

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS (L) NO. 201 OF 2017
WITH
CHAMBER SUMMONS (L) NO. 202 OF 2017
IN
WRIT PETITION (L) NO. 1541 OF 2017**

Shantaram Laxman Shelke & Anr. ... Applicants

In the matter between

Shikshak Bharati & Ors. ... Petitioners

Vs.

The State of Maharashtra & Ors. ... Respondents

**WITH
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5989 OF 2017**

Sanjay B. Satpute ... Petitioner

V/s.

The State of Maharashtra & Ors. ... Respondents

Mr. Rajiv Patil, Senior Counsel with Mr. Milind Sawant & Mr. Sachin Punde for the Petitioners.

Mr. Kedar Dighe, AGP for State – Respondents Nos. 1 to 4.

Mr. Satyajit Rajeshirke, Applicant in CHSW(L) No. 201 of 2017.

Mr. Prabhakar Jadhav, for the Applicant in CHSW(L) No. 202 of 2017.

**CORAM : B.R. GAVAI AND
RIYAZ I. CHAGLA, JJ.
DATE : 16 JUNE 2017.**

P.C.:-

1. The Petitioners have approached this Court being aggrieved by portion which has been reproduced thereafter Clause No.4 of the Government Resolution (GR) dated 17th May 2017. Since the facts and the questions of law are common in both the Petitions they are heard together and disposed of by this common order.

2. The Petitioners Nos.1 and 2 in Writ Petition No. 1541 of 2017 are the Associations of the teachers, whereas Petitioners Nos. 3 & 4 in the present Petition as well as Writ Petition No. 5989 of 2017 are teachers working in the night schools as well as the days schools.

3. The Petitioners are aggrieved with sub clause (1) (4) of the GR and particularly the underlined portion thereof. For the sake of convenience, we are reproducing hereto translated versions thereof.

4. General terms:-

1) At present the number of teachers and non-teaching staff members working in two night schools respectively is 1010 and 348, totalling to 1,358. The average annual expenditure incurred on their salary is Rs.34 Crores and 50 lakhs. Therefore, the expenditure being incurred on salary of teachers and non-teaching staff members who are working in two

night schools can be avoided if they are removed from service. In this regard following points have been taken into consideration:

A) Teachers and non-teaching staff members working in two schools are causing considerable financial burden on the government.

B) Government is also incurring expenditure on the salary of teachers working in day schools and who have been declared surplus. The government is compelled to pay such teachers, although no work is available for them. Therefore, such surplus teachers can be accommodated on vacant posts in night schools temporarily till the time they are absorbed in regular schools and the financial burden caused by employees working in two schools can be reduced.

C) It is necessary to determine service protection to teachers and non-teaching staff members working only in one night school.

D) As per section 4(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 teachers and non-teaching staff members working full-time in any aided or unaided day schools cannot work in second employment.

Taking into consideration all the above aspects, henceforth, teachers and non-teaching staff members working in any aided or unaided schools cannot work in second employment.

4. In a nutshell the effect of aforesaid clause of GR is that such of the teachers who are employed as full time teachers in day schools would not be entitled to continue on the second employment in the night schools.

5. We have heard Shri Rajiv Patil, learned Senior Counsel and Mr. Pitre, learned counsel for the Petitioners. Shri Dighe and Mr. Patel, both appearing on behalf of Respondent-State, Mr. Rajeshirke and Mr. Prabhakar Jadhav, learned counsel for the intervenors.

6. Shri Patil, learned Senior Counsel appearing for the Petitioner submits that as a matter of fact reference to sub section 5 of Section (4) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, hereinafter referred as **(M.E.P.S. Act)**, the impugned GR itself shows that it is issued without application of mind. The learned senior counsel submits that the rights are accrued in favour of Petitioner in as much as the Petitioners have been appointed as regular teachers in the day schools as well as in the night schools in accordance with provisions of The

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 hereafter referred as **M.E.P.S. Rules**. He submits that the said GR which is contrary to the provisions of the Rules 21, 22 (g) and Sub Clause (b) of clause (1) of Rule 23 of the MEPS Rules, is liable to be set aside as the GR which is in the nature of administrative instructions cannot have a superseding effect over the statutory Rules. The learned senior counsel submits that, though the night school teachers are receiving salary from the grant in aid from the government, their appointments are made by the management and as such there is a contract between employer and employees – management and which cannot be said at naught by the said GR. The learned counsel therefore submits that the Petitions deserves to be admitted and the GR deserves to be stayed.

7. Mr. Dighe who leads the arguments on behalf of the State relying on the judgment of the larger bench of this Court in the case of *Chandrakant Sakharam Karkhanis & Ors. Vs. State of Maharashtra & Ors*¹. submits that the circulars, orders and GRs, issued by the State Government which are duly authenticated by a signature under the endorsement by order and in the name of the Governor of Maharashtra and are intended to be applicable straight away and issued in exercise of the powers conferred under the

¹ 1976 BCI 85.

proviso to Article 309 of the Constitution, will have the same effect as that of the Rules. The learned AGP further submits that taking into consideration the factual scenario that the government is required to pay salaries of many surplus teachers in the State, though it is not in a position to provide work to them, has taken a policy decision to prohibit the regular teachers working in the day school to work in the night schools. The learned AGP further submits that under the Right to Education Act, the teacher is required to spend at least 45 hours in a week for imparting teaching to the students which makes around 9 hours a day. It is submitted that if the teachers put in 9 hours a day teaching the students in a school, it will not be possible for him to put again 3 and half hours in night schools and effectively educate children in the night schools. It is submitted that taking into consideration all these aspects the State Government has taken a considered decision to prohibit the regular teachers working in the day school from working in the night schools.

8. Mr. Rajeshirke appearing for intervenors who are the part time workers working in night schools states that on account of the full time teachers working in the day school also working in the night schools, the part time teachers working in the night schools are deprived of becoming a full time teacher and are not getting benefits of a full time teachers, though they would have otherwise been entitled to.

He therefore, supports the government decision.

9. Mr. Prabhakar Jadhav, learned counsel appearing on behalf of the intervenors who are the unemployed graduates states that more than 6 lakhs B.Ed graduates are without employment on one hand and on the other hand the teachers working in the night schools are getting the double benefits. He also therefore, supports the government decision.

10. In so far as the reliance placed by the learned counsel Mr Dighe in the case of *Chandrakant (Supra)* is concerned, we do not find that a reference to the said case would be necessary in the facts of the present case, in as much as in the said case the larger Bench of this Court considered exercise of powers by the State Government under the provisions of a Article 309 of the Constitution of India. Such is not the case herein. It need not be stated that it is more than a settled law that the administrative instructions cannot travel beyond the scope of the statutory rules or the statutory rules cannot travel beyond the parent statute.

11. The question therefore herein as to whether there is any conflict in the GR and any of the statutory rules or not. In so far as Sub Section 5 of the MEPS Act is concerned, it refers to prohibition of an employee working in the private

coaching class. In that view of the matter we find that the said would not be applicable to the facts of the present case. We are of the considered view that it would be neither be helpful to Petitioners nor to the Sate. However, merely by its reference, in our view the GR cannot be held to be invalid, if it is found to be otherwise valid in law.

12. Shri Patil, learned senior counsel for the Petitioners heavily relied on Rules 21, 22(g) and 23 (1) (b) of the MEPS Rules. Rule 21 deals with the workload and as such we do not find it necessary to refer to the said Rule. We reproduce here clause (g) of Rule 22 and clause b of Rule 23 which reads thus:-

22(g):- Full time teaching staff shall not accept part-time employment on payment or for any consideration in another education, cultural or literary institution without obtaining prior written permission from the authorities of the school in which he is employed on full time basis. Such work shall, however, be limited to two hours per day including private tuitions. In respect of a full time non-teaching employee desirous of working in Night Schools, he shall be so allowed for the entire working period of the Night School.

23(1) (b):- A teacher shall not do private tuition for more than two hours a day or teach more than five pupils during the whole period of tuition in the day. The expression "five pupils" means the same five pupils and not batches of pupils. Day school

teachers working in Night Schools may work for full duration of the Night Schools instead of two hours as mentioned in this rule provided they do not undertake private tuition.

13. It can thus be seen that the Rule 22 deals with the Duties and Code of Conduct, whereas Rule 23 deals with private tuitions. What is provided by clause (g) of Rule 22 is that the full time teaching staff shall not accept part time employment on payment or for any consideration in other education or cultural institution without obtaining prior permission from the authorities of an institution in which he is employed on full time basis. There is a restriction of two hours for such an employment. However, the restriction of two hours is exempted in so far as the night schools are concerned. Similarly, in so far as Rule 23 which deals with private tuitions is concerned, there is restriction on a teacher for private tuitions for more than two hours a day and to teach more than five pupils during a day. However, the said restriction is also exempted when a day school teacher works in a night school.

14. It could thus be seen that what has been provided by these rules is a restriction for an employment in respect of full time teachers working in the school to do the work of private tuitions. In certain cases the private tuitions are permissible up to two hours a day and five pupils in a day.

However, this ceiling is exempted in so far as the teachers employed in the night schools are concerned. It could thus be seen that the said provisions only grants exemption of a outer limit of two hours for doing private tuitions to the teachers who are employed in day school, if they are working in the night school.

15. We do not find that any right is created by any of the provisions under the said Rules in the teachers working in a day school to work in a night schools.

16. We therefore do not find that there is any conflict in the GR and any of the Rules on which Mr Patil has relied.

17. If that be so, then the scrutiny of the GR would be restricted only within the parameters that are available whilst scrutinizing a policy decision. By now it is settled law that a the policy decision of the State can be interfered only if it is found to be patently arbitrary, unreasonable, discriminatory, or is taken with *malafide* intention to suit a particular person or class of persons.

18. We have perused the original file which was produced before us. The perusal of file reveals that the State has undergone the detailed decision making process before arriving at the decision which is formulated in the GR. Not

only that it appears that this issue has been pending for more than a decade before the State and various committees and sub committees were formed. The views of Member of Maharashtra Legislative Council representing teachers apart from Union teachers association were also taken into consideration by State Government prior to arrive at a decision. The perusal of the file reveals that the State has taken into consideration that it is required to spend a huge amount on surplus teachers who are required to be paid salaries without undertaking any work from them. The State has taken into consideration that by deciding not to permit the full time day teachers working in night schools who are paid twice from the government grants, a substantial number of surplus teachers can be accommodated in the night schools and there can be a substantial saving of the government exchequer. It would be relevant to refer to the data produced in a Affidavit in Reply filed by Mr Sanjay Mane, Under Secretary to the Government of Maharashtra.

Total number of teachers drawing salary from the State Government / aid	Surplus teachers	Annual expenses on surplus teachers	Annual expenses on teachers working twice. (Only on salary for night teaching)	Number of night schools	Number of students studying in night schools
Approx	Approx.	Approx.	Rs.34.50	176	Approx.

Rs. 7 lacs	3,500	Rs.150 Crores	Crores		32,000
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19. We find that the reliance placed by Mr. Rajeshirke on the judgment of Apex Court in the case of *Malpe Vishwanath Acharya & Ors. vs. State of Maharashtra & Anr.*² is well merited. If the State has taken a decision which ensures that instead of paying the same set of teachers twice, and also number of surplus teachers without undertaking any work from them, it shall prohibit the full time teachers from working in night schools and absorb the surplus teachers in night schools and rationalize the funds; by no stretch of imagination the said decision can be said to be either arbitrary or irrational. As observed by the Apex Court in the case of *Malpe(Supra)* the law is required to keep balance between the rival interest of the parties. On one hand, the State was required to deal with the interest of the teachers who are getting two salaries and on the other hand the State is required to pay huge amounts to the surplus teachers, who are not required to work and on the third hand there are lakhs of B.Ed graduates, who are without any employment, waiting in the queue to get employment.

20. Not only this but we find that the contention as advanced by the learned AGP that the full time teachers

² (1998) 2 Supreme Court Cases 1.

working in the day school also would not be in position to effectively discharge duties in the night school also cannot be said to be unreasonable or incorrect. Mr. Patil, learned Senior counsel has been fair enough to state that most of the night schools are either in Mumbai or Pune. It is a common knowledge that on an average travelling distance in Mumbai one way is around two hours. If teacher works in a day school for nine hours and spends four hours on travelling will be putting in 13 hours for the day shift. If 3 and half hours are added to them in the night shift and four hours for travelling, it will make up to 7 and half hours. It will lead to a situation that the teacher in a city like Mumbai would be around 20 and half hours out of home. The Courts cannot be away from the ground realities, while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. In that view of the matter, we do not find that the policy decision of the State can be said to be arbitrary or *malafide* to warrant interference.

23. In that view of the matter, we find that no interference is warranted in the government resolution, hence the Writ Petitions are dismissed.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI J.)