

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.6427 OF 2014

Shri Nageshwar Shikshan Prasarak
Mandal, Through its President,
Shri Shivaji s/o Shankar Shinde,
Age-65 years, Occu:Retired Engineer
R/o-Undirkhede, Tq-Parola,
Dist-Jalgaon.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
School Education Department,
Mantralaya, Mumbai,
- 2) The Education Officer (Secondary),
Zilla Parishad, Jalgaon,
- 3) Shri Sambhaji Waman Patil,
Major, Occu:Service as
Assistant Teacher,
Jagruti Vidyalaya, Hambardi,
Tq-Yawal, Dist-Jalgaon,
- 4) The Headmaster,
Shri Nageshwar Shikshan Prasarak
Mandal, Secondary School,
Undirkhede, Tq-Parola,
Dist-Jalgaon.

...RESPONDENTS

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Mr.S.R. Barlinge Advocate for Petitioner.
Mr.P.N. Kutti, A.G.P. for Respondent Nos.1 & 2.
Mr.U.R. Awate Advocate h/f. Mr. S.B. Talekar
Advocate for Respondent No.3.
Mr.K.M. Nagarkar Advocate for Respondent No.4.

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**CORAM: S.S. SHINDE AND
S.M. GAVHANE, JJ.**

DATE OF RESERVING ORDER : 15TH JANUARY, 2018

DATE OF PRONOUNCING ORDER: 7TH FEBRUARY, 2018

ORDER [PER S.S. SHINDE, J.] :

1. This Petition under Article 226 of the Constitution of India, is filed with following substantive prayers:

"A) By a writ of certiorari, or any other appropriate writ, or order or directions in the like nature, the impugned letter dated 07.06.2014, issued by the Education Officer (Secondary), Zilla Parishad, Jalgaon, may kindly be quashed and set aside.

B) By a writ of mandamus, or any other appropriate writ, or order or directions in the like nature, the Respondent No.2 - Education Officer (Secondary), Zilla Parishad, Jalgaon, may kindly be directed to allow the Petitioner to fill up the vacancy of a teacher by appointing a candidate belonging to Scheduled Caste category."

2. It is the case of the Petitioner that it is a duly registered society and a public trust which runs a secondary school, namely, Madhyamik Vidyalaya, Undirkhede wherein total four teachers are working. It is submitted that Respondent No.3 -Shri Sambhaji Waman Patil, had illegally got himself appointed in the said school and by misleading the School Tribunal, he obtained some orders. Ultimately, the Division Bench of this Court vide its Judgment and order dated 26th July,

2010, disposed of Writ Petition No.4205 of 1994 with Writ Petition Nos. 5410 of 1996 and 907 of 1997. This Court in the said order, observed that the appointment of Respondent No.3 was not made as per the rules and ultimately to meet the equities, directed the Education Officer to declare Respondent No.3 as a surplus teacher and directed him to be accommodated in some other school in Jalgaon District. Respondent No.3 was then appointed/absorbed in Jagruti Vidyalaya at Hambardi, Tq-Yawal, Dist-Jalgaon.

3. It is further the case of the Petitioner that in the year 2014, one Shri Ramesh Ambadas Jagtap, a teacher having qualification of B.A. B.Ed.(English) attained the age of superannuation on 31st May, 2014, and as a result one vacancy became available in the Petitioner school. However, as per the roster the said vacancy is for the candidate belonging to Scheduled Caste category. The Headmaster of the school, by its

letter dated 10th May, 2014, informed the Petitioner to take steps for filling up the said vacancy by appointing the candidate belonging to Scheduled Category. Accordingly, the Petitioner submitted an application to the Education Officer (Secondary), Zilla Parishad, Jalgaon requesting him to allow the Petitioner to advertise the said post of Scheduled Caste category. The Education Officer, instead of permitting the Petitioner to fill up the vacancy by appointing a candidate from Scheduled Caste category, by impugned letter dated 7th June, 2014, has directed the petitioner/institution to repatriate Respondent No.3 on the said post. Being aggrieved by the said letter dated 7th June 2014, the Petitioner has filed this Petition.

4. Learned counsel appearing for the Petitioner, referring to the grounds taken in the Petition submits that Respondent No.3 was not declared surplus as per the provisions of Rule 26

of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (For short "MEPS Rules, 1981) but this High Court directed the Education Officer to absorb Respondent No.3 in some other school. Therefore, the Education Officer cannot compel the Petitioner to repatriate Respondent No.3 on the vacant post and the impugned letter dated 7th June, 2014 deserves to be quashed and set aside. It is further submitted that the vacancy as per the roster, is required to be filled in by appointing a candidate belonging to Scheduled Caste category, and in such circumstances it would not be advisable to accommodate Respondent No.3 on the reserved post. Hence, it is prayed that the Writ Petition may be allowed.

5. On the other hand, learned A.G.P. appearing for the State, referring to the earlier reply filed on behalf of Respondent No.2 on 4th September 2014 and another reply dated 4th august,

2015, submits that as per the provisions of Rule 26 of the MEPS Rules, 1981, by letter dated 7th June, 2014, the Education Officer repatriated the services of Respondent No.3 - Sambhaji Waman Patil, assistant teacher, in the establishment of Petitioner school. Accordingly, Respondent No.3 has joined the said school and since 14th June, 2014, Respondent No.3 is working as assistant teacher in the petitioner school. Referring to the provisions of Rule 26(4) of the MEPS Rules, 1981, it is submitted that, at the time of repatriation of employee in his original establishment, the roaster or reservation for absorption/repatriation is not required to be followed. Therefore, it is submitted that though Respondent No.3 is from open category, the directions issued to the Petitioner management to absorb/repatriate him, are in consonance with the provisions of the MEPS Rules, 1981. Hence it is submitted that the Writ Petition is liable to be rejected.

6. Learned counsel appearing for Respondent No.3, referring to the reply filed, submitted that an appeal filed by him against the order of termination was allowed by the School Tribunal, Nashik and the said order was challenged in three different Writ Petitions i.e. Writ Petition Nos.4205 of 1994, 5140 of 1996 and 907 of 1997. It is submitted that, in the said Petitions, Respondent No.3 filed undertaking stating therein that, he had no objection for being declared as surplus and to accommodate him in any of the schools in Jalgaon District. Ultimately the High Court held that the Judgment and Order of learned Member, School Tribunal, Nashik challenged in Writ Petition Nos.5410 of 1996 and 907 of 1997 do not stand to scrutiny of law and refused to interfere with the same due to passage of time. It is submitted that the fact remains that the Judgment and order dated 26th August, 1994 in Appeal No.17 of 1993 passed by the School Tribunal was maintained. It is submitted that, as stated herein

above, the High Court directed the Education Officer to declare Respondent No.3 as surplus from the establishment of the Petitioner and further directed to absorb Respondent No.3 in any other school in Jalgaon District. Accordingly, the services of Respondent No.3 were absorbed vide order dated 2nd April, 2012 in Jagruti Vidyalaya, Hambardi, Tq-Yawal. It is submitted that immediately Respondent No.3 was directed to be declared surplus, he approached the Headmaster of Madhyamik Vidyalaya, Undirkhede run by the Petitioner society and preferred representation stating that his claim the original school was intact. It is submitted that Respondent NO.3 had never given up his claim over original post or his right to revert back to the original school and therefore he is entitled to protection provided under Rule 26(4) of the MEPS Rules, 1981. It is further submitted that Headmaster, Jagruti Vidyalaya, Hambardi, was directed to relieve Respondent No.3 so as to enable to join the

original school. Respondent No.3 came to be relieved on 16th June, 2014 and accordingly, he joined in Madhyamik Vidyalaya, Undirkheda at 7.a.m. on 28th June, 2014 and working there as assistant teacher. It is further submitted that one Jagtap, who was from the open category, appointed on the post of assistant teacher retired on 31st May, 2014. If there is back-log of S.C. category, the same can be filled in future. It is submitted that the action of the Education Officer cannot be faulted with. Therefore, it is prayed that the Writ Petition be rejected.

7. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner, learned A.G.P. appearing for the State, learned counsel appearing for Respondent No.3 and learned counsel appearing for Respondent No.4. We have carefully perused the grounds taken in the Petition, the replies filed by the respective Respondents and the annexures

thereto and the relevant provisions of the MEPS Rules, 1981, and the common Judgment and order passed by the Division Bench of this Court (CORAM: B.R. GAVAI & S.V. GANGAPURWALA, JJ.) on 26th July, 2010 in Writ Petition Nos.4205 of 1994, 5410 of 1996 and 907 of 1997.

8. As per the common order dated 26th July, 2010, passed in three Writ Petitions, referred above, Respondent No.3 was directed to be declared as surplus from the establishment of the Petitioner school and the Education Officer was directed to absorb Respondent No.3 in any other school. Accordingly, the services of Respondent No.3 were absorbed in Jagruti Vidyalaya, Hambardi, Tq-Yawal, Dist-Jalgaon, as per the orders issued by the Education Officer. Respondent No.3 had never given up his claim over original post or his right to revert back to the original school. It reveals from the documents placed on record that an assistant teacher, namely R.A. Jagtap serving

in Madhyamik Vidyalaya, Undirkhede, on 31st May, 2014 came to be retired and therefore one post of assistant teacher became vacant. In accordance with the provisions of Rule 26(4) of the MEPS Rules, the Education Officer issued the impugned order dated 7th June, 2014 directing the Petitioner society to absorb the services of Respondent No.3 in the said vacant post. In the impugned order, the Education Officer has referred to the letter of Respondent No.3 addressed to the Petitioner society on 24th September, 2010, stating that, he has not given up his claim to the original post, and as and when the vacancy would arise, he may be repatriated on the said post.

9. We have perused the relevant provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The impugned order passed by the Education Officer is in accordance with the provisions of Rule 26(4) of the MEPS Rules. It is the case of the Petitioner

that as per the roaster, the said vacancy of assistant teacher was meant for the candidate belonging from Scheduled Caste category, and it was not proper on the part of the Education Officer to direct the Petitioner society to repatriate the services of Respondent No.3 on the said post, though Respondent No.3 is from open category. In this respect, it is explained on behalf of Respondent Education Officer that, at the time of repatriation of employee in his original establishment, it is not mandatory to follow the roaster of reservation. In the peculiar facts of this case, the said explanation given on behalf of the Education officer appears to be plausible. Even otherwise, the assistant teacher working in the Petitioner society, namely Mr. Jagtap, on whose superannuation the concerned post became vacant, was from the open category. After considering all the relevant facts and the provisions of the MEPS Rules, the Education Officer has passed the impugned order. We are of

the considered view that there is no perversity in the impugned order passed by the Education Officer, and the same cannot be faulted with. Therefore, the Petition is devoid of merits.

10. For the reasons afore-stated, we are not inclined to entertain this Petition. Accordingly, the Writ Petition stands rejected.

[S.M. GAVHANE, J.]

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[S.S. SHINDE, J.]