

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

WRIT PETITION NO. 5481 of 2018

1. The Secretary,
Shri Gujarathi Samaj Vikas Mandal,
Kharakuva Taluka and District Aurangabad – 431001
 2. The Head Master,
Shri Gujarathi Vidya Mandir,
Kharakuwa, Aurangabad
Taluka and District Aurangabad - 431001
- ...Petitioners**

VERSUS

1. Smt. Nilima Shashikant Patel,
age 45 years occupation service
R/o Plot No. 17, Vyankatesh Colony,
near Chetak Ghoda Chowk, Garkheda
Taluka and District Aurangabad.
 2. The Education Officer (Secondary),
Zilha Parishad, Aurangabad
Taluka and District Aurangabad.
- ...Respondents**

*Mr Sanjay R. Kolhare, Advocate for petitioners.
Mr Vijay B. Garud, Advocate for respondent No.1.*

CORAM : SUNIL P. DESHMUKH, J.

DATE : 14th August, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned Advocates for appearing parties finally with consent.
2. Respondent No.1-employee aggrieved by her transfer

as Assistant Teacher from the post of Supervisor has been before the School Tribunal, Aurangabad, under section 9 of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (hereinafter referred to as the "MEPS Act" for short). Before written statement has been filed in the proceedings, an application on behalf of management-petitioners herein has been filed questioning jurisdiction of the Tribunal to entertain, try and dispose of the appeal contending that supervisory post is not a different cadre and the person concerned belongs to the cadre of the Assistant Teacher under category 'C'. It is being submitted that since there is no cadre change, it would not be a case either of super-cession or reversion for the person who had been working as supervisor and was posted as Assistant Teacher. On the whole, it is contention that subject matter-grievance would not fall for consideration in appeal under section 9 of the MEPS Act.

3. Aforesaid application has been countered on behalf of respondent No.1-employee contending that it is a post which concerns academic and administrative duty like the posts of Vice Principal, Head Master, Head Mistress, Assistant Teacher, Assistant Head Master, Assistant Administrator and Superintendent. Rule 5 of the MEPS (Conditions of Service) Rules, 1981 has been referred to show that post of Supervisor shall be filled in from amongst the

permanent staff strictly on the basis of seniority-cum-merit and seniority shall be decided on the basis of guidelines given in Schedule-F.

4. The Tribunal with reference to aforesaid argument had considered that prima facie it would not be firmly stated that the grievance made by respondent No.1-employee would not fall for consideration under section 9 of the MEPS Act. The Court has further considered that a decision of this Court in case of *Sudhakar Shyamrao Choudhari Vs. The Secretary, Saraswati Gramin Shikshan Sanstha and others*, reported in 2014(5) ALL MR 267, wherein it has been considered that it is desirable that all issues are framed and thereafter preliminary issue sought to be raised on behalf of petitioners, be tried and decided alongwith the issues on merits letting opportunity for the parties to lead evidence in respect of their claims. The Tribunal, as such, has considered that matter will have to be considered on merits by letting opportunity to parties. Although learned counsel for petitioners purports to contend that it is not a case of demotion and in support of the same he relies on the case of *Smt. Pushpanjali Subodha Shenvi Vs. Nagrik Seva Mandal and others* reported in 2017(5) ALL MR 72, particularly, emphasizing paragraphs No. 75 and 76 therefrom, yet, it appears that in order to appreciate matter and grievance of respondent No.1-employee, the parties shall have opportunity to deal with the matter on merits and evidence.

5. In the circumstances, challenge to impugned order is not being entertained. The writ petition is disposed of.

6. Needless to refer that observations hitherto in the impugned order and in this order are at interlocutory stage and shall not influence decision making on the merits. It is further desirable that appeal filed by respondent No.1-employee be proceeded with expeditiously and the Tribunal may dispose of the same as early as possible, preferably within a period of one year from the date of receipt of writ of this order.

(SUNIL P. DESHMUKH)
JUDGE.

Madkar