

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 4182 OF 2005

1. Vijay s/o Sadashiv Sonar,
Age : 36 years, occup.: Service,
Assistant Teacher,
N. G. Bagul High School,
Songir, Tq. and Dist. Dhule
2. Hemkant s/o Shankar Vispute,
Age : 37 years, occup : Service,
Assistant Teacher,
N. G. Bagul High School,
Songir, Tq. and Dist. Dhule
3. Gokul s/o Jairam Jagtap,
Age : 36 years, occup.: Service,
Assistant Teacher,
N. G. Bagul High School,
Songir, Tq. and Dist. Dhule
4. Ravindra s/o Shantilal Nhavalade,
Age : 36 years, occup : Service,
Assistant Teacher,
N. G. Bagul High School,
Songir, Tq. and Dist. Dhule
5. Bhaskar s/o Hiranman Ahire,
Age : 44 years, occup : Service,
Assistant Teacher,
N. G. Bagul High School,
Songir, Tq. and Dist. Dhule .. Petitioners

versus

5. The State of Maharashtra,
through its Secretary,
School Education Department,
Mantralaya, Mumbai - 32

2. The Director of Education (Secondary)
Maharashtra State, Pune
3. The Divisional Commissioner,
Nashik Division, Nashik.
4. The Dy. Director of Education,
Nashik Division, Nashik
5. The Education Officer (Secondary),
Zilla Parishad, Dhule
6. The Administrator,
N. G. Bagul Madhyamik Vidyalaya,
Songir, Tq. and Dist. Dhule
7. The Head Master,
N. G. Bagul High School,
Songir, Tq. & Dist. Dhule .. Respondents

WITH
WRIT PETITION NO. 4680 OF 2005

01. Shri Ramesh Hiralal Gujar,
Age : 40, Occupation - Assistant Teacher,
R/o Songir Taluka and District Dhule,
02. Chandrashekhar Hiralal Bagul,
Age : 40 years, occupation : Librarian,
R/o Songir Taluka and District Dhule,
03. Bherulal Hiralal Bagul,
Age : 42 years, Occupation - Clerk,
R/o Songir, Taluka and District Dhule,
04. Dilip Chandulal Vispute,
Age : 32 years, occupation - Peon,
R/o Songir, Taluka and District Dhule .. Petitioners

versus

01. The State of Maharashtra
(Education Department),
Mantralaya, Mumbai - 32
 02. The Director of Education,
State of Maharashtra,
Central Building, Pune-411001
 03. The Revenue Commissioner,
Nasik Division, Nasik Road,
Nasik
 04. The Deputy Director of Education,
Nashik Division, Commissioner
Office, Nasik Road, Nasik
 05. The Education Officer (Secondary),
Zilla Parishad, Dhule
 06. The Secretary,
Songir Vidya Prasarak Mandal Songir,
Taluka and District Dhule,
The Head Master,
N.G. Bagul High School,
and Junior College, Songir,
Taluka and District Dhule
 07. The Head Master,
N. G. Bagul High School and Junior
College, Songir, Taluka and District Dhule
 08. The President,
Songir Vidya Prasarak Mandal,
Songir, Taluka and District Dhule
- ... Respondents

WITH
WRIT PETITION NO. 5089 OF 2005

01. Kailas Bhaskar Dusane,
Age - 35 years, occupation :
Assistant Teacher,
R/o Songir, Taluka & Dist. Dhule,
02. Suresh Bhika Chaudhari,
Age : 37 years, occupation :
Assistant Teacher,
R/o Songir, Taluka and District Dhule
03. Shivaji Bhimrao Patil,
Age - 39 years, Occupation :
Assistant Teacher,
R/o Songir, Taluka & District Dhule .. Petitioners

versus

01. The State of Maharashtra,
02. The Director of Education,
State of Maharashtra,
Central Building, Pune-411001
03. The Revenue Commissioner,
Nasik Division, Nasik Road,
Nasik
04. The Deputy Director of Education,
Nasik Division, Commissioner Office,
Nasik Road, Nasik
05. The President,
Songir Vidya Prasarak Mandal, Songir,
Taluka & District Dhule
06. The Head Master and Principal,
N. G. Bagul High School and Junior
College, Songir, Taluka & District Dhule .. Respondents

Mr. S. R. Barlinge, Advocate for petitioners in writ petition no. 4182 of 2005

Mr. M. C. Jain, Advocate for petitioners in writ petitions no. 4680 of 2005 and 5089 of 2005

Mr. S.K.Tambe, Assistant Government Pleader for respondents no. 1 to 5 in writ petition no. 4182 of 2005 and 4680 of 2005 and respondents no.1 to 4 in writ petition no. 5089 of 2015

Mr. S. B. Pallod, Advocate for respondent no. 6 in all three writ petitions.

CORAM : SUNIL P. DESHMUKH AND
SANGITRAO S. PATIL, JJ.

Date : 12th September, 2017

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

1. This group of three writ petitions concerns orders passed on 08-06-2005 by the Education Officer, Zilla Parishad, Dhule addressed to the administrator/ Secretary/President of respondent no. 6 – institute, and order dated 06-07-2005 by the Deputy Director of Education, Nasik Division, Nasik, whereunder approval to the appointments of the petitioners has been purportedly cancelled with further direction to discontinue services of the petitioners, their appointments being in breach of Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981 ("The MEPS Rules" for brevity) and to report back the compliance. Consequently, under purported orders dated 13-06-2005 petitioners in aforesaid first two writ petitions, and order dated 13-07-2005 the petitioner in third writ petition, who were appointed and working since 1994-95 were communicated that their appointments were without following due procedure and in breach of sub-rules (8) and (9) of Rule 9 of the MEPS Rules and therefore were being discontinued pursuant to aforesaid orders dated 08-06-2005 and 06-07-2005 passed by Education Officer and Deputy Director of Education respectively.

2. The petitioners question propriety, legality and validity of aforesaid orders passed by Education Officer, Deputy Director of Education and the resultant orders by the employer of the petitioners.

3. Learned counsel Mr. Barlinge appearing on behalf of the petitioners in Writ Petition no. 4182 of 2005 and Mr. Jain for petitioners in Writ Petitions no. 4680 of 2005 and 5089 of 2005 contend that the petitioners were selected by duly constituted school committee by following due procedure as

prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1978 ("The MEPS Act" for brevity) and the MEPS Rules and were accordingly appointed. Their appointments and continuations had also been accorded permanent approval by concerned Education Officer then.

4. Learned counsel for petitioners further refer to that around 2004, one private person had on the *Lokshahi Din* (Democratic day) purportedly complained to the Collector, of improper procedure had been employed in appointments of the petitioners and that the Collector then had directed the education department to look into the matter and thereafter purported proceedings had been initiated for alleged irregularities in the appointments of the petitioners. They submit, appointments of the petitioners have been made by following due procedure, may be that the management while making appointments had faltered in requesting the Education Officer for furnishing list of surplus teachers or, for that matter, about advertisement, yet it is not a case wherein it can be said that the petitioners were not qualified and/or eligible when they were appointed and they had undergone due procedure of selection by school committee as required

under the MEPS Act and the Rules thereunder. There is no dispute over the same and as such, claimed irregularities ten years down thereafter would not dislodge petitioners from continuous employment nor appointments made in 1994-95.

5. Learned counsel for petitioners further refer to that the petitioners had become permanent employees in due course of time and their permanency was accorded approval by Education Officer as required under the MEPS Act and the MEPS Rules and as such, they being permanent employees, their services could not have been brought to an end under the proceedings as adopted by the respondents passing the orders impugned in writ petitions. They submit, as a matter of fact, the MEPS Act, particularly, Section 4, refers to that services of a permanent employee could not be brought to an end without following due procedure therefor as prescribed under the Act and the Rules concerned. They submit that it is evident, no procedure as prescribed under the MEPS Act and the Rules thereunder had ever been followed while purporting to terminate their services nor there is any personal ground against the petitioners for alleged discrepancy in following procedure while appointing them nor had they played any role in the same. The so called irregularities cannot at all be,

ought not be and should not be attributed to them. It is further submitted that the grievance with regard to non following of proper procedure has been made ten years down as a outcome of a dispute or complaint by a private individual and not for the reasons attributable to petitioners. Thus, according to learned counsel, neither on facts nor on legal grounds the petitioners can be attributed any role having been played by them in their appointments.

6. Further, learned counsel refer to that while petitions were admitted, interim reliefs were granted and thus their services have been continued and they have been serving for more than twenty two years. One of the petitioners has already superannuated and majority of them are on the verge of superannuation. In such a case, it would be unfair and improper to affect the petitioners for the so called allegations in respect of breach of following procedure while their appointments were made.

7. Learned counsel for the petitioners place reliance on a decision of the division bench of this court in the case of *Jagannath J. Joshi v. North Mah. University*, 1994 (4) Bom.C. R. 123 wherein, according to the learned counsel, it has been held

that an approval granted would hardly be amenable to be disturbed for the reasons not attributable to the petitioners. Learned counsel further purport to point out that aforesaid decision still holds the field and has been often referred to, relied on and followed subsequently.

8. It has been contended on behalf of the petitioners that dependencies on them have been accrued and increased during this period. Petitioners' principal source of income happens to be their employment in the school and on disruption in their services, their families and dependents would be exposed to grave realities of life and, as such, contend that even on humanitarian ground the petitions deserve to be allowed.

9. Learned Assistant Government Pleader, on the other hand, purports to support the orders passed, contending that while law prescribes a particular procedure to be followed in making appointments, it has emerged that the appointments of the petitioners had been made without advertisement, without taking into account reservations of the posts or, for that matter, even consulting the Education Officer in respect of surplus teachers. He, therefore, contends that having

regard to the same, impugned orders can seldom be faulted with.

10. He refers to and relies on a decision of the Division Bench of this Court in the case of *Priyadarshini Education Trust vs. Ratis Bano*, 2007 (6) Mh. L. J. 667, submitting that may be the Rules in the case of unreserved post may not be strictly followed, however, having regard to paragraph no. 11 of said judgment, it would be necessary to consider that an advertisement in respect of unreserved post is contemplated as in the cases of reserved vacancies.

11. The proceedings in question are initiated on a complaint by a third person alleging irregularities in appointments of the petitioners. In the present case, there does not appear to be any dispute over that the petitioners had been selected and appointed in 1994-1995 by duly constituted school committee as required under the MEPS Act and the MEPS Rules; initially their appointment were on probation for a period of two years and on completion of probationary period their appointments had been granted approval permanently by the concerned Education Officer. Breaches as are sought to be alleged are with respect to advertisement, seeing list of surplus teachers

pursuant to Section 5(2) of the MEPS Act and backlog. In such a case, it may be relevant to consider that the omission cannot be attributable to the petitioners. There is no dispute over as well that the petitioners have been permanent employees under the provisions of the Act and the Rules and that for removal of permanent employee, procedure has been prescribed under the MEPS Rules which is obligatory, without which their removal is not possible.

12. Observations by Division Bench in *Priyadarshini's* case (supra) appear to have been made on different set of facts. Further, the decision in the case of *Jagannath Joshi* (supra), to a fairly large extent, supports the petitioners in respect of approvals granted to their appointments. It does not appear to be possible to remove in the given circumstances of the case, more so, while the officer of the same peer – Deputy Director of Education has once referred to under communication dated 08-03-2004 to the Divisional Commissioner, Nashik Division which is at paperbook page 68 of Writ Petition No. 4182 of 2005 that petitioners had acquired status of permanent employees and therefore no orders in respect of their removal can be passed by the administrator. Intriguingly, officer of the very same rank (Deputy Director of

Education) under subsequent communication dated 25-11-2004 (paperbook page 89 writ petition no. 4182 of 2005) purported to communicate the Education Officer that since eleven petitioners have been appointed without advertisement and without seeking list of surplus teachers, approvals granted to appointments of eleven teachers may be cancelled/revoked after hearing them, Head Master and the Administrator. It appears, this subsequent communication does not take into account relevant substantive provisions under the MEPS Act and the Rules thereunder for removal of such permanent employees. As such, said communication dated 25-11-2004 and directions contained in the same to the Education Officer, keeping in view provisions of MEPS Act and Rules, Section 4 and Rule 32 onwards and decision in the case of Jagannath Joshi (*supra*) would be incompatible with statutory provisions for removal and as such unsustainable.

13. In the circumstances, having regard particularly to the passage of time and that the petitioners are due to retirement in short span of time on superannuation and also that they can hardly be attributed with any role in the entire process concerning their appointments, we do not think that it would

be proper for us to allow disturbance and interruption in the long rendered services.

14. Impugned orders in all three writ petitions, as such, stand set aside. Writ petition no. 4182 of 2005 stands granted in terms of prayer clauses (A) and (B). Writ petitions no. 4680 of 2005 and 5089 of 2005 stand granted in terms of prayer clauses (a) and (b).

15. All the three writ petitions stand disposed of. Rule made absolute in aforesaid terms.

SANGITRAO S. PATIL
JUDGE

SUNIL P. DESHMUKH,
JUDGE

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