

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5380 OF 2004

Kailash Kevaldas Suryawanshi,
Age-30 years, Occu-Nil,
R/o H.No.134, Shivajinagar,
Jalgaon, Dist. Jalgaon

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai - 32.
2. The Chairman / Secretary,
School Committee,
P.M.Lunkad Kanya Shala
Shikshan Prasarak Mandal,
Jalgaon, Dist. Jalgaon,
3. The Head Mistress,
P.N.Lunkad Kanya Shala,
Jalgaon,
4. Mr.Krushna Shankar Chaudhari,
Head Master,
Sheth L.M.S. Vidyalaya,
Jalgaon,
5. The Education Officer,
(Secondary), Zilla Parishad,
Jalgaon, Dist. Jalgaon.

-- RESPONDENTS

Mr.Ajinkya Deshmukh h/f Mr.A.V.Hon, Advocate for the petitioner.
Mr.P.N.Kutti, AGP for respondent Nos. 1 and 5.
Mr.K.C.Sant, Advocate for respondent Nos. 2, 3 and 4.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 28/09/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Mr.Sant, learned Advocate for respondent Nos. 2,3, and 4 appears and strenuously supports the impugned judgment.

3. I have heard the learned Advocates for the petitioner who has challenged the judgment of the School Tribunal dated 27/05/2004 and Mr.Sant.

4. It is apparent that the impugned judgment has been delivered on preliminary issues and the appeal has been held to be worth dismissing only on the count that the appointment of the petitioner was not approved by the Education Officer.

5. There is no dispute that the petitioner has challenged his termination dated 27/01/2003. The School Tribunal framed the following 3 issues :-

[1] *Whether the school is recognized as defined under the MEPS Act, 1977 ?*

[2] *Whether the appointment of the appellant was made as*

per the Section 5 of the MEPS Act, 1977 and Rules thereunder ?

[3] *Whether such an appointment has been approved by the Education Officer in pursuance to the provisions of the Act as well as the Rules framed thereunder including the Government Resolution issued from time to time regarding reservation etc. ?*

6. The impugned judgment indicates that issue No.1 was answered in the affirmative holding that the school is recognized under the MEPS Act. The answer to issue No.2 also indicates that the Tribunal has concluded that the appointment of the petitioner/ appellant is in tune with Section 5 of the MEPS Act. As such, the first two issues were answered in the affirmative. I am sustaining the said two conclusions.

7. However, with regard to the third issue, the Tribunal concluded that since the appointment of the petitioner was not approved, the appeal is untenable and must fail.

8. It is no longer *res integra* that lack of approval cannot be a ground for termination (St.Ulai High School and another Vs. Devendraprasad Jagannath Singh and another, 2007(1) Mh.L.J.597)

decided by the learned Full Bench of this Court). For the said reason, the Tribunal cannot abdicate its jurisdiction and conclude that the appeal has to fail because of the negative findings on preliminary issue No.3.

9. This petition, therefore, succeeds. The impugned order dated 27/05/2004 is set aside only to the extent of the answer of the Tribunal to issue No.3 considering the fact that the appeal u/s 9 cannot be dismissed without adjudication merely because the appellant has not acquired approval for his appointment.

10. Appeal No.4/2003 is, therefore, remitted to the School Tribunal, Nasik on the following conditions :-

- [a] The litigating sides shall appear before the School Tribunal on 17/10/2016 and formal notices need not be issued.
- [b] The Tribunal shall allow the respondents to file their written statement on the main appeal, if not already filed, within a period of 4 (four) weeks from the date of appearance and thereafter shall decide the appeal on its own merits keeping in view that its conclusions in the judgment dated 27/05/2004 that the School is recognized and the appointment of the appellant is as per Section 5 of the MEPS Act and the Rules thereunder are legal and have been sustained in this order.
- [c] Needless to state, the Tribunal shall keep in view the ratio laid

down by the learned Full Bench of this Court in the matter of St.Ulai High School (supra) and shall decide the appeal in the light of the contentions of the parties.

- [d] Since the appeal is of the year 2003, the Tribunal shall endeavour to decide the same on or before 29/04/2017.

11. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)