

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1273 OF 2001

Shri. Bajirao Somanna Mane

Aged : 29 years, Occ.: Nil,

R/o : 1558, E Ward,

Near Laxman Randive, Randive Lane,

Kolhapur

.... Petitioner

V/s

- 1 Indian Red Cross Society ... Respondents
Kolhapur District,
Near Government Central Building,
Kasaba Bavada, Kolhapur
- 2 The Head Master,
Swayam Matimand Mulanchi Shala
Kolhapur, Kasaba Bavada,
Kolhapur
- 3 District Social Welfare Officer,
Kolhapur, At Govt. Central Building,
Kasaba Bavada, Kolhapur
- 4 The Presiding Officer,
School Tribunal, Kolhapur

**WITH
WRIT PETITION NO.3074 OF 2009**

- 1 Indian Red Cross Society
Kolhapur District,
Near Government Central Building,
Kasaba Bavada, Kolhapur
- 2 The Head Mistress,
Swayam Matimand Mulanchi Shala
Kolhapur, Kasaba Bavada,
Kolhapur Petitioners

Vs.

- | | | |
|---|---|-----------------|
| 1 | The State of Maharashtra,
Through the Secretary,
Social Welfare Department,
Mantralaya, Mumbai – 400 032 | ... Respondents |
| 2 | The District Social Welfare Officer,
Kolhapur, having office at Zilla Parishad,
Nagala Park, Kolhapur | |
| 3 | The Deputy Director (Handicapped Section),
Social Welfare Department,
Maharashtra State, Pune – 411 001 | |
| 4 | The Presiding Officer,
School Tribunal, Kolhapur | |
| 5 | Bajirao Somanna Mane
Aged : 37 years, Occ.: Service
R/o : 1558, E Ward,
Near Laxman Randive, Randive Lane,
Kolhapur | |

Shri N.V. Bandiwadekar, Advocate for the petitioner in WP No.1273/2001 and respondent no.1 in WP No.3074/2009

Mr. Rajdeep Suresh Khadapkar, Advocate for respondent nos.1 & 2 in WP No.1273/2001 and for Petitioner in WP No.3074/2009.

Shri S.D. Rayrikar, Additional Government Pleader for State.

CORAM : SMT. R.P. SONDURBALDOTA, J.

Reserved on : 18th OCTOBER, 2016

Pronounced on : 17th NOVEMBER, 2016

JUDGMENT :

1 This is a common order on the above two petitions between the same parties. Though the orders impugned in the petitions are separate, because they arise out of the same dispute between the parties, it would be convenient to dispose them off together.

2 The first petition filed by the employee under Articles 226 and 227 of the Constitution of India challenges the order dated 21st June, 2000 passed by the School Tribunal, Kolhapur on Miscellaneous Application No.37/1998 in Appeal No.157/1996. The second petition filed after a gap of about 8 years, by the management of the school and the Head-Mistress of the school, challenges the order dated 11th April, 1997 passed by the Deputy Director (Handicapped Section) Social Welfare Department directing reinstatement of the employee with fall back wages. The parties shall hereinafter be referred to by their nomenclature in the first petition.

3 Respondent no.1 runs respondent no.2, a school by name Swayam Matimand Mulanchi Shala, Kolhapur. Respondent no.3 is the District Social Welfare Officer who has control over the schools similar to respondent no.2 school in the district. The conditions of employment, recruitment, etc. of the staff working in the schools like respondent no.2 are governed by Special School Code for Schools of Handicapped, (SSCSH for short) issued by the Social Welfare Department of the Government of Maharashtra. The petitioner was appointed as a Craft teacher on part time basis

with respondent no.2 school, by the appointment order dated 9th June, 1993. Thereafter by the order dated 30th April, 1994 he was appointed on full time basis for the period 13th June, 1994 to 30th April, 1995. By the further order dated 23rd April, 1995, he was appointed for the period 1st May, 1995 to 30th April, 1996. The appointment of the petitioner was approved by respondent no.3 by his order dated 30th March, 1996.

4 Respondent no.2 was initially an unaided school. As such, the petitioner was not paid the salary and allowances in the prescribed pay scale. He was paid a sum of Rs.300/- (Rupees three hundred only) per month. From the year 1995 respondent no.2 started receiving 100% aid from the Social Welfare Department. Thereafter, instead of continuing with his services from the academic year 1996-97, respondent no.2 refused to permit him to work in the school from June, 1996. The petitioner made representations to respondent nos.1 & 2 which were rejected. The service of the petitioner was thus otherwise terminated by respondent no.2.

5 Being aggrieved by the otherwise termination from service the petitioner preferred an appeal being Appeal no.157 of 1996 on 15th June, 1995 to the School Tribunal, Kolhapur along with the application for stay to the termination. The appeal had been filed under Section 9 of Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1997 (MEPS Act, for short). By the interim order dated 16th July, 1996, the School Tribunal directed respondent nos.1 & 2 that they should not act upon the termination of the petitioner and that he should be

allowed to continue on duty till further orders. In compliance of the interim order the Secretary of respondent no.1 issued order dated 20th July, 1996 permitting the petitioner to resume duty in the school. Since then the petitioner started discharging his duties as a Crafts teacher.

6 The appeal preferred by the petitioner was contested by respondent nos.1 & 2. One of the grounds of challenge was that the School Tribunal had no jurisdiction to entertain the appeal because the provisions of the MEPS Act are not attracted to the school. It was contended that respondent no.1 is a society registered for giving relief to the handicapped students and there is a separate Act which has been enacted for the administration of the school for handicapped managed by private institutions under the direct control of the Social Welfare Department of the Government of Maharashtra. Therefore, such schools are not governed by the provisions of the MEPS Act. Consequently, the School Tribunal has no jurisdiction to entertain the appeal. As regards the merits, respondent nos.1 & 2 contended that the petitioner was not duly qualified to be appointed as a Crafts teacher and therefore he was not entitled to be continued in the service. According to these respondents, the Diploma for Drawing acquired by the petitioner was not from a Government recognised institution and his qualification could not be accepted for the purpose of employment in respondent no.2 school.

7 The School Tribunal by its order dated 19th November 1996 answered the issue of jurisdiction in favour of the petitioner

but dismissed the appeal on the ground that the petitioner had failed to prove that he is duly qualified to get continuation of service in the institute.

8 On 22nd January, 1997, the petitioner submitted representation/appeal to the Directorate of Social Welfare, Pune under the provisions of Rule 83(1) of the SSCSH challenging termination of his services. Respondent nos.1 & 2 were served with the notice of that appeal. They, however failed to remain present to contest the appeal. The Deputy Director therefore by his order dated 11th April, 1997 allowed the appeal holding that, the otherwise termination, of services of the petitioner was illegal. He further held that the certificates of the petitioner show that his educational qualification was Government recognised and the same has been acquired through a Government recognised institute. By that order the petitioner was reinstated in service with retrospective effect with a direction for payment of salary and allowances accordingly. Respondent nos.1 & 2, thereafter applied to the Deputy Director of Social Welfare for rehearing of the appeal by giving them an opportunity of hearing. Accordingly, the appeal was once again heard on 11th November, 1997 in the presence of both the sides, and decided on 19th December, 1997 with the same findings as in the earlier order. Thereafter, respondent no.1 issued order dated 10th January, 1998 reinstating the petitioner in service.

9 Strangely, after compliance with the order of the Deputy Director of Social Welfare, one Mrs. Gokhale, the then

Head-Mistress of the school, on her own, on 16th May, 1998, filed Miscellaneous Application No.37/1998 in the disposed off appeal seeking guidance from the School Tribunal as regards the direction given by the Deputy Director of Social Welfare. On the very day, the School Tribunal passed ex-parte interim order and directed that the petitioner be not allowed to discharge duties and he be not paid salary until further orders pending hearing of the application. The order came to be communicated to the petitioner as late as 8th June, 1998.

10 Respondent no.1, management had submitted a representation cum appeal to the Secretary, Social Welfare Department while he was on tour at Kolhapur on 17th May, 1998 against the order of the Deputy Director. The Secretary had initially stayed the order of the Deputy Director, but later when it was realised by him that the order of stay was being used by respondent no.1 in the proceedings before the School Tribunal, he withdrew the order on 6th April, 1999. This resulted into Respondent no.1 passing a resolution in the meeting of the Board of Directors held on 14th June, 1998 that since the Deputy Director had held that the educational qualification of the petitioner was from a Government recognised institution and had ordered reinstatement of the petitioner with retrospective effect, the Management did not find it necessary to seek clarification of the order from any authority. It also recorded that application filed by the headmistress before the School Tribunal was made by her in her individual capacity and no authority had been given to her by the Management. Pursuant to the resolution, the Chairman of respondent no.1 filed a say before the School Tribunal in the

application filed by the headmistress. It was also pointed out to the School Tribunal that the applicant in the application Mrs. Gokhale was no longer the headmistress of the school. Respondent no.1 made it clear that it had no interest in the application filed by the headmistress as it did not require any guidance from the Tribunal and requested the Tribunal to pass appropriate orders.

11 In the meantime, being aggrieved by the order dated 16th May, 1998 of the School Tribunal on the application filed by the headmistress, the petitioner preferred Writ Petition No.5837 of 1999 in this Court. That petition came to be disposed off with an observation that the order impugned therein was only an interim order and hence required no interference at the hands of this Court. The petitioner was then allowed to withdraw the Writ Petition with a direction to the School Tribunal to decide the application expeditiously.

12 The petitioner thereafter filed his say to the Miscellaneous Application No.38 of 1998 to oppose the same. He had contended therein that the application was not maintainable because the provisions of MEPS Act and Rules do not provide for such an application. Also that respondent no.2 had no authority to file the application before the Tribunal, since the management had not authorised her to file the same. The Tribunal, however, on 21st June, 2000, decided that application alongwith Miscellaneous Application No. 36 of 1998 filed in a very Appeal by another teacher in the school, one Mrs. Joshi. By the common

order, the Tribunal held that the order passed by it on 19th November, 1996 in Appeal No.156 of 1996 and Appeal No. 157 of 1996 is still in force and binding on the parties until the order is set aside by a superior court. It, further held that the interim orders in the application will remain in force, until they are set aside by the superior court. This is the order now challenged by the petitioner in his petition. As already mentioned hereinabove, the second petition by respondent no. 2 is to challenge the order dtd. 11th April, 1997 passed by the Deputy Director (Handicapped Section), Social Welfare Department directing reinstatement of the petitioner.

13 From the above narration of facts, it is seen that there are two diametrically opposite orders in the field as regards the employment of the petitioner. One is by the School Tribunal and the other is by the Deputy Director (Handicapped Section), Social Welfare Department. It is obvious that only one of the orders can remain in the field and the other is required to be set aside. For that purpose, the first aspect to be considered is of the rules applicable to respondent no.2 -School. Whether it is governed by MEPS Act or whether it is governed by SSCSH. Section 3(1) of MEPS Act states that the provisions of the Act shall apply to all private schools in the State of Maharashtra, whether receiving any grant-in-aid from the State Government or not, with the exception as contained in Sub-Section (2).

14 It is now to be seen whether respondent no.2 is the private school as contemplated by MEPS Act. For this purpose definitions of "Private School", "School", "recognised", "Director",

“Divisional Board” and “State Board” under that Act must be looked into. The same read as under :

“2(20) “private school” means a recognised school established or administered by a Management, other than the Government or a local authority”.

2 (24)“School” means a primary school, secondary school, higher secondary school, junior college of education or any other institution by whatever name called including, technical, vocational or art institution or part of any such school, college or institution, which imparts general, technical, vocational, art or, as the case may be, special education or training in any faculty or discipline or subject below the degree level”.

2(21) “recognised” means recognised by the Director, the Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards”;

2(6) “Director” means the Director of Education or the Director of Technical Education [or the Director of Vocational Education and Training] [or the Director of Art] as the case may be, appointed as such by the State Government”;

2(6A) “Divisional Board” means the Divisional Board established under the Maharashtra Secondary and Higher Secondary Education Boards Act, 1965”;

2(25) “State Board” means -

(a) the Maharashtra State Board of Secondary and Higher Secondary Education established under the Maharashtra Secondary and Higher Secondary Educational Boards Act, 1965;

(b) the Board of Technical Examinations, Maharashtra State;

(c) the Maharashtra State Board of Vocational Examinations; or

(d) the Art Examinations Committee”;

15 Undoubtedly respondent no.2 is recognised by the Director of Social Welfare. He is not covered by the definition of term Director under the MEPS Act. There is nothing on record to indicate that the petitioner's School is recognised by the Director of Education or Director Technical Education or Director of Vocational Education and Training or the Director of Art appointed by the State Government. It is also not recognised by the Divisional Board or the State Board. Consequently respondent no.2 does not fit into the definition of Private School as under the MEPS Act. Therefore, it would not be governed by the provisions of that Act. Mr. Bandiwadekar, the learned advocate for the petitioner submits that the Full Bench of our High Court in Suryakant Sheshrao Panchal vs. Vasantrao Naik Vimukta Jati Bhatakya Jamati Aadarsh Prasarak Mandal & Others., reported in 2002(5) Bombay Cases Reported, page 95, was required to consider the status of Ashram Schools, i.e. whether Ashram School is a private school and the employees working in Ashram School are amenable to the MEPS Act. The Full Bench held that an Ashram School up to primary level is not covered by the MEPS Act because it is recognised neither by Director of Education nor by the Director of Technical Education nor the Director of Vocational Education and Training nor the Director of Art nor the Divisional Board nor the State Board as defined under the MEPS

Act. In that decision the Full Bench has referred to with approval decision of the Division Bench in Taramati Bafna Blind Welfare and Research Institute, Aurangabad vs. State of Maharashtra (Writ Petition No.2919 of 1991) wherein it was held that a blind school recognised by the Director of Social Welfare was not a private school as contemplated under the MEPS Act.

16 Besides, it is seen that, respondent no.2 though named as a school, is an institution which works for mentally challenged children under the control of Social Welfare Department of the Government. The conditions of employment, recruitment etc. of the staff working in it are governed by a special Code i.e. SSCSH issued by the Social Welfare Department of the Government of Maharashtra. Since that Code is complete in itself and has a separate and independent scheme for redressal of grievances by the employees, the petitioner could not have resorted to the remedy under the MEPS Act. Respondents no.1 and 2 had in fact taken a correct objection to the maintainability of those proceedings of the petitioner. Thus, it was acceptable even to respondents no. 1 and 2 that they are governed by SSCSH and not by the MEPS Act. In the circumstances, the order passed by the School Tribunal under the MEPS Act was clearly without jurisdiction and authority. It must therefore be treated as null and void. Between, the two order passed by the Deputy Director of Social Welfare exercising his authority under the SSCSH will prevail.

17 Mr. Khadapkar then submits that the order of the Deputy Director cannot be sustained on the merits of the

petitioner's claim. He argues that at the time of joining service, the petitioner did not hold the requisite qualifications. This aspect has been considered by the Deputy Director in his order under challenge in the second petition. He is apparently satisfied that the petitioner holds requisite qualifications. The certificates produced by the petitioner were found to be from a Government Recognised Institute. In my opinion, no further enquiry by this Court into the certificates produced is called for.

18 For the abovestated reasons, the petition filed by the petitioner must succeed and the petition filed by respondents no. 1 and 2 must fail. The petitioner is therefore required to be reinstated in service pursuant to the order passed by the Deputy Director, (Handicapped Section), Social Welfare Department i.e. that reinstatement in service with retrospective effect with a direction for payment of salary and allowances. Mr. Khadapkar, however points out that during the pendency of the present proceedings for some period, the petitioner was gainfully employed elsewhere. In that circumstance, the petitioner will not be entitled to payment of back-wages and allowances from respondents no. 1 and 2 for the period of his employment elsewhere. With this modification, the Writ Petition No.1273/2011 is allowed and Writ Petition no.3074/2009 is dismissed.

(Smt. R.P. SondurBaldota, J.)