

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6192 OF 2018

Smt. Gandhali Dinkarrao Kadam .. **Petitioner**
Versus
The State of Maharashtra and others .. **Respondents**

Mr. D. J. Choudhary, Advocate for the Petitioner.
Mr. V. S. Badakh, A.G.P. for Respondent No. 1.
Mr. Vitthal M. Chate, Advocate for Respondent
No. 2.
Mr. Prashant D. Suryawanshi, Advocate for
Respondent No. 3.
Mr. Sahebrao A. Nagarsoge, Advocate for Respondent
No. 4.

CORAM: S. V. GANGAPURWALA &
R. G. AVACHAT, JJ.

DATE: 17th DECEMBER, 2018

PER COURT :

1. The petitioner assails the communications thereby communicating the petitioner to accept the post of Headmistress or else face enquiry.

2. Mr. Choudhary, learned counsel for the petitioner submits that as per Rule 3 (3) of the Maharashtra Employees of Private Schools

(Conditions of Service) Rules, 1981 (*hereinafter referred to 'MEPS Rules'*), it is the right of the employee to refuse the post of the Headmaster / Headmistress, on that ground the enquiry cannot be initiated.

3. Mr. Suryawanshi, learned counsel for respondent no. 3 submits that there are three teachers and none of the teacher is ready to accept the said charge of the post of Headmaster / Headmistress. The petitioner is the seniormost and is bound to accept the charge. Even representation is given by the institution to the Education Officer seeking directions against the petitioner to accept the charge.

4. We have heard the learned counsel for the Education Officer also.

5. It is not necessary that the seniormost teacher should accept the charge of the post of Headmaster / Headmistress. Under Rule 3 (3) [explanation], if the seniormost teacher refuses

to accept the post of the Headmaster / Headmistress, then the said teacher loses right to claim the post of the Headmaster / Headmistress. The petitioner is not ready to accept the post of Headmaster / Headmistress. The claim of the petitioner for the post of Headmaster / Headmistress would be disregarded and the management would be entitled to appoint other seniormost candidate, and if other teachers are also not ready to accept the post of Headmaster / Headmistress, then the management has right to appoint Headmaster / Headmistress through nomination as per Sub-rule 5 of Rule 3 of the MEPS Rules.

6. The institution may approach the Education Officer seeking permission to fill in the post of Headmaster / Headmistress by nomination, if none of the teachers working with the management and qualified to be appointed as Headmaster / Headmistress are not taking up the responsibility of discharging duties of Headmaster /

Headmistress. If such an application is received from the management, the Education Officer shall decide it within a period of four (4) weeks from the date of receipt of the application.

7. There are no other allegations leveled against the petitioner except that the petitioner is not accepting the post of Headmistress. In view of that, the impugned communications are quashed and set aside.

8. The writ petition accordingly stands disposed of. No costs.

[R. G. AVACHAT, J.] [S. V. GANGAPURWALA, J.]

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