

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5649 OF 2015

Khandala Vibhag Shikshan Samiti, Khandala ..Petitioner
Versus
The State of Maharashtra through the Secretary,
School Education Department, Mantralaya,
Mumbai and ors. ..Respondents

Mr. Narendra V. Bandiwadekar, advocate for the petitioner.
Mr. P. G. Sawant, AGP for respondent Nos. 1 to 3.
Mr. Prashant Bhavake, advocate for respondent No.4

**CORAM : SHANTANU KEMKAR &
RANJIT MORE, JJ.**

DATE : 2nd MAY, 2016.

P. C. :

Parties through their counsel.

2. Rule. Rule made returnable forthwith and taken up for hearing by consent.

3. By filing this petition, the petitioner is challenging the order dated 20th February, 2015 passed by the 3rd respondent directing the petitioner-management to condone respondent No.4's break in service and regularise the period between 12th September, 2003 to 20th September, 2003 by treating the said period as period of Earned Leave. It has further been directed that services of respondent No.4 be

treated as without break and the benefits of due promotion to be extended to him by calculating the said period.

4. Having gone through the impugned order, so far as first part of the order is concerned, we find that the same is justified and, there cannot be said to be any illegality in ordering for treating of the aforesaid period to be continuous in service as period of Earned Leave. As regards the second part about granting of promotion to respondent No.4, we find that this part of the order is without jurisdiction as under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation **Act**, 1977 (for short, "the **MEPS Act**"), respondent No.4 has to approach the School Tribunal for redressal of his grievance in regard to non-grant of promotion. As a result, we uphold the first part of the impugned order directing treating of services of respondent No.4 as continuous. However, we set-aside the second part of the order, by which, respondent No.4 has been ordered to be promoted, however, with liberty to respondent No.4 to avail the remedy as provided under Section 9 of the MEPS Act. All points and contentions of the parties are left open. With the aforesaid directions, the writ petition is disposed of.

[RANJIT MORE, J.]

[SHANTANU KEMKAR, J.]