिवृत्त होईपर्यंत कार्यरत राहतील, अथवा अतिरिक्त कर्मचा-यांच्या सेवा नजिकच्या शासकीय/जिल्हा परिषद कार्यालयांत/अनुदानित/अंशतः अनुदानित संस्थांमध्ये आवश्यकतेनुसार तात्पुरत्या प्रत्यावर्तित करण्यात येतील. सदर कर्मचा-यांच्या सेवानिवृत्तीनंतर ही अतिरिक्त ठरलेली पदे आपोआप व्यपगत होतील व त्यानंतर शिपाई भत्ता सुरू होईल."

. English translation of above said clause No.4, reads as under:-

"4. According to the above criteria, in schools where there are more Class IV employees working in the previously sanctioned post and approved by the competent authority, the additional posts of Class IV employees will remain in the same institution until the said employee retires from that post, or the services of additional employees will be temporarily deputed / reverted to the nearest Government / Zilla Parishad offices / Aided / partially aided institutions as per requirement.

After the retirement of the said employee, these additional posts will automatically lapse and thereafter peon allowance will start.”

(Translated by Senior Translator and Interpreter,
High Court of Bombay, Bench at Aurangabad)

11. Learned AGP submits that in view of above said Clause No.4 of the Government Resolution, the person who is working prior to coming into force the said Government Resolution, his post is protected till the retirement or if some Class-IV employee would turn out to be surplus, still he would continue there in the same institute till the retirement or would be absorbed in nearby Government or Zilla Parishad office / aided / partially aided institution, as per the requirement. Therefore, all care has been taken so that those persons who have been appointed prior to 1st December 2020 should not suffer. But, thereafter there shall not be an appointment on regular post having salary by pay-scale. The Government has every power to issue such circulars, notifications, resolutions when it has the power to decide the staffing pattern. The financial constraints are prompting the Government to take such decision and it is not only in schools but in other Government offices also the Government is promoting process of outsourcing instead of employing persons under “Class-IV employees”.

12. Learned AGP relies on the observations in *State of Uttar Pradesh and others vs. Principal Abhay Nandan Inter College and others, 2021 AIR (SC) 4968: 2021 (15) SCC 600*, wherein the Hon'ble Apex Court has upheld the scheme for outsourcing issued in the State of Uttar Pradesh in respect of Class-IV employees in colleges. It was considered that the challenge to the amendment to the Regulation in respect of outsourcing and it was further considered that said Regulation which was in the form of a subordinate legislation was also in the form of a policy decision. A policy decision is presumed to be in public interest and such a decision once made is not amenable to challenge, until and unless there is manifest or extreme arbitrariness, a Constitutional Court is expected to keep its hand off. Learned AGP strenuously submits that it is the policy decision that has been taken, then the petitioners have no right to challenge the said Government Resolution unless it is shown that only the petitioners are discriminated.

13. As the facts have already been narrated, the same need not be reproduced once again. The challenge is to the Government Resolution dated 11th December 2020, which is of course the outcome of the power within the State Government to

make rules in respect of staffing pattern. Certainly, in view of the observations in *Writ Petition No. 5959 of 2015 on 4th May 2018 (Sanskar Prabodhini Secondary School, Through its Head Mistress vs. the State of Maharashtra and others)* (supra), the Secondary School Code has a statutory force. However, it can be seen that the main object is to have uniformity in the schools, especially the secondary school or higher secondary school or higher secondary multipurpose school or vocational high school, which is described in the definition of "school" in Chapter-I of the Secondary School Code. Chapter-II of the Secondary School Code deals with the recommendation, organization and management of the schools including conditions, grant, refusal and withdrawal of recognition, admissions, staffing pattern etc. But when Chapter-III of Secondary School Code lays down provisions for conditions of service of staff, records, register and inspection, then the number of clerical staff admissible to a school has been prescribed in Clause 57.5. Clause 57.7 deals with lower grade staff and all this is by virtue of Government Resolution dated 2nd January 1975. Even in respect of laboratory assistant, the pattern is fixed as per Circular dated 21st May 1981.

14. Section 16 of the MEPS Act prescribes for rules and Section 16(1) gives power to the State Government to make rules for carrying out the purposes of this Act by notification in the official gazette. The MEPS Rules of 1981 have been framed under Section 16(1) and 16(2) of the MEPS Act and Rule 7 of the MEPS Rules deals with scales of pay and allowances and it is said that it should be as per Schedule "C". Thus, it can be seen that the ultimate power is with the State Government, which can make necessary changes by way of Government Resolutions. Various Government Resolutions, referred above, are the outcome of policy decision by the Government and out of that even Government Resolution dated 28th June 1994 was also the outcome of the report of the committee constituted under the chairmanship of Mr. Chiplunkar by the Government and it was the outcome of policy decision. The subsequent Government Resolutions of 25th November 2005, 23rd October 2013 and 12th February 2015 are also part of the policy decision and after the procedure undertaken by the Government of appointing high level committee. Merely because now the impugned Government Resolution dated 11th December 2020 makes a provision for consolidated pay for Class-IV employees after coming into force of the said Government Resolution and says that hereinafter

there shall not be a regular post for Class-IV, which is not favourable to the petitioners; the petitioners cannot challenge the same as being arbitrary.

15. In the *State of Uttar Pradesh and others vs. Principal Abhay Nandan Inter College and others*, (supra), the Hon'ble Supreme Court has considered the challenge to the regulation. Though that Regulation was made by the State of Uttar Pradesh which was under the Intermediate Education Act, 1921, we cannot say that the observations from the said decision are not applicable here. In that case, the Hon'ble Supreme Court had taken note of Section 9(4) of the Intermediate Education Act, 1921, which was giving power to the State Government to modify or rescind or make any regulation. Here also we have taken into account all enabling provisions to make the rules under the above Enactment and therefore, we say that those observations / law laid down is applicable here, which is now reproduced. Para Nos. 36 to 39 of the decision in *Uttar Pradesh* (supra) reads thus:-

"36. The challenge before us is the amendment to the Regulation 101. This regulation is in the form of a subordinate legislation. A subordinate legislation can also be in the form of a

policy decision. We have already noted that a policy decision has come into force in the year 2010 itself.

37. A policy decision is presumed to be in public interest, and such a decision once made is not amenable to challenge, until and unless there is manifest or extreme arbitrariness, a constitutional court is expected to keep its hands off.

38. A challenge to a regulation stands on a different footing than the one that can be made to an enactment. However, when the regulation is nothing but a reiteration of a policy reinforcing the decision of the Government made earlier, then the parameters required for testing the validity of an Act are expected to be followed by the Court.

39. An executive power is residue of a legislative one, therefore the exercise of said power i.e., the amendment of the impugned regulation, cannot be challenged on the basis of mere presumption. Once a rule is introduced by way of a policy decision, a demonstration on the existence of manifest, excessive and extreme arbitrariness is needed."

16. In Paragraph No.45 of the decision in *Uttar Pradesh* (supra), the Hon'ble Apex Court has also dealt with the argument in respect of short comings in recruitment by outsourcing. It was specifically observed that the challenge to the said scheme is not by an employee recruited by way of outsourcing, and therefore, it cannot be presumed that the said method of recruitment by outsourcing would necessarily be

adopting contract labour and that there exists an element of unfair trade practice.

17. Further, in Paragraph No.47 of the decision in ***Uttar Pradesh*** (supra), the Hon'ble Apex Court has observed thus:-

"47. The entire issue has to be looked at from different perspective as well. By the policy decision made, the appellants have abolished the post though in an indirect way by providing for "Outsourcing". Now, a court cannot create or sustain the aforesaid post. There is nothing on record to hold that the decision made is extraneous as it is obviously made applicable not only to the aided institutions but also to all government departments as well."

18. We are taking note of the fact that the Government of Maharashtra is also encouraging employment by contract in Government offices as regards Class-IV employees are concerned and even as regards the work of cleanliness in various Government premises is concerned, it is now by way of outsourcing or giving a contract of the same by inviting tenders. Taking similar situation in account, the Hon'ble Apex Court has observed in Paragraph No.48 of the decision in ***Uttar Pradesh*** (supra) thus:-

" 48. Arguments are advanced to the effect that interest of poor and needy is affected by the impugned Regulation. We do not know how the interest of the poor and needy is affected by the impugned Regulation. Admittedly, no challenge has been made to the decision taken in 2010 and 2011 which was to be made applicable to all the recruitments for Group 'IV' posts in the Government, and not only for the institutions and the persons recruited by them. The entire litigation is triggered only by the institutions."

19. The Hon'ble Apex Court in *Uttar Pradesh* (supra) has clearly observed in Paragraph No.43 thus:-

"43. The Division Bench in considering the view has entered into an arena which was not required to be done. Much labouring was done in interpreting the word "Outsourcing", however, such an exercise ought to have been avoided as it stands outside the scope of judicial review. We have already noted the fact that "Outsourcing" as a matter of policy is being introduced throughout the State.

It is one thing to say that it has to be given effect to with caution as recommended by the Seventh Central Pay Commission, and another to strike it down as unconstitutional. "Outsourcing" per se is not prohibited in law. It is clear that a recruitment by way of "Outsourcing" may have its own deficiencies and pit falls, however, a decision to take "Outsourcing" cannot be declared as ultra vires of the constitution on the basis of mere presumption and assumption. Obviously, we do not know the nature of the scheme and safeguards attached to it."

20. Herein this case, said employee Smt. Wani has not challenged the said Government Resolution or the order dated 3rd February 2021, by which the Education Officer (Secondary), Zilla Parishad, Aurangabad had rejected the proposal to grant approval to her appointment. Further, said Smt. Wani is also not made party to the present Petition and therefore, taking into consideration the prayers, we find no merit in the present Petition and it deserves to be dismissed.

21. Accordingly, the Writ Petition is dismissed.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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