

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

WRIT PETITION NO.7830 OF 2017
WITH
CIVIL APPLICATION NO. 4800 OF 2018
WITH
CIVIL APPLICATION NO.5219 OF 2018

Shyam s/o Trimbak Doke,
Age 55 years, Occu. Service,
R/o leet, Taluka Bhoom,
District Osmanabad

..Petitioner

Versus

1. The State of Maharashtra
(through Principal Secretary,
Secondary and Higher Secondary
Department, Mantralaya, Mumbai
2. The Zilla Parishad, Osmanabad,
(Through the Chief Executive Officer),
Taluka and District Osmanabad
3. The Education Officer (Secondary),
Zilla Parishad, Osmanabad,
District Osmanabad
4. The President,
Khopeshwar Shikshan Prasak Mandal,
leet, Taluka Bhoom, Dist. Osmanabad
5. Smt. Surekha Annarao Surwase,
Age 44 years, Occu. Service,
R/o Smt. Mainabai Sambhajirao
Deshmukh Kanya Prashala, leet,
Taluka Bhoom, Dist. Osmanabad

..Respondents

Mr V.M. Humbe, Advocate for petitioner
Mr A.V. Deshmukh, A.G.P. for respondents no.1 and 3
Mr R.J. Nirmal and Mr E.S. Murge, Advocates for respondent no.4
Mr K.R. Doke, Advocate for respondent no.5
Respondent no.2 served

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 23.4.2018**

**DATE OF PRONOUNCING
THE JUDGMENT : 8.6.2018**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned Counsels for the parties, heard finally at admission stage.

2. The petitioner assails the order of Education Officer (Secondary) dated 7th June 2017 whereby respondent no.5, lady teacher who was appointed as Head Mistress at girls school was posted on a post of Head Mistress at general school on account of reduction of the post of Head Mistress in girls school. It is assailed on the ground that she is junior to the petitioner.

3. We have heard learned Advocate Mr Humbe for the petitioner, Mr A.V.Deshmukh, learned A.G.P. for respondents no.1 & 3, learned Advocates Mr R.J. Nirmal and Mr E.S. Murge, for the school management (respondent no.4) and Mr K.R. Doke, learned Advocate for respondent no.5.

4. Before adverting to the controversial issue, we refer to the admitted facts. Respondent no.4 - Khopeshwar Shikshan Prasarak Mandal at leet is a public trust registered under the Bombay Public Trusts Act and is running three schools. All are receiving grants-in-aid. Pargaon Kanya Prashala, Pargaon, Taluka Washi, District Osmanabad and Smt. Mainabai Sambhajirao Deshmukh Kanya Prashala, leet, taluka Bhoom are schools meant for girls only, whereas Late Vinayakrao Deshmukh Vidyalay and Jr.College is a Secondary and Higher Secondary School is a general school. The petitioner was appointed as Assistant Teacher by respondent no.4 on 14.6.1993 and

is working as such in Late Vinayakrao Deshmukh Vidyalay and Jr.College. Respondent no.5 - Surekha Annarao Surwase was appointed on 15.6.1998 as Assistant Teacher i.e. five years after the appointment of the petitioner. Though the petitioner was senior to respondent no.5. Respondent no.5 being senior-most lady teacher, she was appointed as Head Mistress at Smt. Mainabai Deshmukh girls' School by order dated 12.2.2001. The staffing pattern was sanctioned as per the figure of students in the school. As per Government Resolution dated 28.8.2015, in case of a secondary school imparting training to the students from 5th to 10th standard, if the total students are above 100 then there is a sanctioned post of Head Master. As per paragraph 2.5.3.2 of the said Government Resolution, if the figure of students goes below 90, the school loses the post of Head Master. As per the scheme, the strength of students and the strength of sanctioned posts, both in teaching and non-teaching staff was declared on-line. In 2015-16 (Page 16), strength of students in Smt. Mainabai Deshmukh School was reduced to 82 and the post of Head Mistress became surplus. Therefore, the question was whether respondent no.5 was to be retrenched or she was entitled for absorption in other school as Head Mistress or she was to be reverted as Assistant Teacher. It seems that she continued to work a Head Mistress in spite of abolition of post of Head Mistress. In 2016-17, the same situation continued and there was no sanctioned post of Head Mistress in Smt. Mainabai Deshmukh School. At the same time, Head Master of Late Vinayakrao Deshmukh Vidyalay and Jr. College retired on 31.5.2017. The petitioner claimed that he was senior-most teacher as per the common seniority list, maintained for all the three schools.

He was entitled for promotion to the post of Head Master in late Vinayakrao Deshmukh School. Respondent no.5 relied on Government Resolution dated 28.8.2015, clause no.2.5.3.2 as corrected vide Government Resolution dated 23.6.2016. At the same time, there was dispute between the two groups regarding the management of respondent no.4 - trust. Respondent no.5 applied to the Education Officer (Secondary) - respondent no.3 and by impugned order dated 7.6.2017, respondent no.3 transferred and posted respondent no.5 as Head Mistress of late Vinayakrao Deshmukh Vidyalay and Jr. College. She claims that she has taken charge of the said post immediately.

5. The petitioner seeks quashing of the said order and seeks directions to respondents no.2 and 3 to absorb him as Head Master of the general school. Learned Advocate Mr Humbe for the petitioner made following submissions :

(I) The petitioner is quite senior to respondent no.5 and on the basis of his seniority, he was entitled for the said post. The post of Head Master of a general High School and Junior College has to be filled up on the basis of seniority. Respondent no.5 is not the senior-most and cannot claim the said post even if she loses the post of Head Mistress in a girls' High School on account of abolition of the post.

(II) Clause 2.5.3.2 of the Government Resolution dated 28.8.2015 states about absorption of Head Master in other school if the said post becomes excess, but this provision cannot override the provisions of law of appointing senior-most teacher in a general school. There are

Supreme Court and High Court judgments confirming this policy of appointing senior-most teacher as Head Master and the Government Resolution or Circulars cannot override the judgments of Apex Court, which are as good as law.

6. The petitioner has also referred to following the last come first go rule as per the common seniority list at the time of retrenchment and absorption, which have no direct relevance. No retrenchment order of anybody has been produced. Learned Advocate for the petitioner submitted that respondent no.5 can be absorbed on the post of Assistant Teacher and not on the post of Head Mastress.

7. Respondent no.3 has supported his own order. He has contended that the post of Head Master is in the category of Group-B, whereas the post of petitioner as Assistant Teacher is in Group - C. When the post of Head Master from Group - B was abolished, as per the Government Resolution, respondent no.5 was entitled for absorption in other High Schools of the same management. Accordingly, she has been absorbed and posted as Head Mistress of Vinayakrao Deshmukh general High School and Jr. College. As there was no authorised management, he was entitled to take the necessary decision, which he has accordingly taken.

8. Respondent no.5 has taken the same stand as taken by respondent no.3. In addition, she has claimed that the petitioner was not the senior-most teacher in the institute and in the school. She also claimed that she was belonging to Scheduled Caste and since there were three posts of Head Master and she being the senior-most

from reserved category, she was entitled to hold one post of Head Mistress. There cannot be retrenchment of an employee from reserved category. She also claimed that the petitioner's contention that the retiring Head Master had handed over charge to him is not factually correct. She is in-charge of the high school, but her salary was withheld without reason. It is argued that the petitioner is not senior-most teacher and the seniority list also discloses that he is not the senior-most teacher.

9. Mr A.V. Deshmukh and Advocate Mr Humbe have filed affidavit on behalf of respondent no.4 claiming that the change report submitted by Advocate Humbe was accepted by Assistant Charity Commissioner by judgment dated 25.5.2011 (Page 149) and, therefore, respondent no.4 is in the management of trustees led by Advocate Humbe.

10. Respondent no.5 has also claimed that the strength of students in Smt. Mainabai Deshmukh School has been increased to 105 and, therefore, recommendation was made for sanction of post of Head Mistress for Smt.Mainabai Deshmukh School from 15.1.2018 (Page 126).

11. Per contra, the Education Officer (Secondary) - respondent no.3 and trustees - respondent no.4 denied that the strength was increased to 105. According to them, some false and back dated transfers of girls from Late Vinayakrao Deshmukh School to Mainabai Deshmukh School were shown and during the inspection by respondent no.3, only three girls were found in the school and the

documents did not disclose increase in the number of students above 100, as claimed. Therefore, they denied that Mainabai Deshmukh School deserves a post of Head Master.

12. We make it clear that in this petition, we will restrict the consideration of the pleas with regard to the prayers made by the petitioner only. The issue about mode of retrenchment or issue regarding subsequent increase in the strength of students thereby insisting the recommendation of one post of Head Master from January or June 2018 are not subject matters concerned with the petitioner's claim and we will not be dealing with it. It is left to the Education Officer to deal with these issues.

13. The point for our consideration is, "Whether the absorption of respondent no.5 who was holding post of Head Mistress of girls' school to the post of Head Mistress of general school on account of abolition of her post, in the light of paragraph 2.5.3.2 of Government Resolution dated 28.8.2015 and Government Resolution dated 23.6.2016 (P.44) is violative of the provisions of law?".

14. Late Vinayakrao Deshmukh is a general High School to which there was attached a Junior College. Considering the strength of students in High School and Junior College, there is no post of Principal, but there is post of Head Master who holds charge of Junior College as well, for which he gets additional allowance of Rs.50/- per month. On 31.5.2017, when the regular Head Master Mr Kate retired, it was the job of the management to pass the resolution and

recommend name of eligible teacher as Head Master as per rules. It is claimed that there was management dispute pending before the Assistant Charity Commissioner and, therefore, the Education Officer (Secondary) was the authorised person to take the decision in this regard. Letter dated 26.5.2017 by Education Officer (Secondary) (Page 20) his reply dated 23.6.2017 para 11 and letter of Assistant Charity Commissioner dated 24.5.2017 disclose that Change Report Nos.244 of 2015 and 354 of 2016 filed by rival groups were pending before him and, therefore, it was not possible to decide as to who was in the management of the trust.

15. Per contra, Advocate Humbe and learned A.G.P. Mr A.V. Deshmukh have filed affidavits and copy of judgment dated 25.5.2011 (Page 149) whereby the Change Report no.585 of 2007 filed by Advocate Humbe (trustee) was allowed. The said Change Report is for earlier period and would not be valid in 2015-16 when new Change Reports were submitted. Since there was no Principal appointed, Education Officer (Secondary) was the person to take decision with regard to appointment of Head Master on the basis of seniority. Respondent no.3 has relied on following clause of Government Resolution in Marathi dated 28.8.2015 :

2.5.3.2 सध्या अस्तित्वात असलेल्या शाळांमध्ये विद्यार्थ्यांची संख्या १० पेक्षा कमी झाल्यास मुख्याध्यापकाचे पद अनुज्ञेय राहणार नाही.

हा शासन निर्णय येण्यापूर्वीच्या निकषाप्रमाणे मान्य झालेल्या मुख्याध्यापकाचे पद अतिरिक्त ठरत असल्यास त्यांना त्या त्या व्यवस्थापनाच्या अन्य शाळांमध्ये समायोजित करावे. पूर्ण जिल्ह्यात किंवा त्याच व्यवस्थापनाच्या कार्यक्षेत्रात मुख्याध्यापक अतिरिक्त ठरत असल्यास त्यांना शिक्षकांच्या पदामध्ये रिक्त जागेवर समायोजित करावे परंतु त्यांना वेतन संरक्षण (Pay Protection)

देण्यात यावे. अशा अतिरिक्त झालेल्या शिक्षकांना जिल्ह्यात किंवा संस्थेत सेवानिवृत्ती किंवा अन्य कारणाने मुख्याध्यापकाचे पद रिक्त झाल्यास अशा पदवन्त लोकांना प्रथम पदोन्नती देण्यात यावी.

There is also Government Resolution dated 23.6.2016 (Page 44) amending the said clause by deletion of words 'in the entire district'.

16. Rule 3 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred as 'MEPS Rules' for brevity) prescribes for qualification and appointment of head as follows :

R.3 (1) Qualification and appointment of Head :

A person to be appointed as the Head

(a) (i) & (ii) - not applicable

R.3 (4) : In the case of a girls' secondary school or Junior College of Education for Women, the senior most lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service, shall be appointed as the Head of that school irrespective of her seniority vis-a-vis the male teachers.

Thus, Rule 3 (4) of MEPS Rules gives preference to lady teachers over all the male teachers for appointment as Head Mistress in girls' (Secondary) School or in Junior College for women.

17. Considering the problems of girl students for the relevant age group and considering their security, the appointment of lady teacher as a Head Mistress on a girls' school is a reasonable discrimination

over the general rule of appointment of teachers strictly on the basis of seniority and eligibility. While holding this rule as valid, in **Vasant Ambadas Hanchate, Solapur Vs. State of Maharashtra, 1985 Mh.L.J. 699**, the Division Bench of this Court observed:

“These problems could very well be understood by a person who has traversed the same path and is conversant with them. It appears that this rule is based on the past experience in the field. To say the least, having regard to the special features of girls' school or the problems of the girl students and the present social conditions, we are unable to find any unreasonableness or arbitrariness in the said provision. Therefore, we entirely agree with the view taken by the earlier Division Bench in *Vinayak Sudame's case*”.

In the case of **Malati Appu Pachore Vs. State of Maharashtra and ors., 2008 (3) Mh.L.J.509**, this policy of appointing senior-most lady teacher as Head Mistress of the school irrespective of her seniority vis-a-vis male teacher is approved and it is held that the provisions of Rule 3 (4) of the MEPS Rules are mandatory for the private aided schools to follow.

18. In Full Bench Bench judgment of **Bhalchandra Bhagwan Kalwade Vs. Education Officer, Z.P., Ahmednagar, 2003 (4) Mh.L.J. 1002**, it is held that Rule 3 (4) of MEPS Rules is applicable for appointment of Head Mistress only and is not applicable to the appointment of Assistant Head Master.

19. In recent judgment in **Haridas Vikramji Meshram Vs. State of Maharashtra and ors., 2018 (2) Mh.L.J. 144**, the Division

Bench of this Court at Nagpur considered the effect of provisions of Section 3(4) of the MEPS Rules on the issue of reservations and held that when the post of Head Master was available only for one girl school out of four schools of the management, the roster would not apply to the girls' school and the post becomes isolated post. It is cut away from the normal school and in the cadre of three posts only roster of 24% has no application.

20. In **Meera Babulalji Modi Vs. Education Officer (Secondary), Zilla Parishad, Nagpur and ors., 1998 (1) Mh.L.J. 175**, some teachers were employed in a school run by society who were declared surplus were absorbed in some other school run by other society. That time there were vacancies of the other schools of parent society and hence, absorption in school of another society was held wrongful. It was also held that since the absorption was not legal and proper, there was no violation of 26 (5) of the MEPS Rules and the said rule was not applicable. This has been referred to for consideration of right of respondent no.5 for absorption in other school of the same management.

21. Rule 3 (3) of the MEPS Rules provides that the post of the Head Master is to be filled up by appointment of senior-most member of the teaching staff in accordance with the guidelines laid down in Schedule - 'F' from amongst those employees in a school or schools who fulfills the satisfactory record of service. If there are many schools of the management, the issue of roster and implementation of policy of reservation may come into picture. It is axiomatic that the provisions

of Rule 3 (4) of the MEPS Rules is applicable only for girls' schools. Those cannot be made applicable to a general school.

22. In the present case, when respondent no.5 became surplus on account of reduction in number of students, she was entitled for absorption. Rule 2.5.3.2 in the Government Resolution dated 28.8.2015 as amended vide Government Resolution dated 23.6.2016 would be applicable. Even otherwise, respondent no.5 was permanent teacher and if the post of Head Mistress was abolished, she could have been reverted to the post of Assistant Teacher and as per above rules, she was entitled for pay protection. Clause 2.5.3.2 of Government Resolution dated 28.8.2015 is in two parts. First part lays down that when the post of Head Master is abolished on account of decrease in the number of students, below 90 and if there is already person appointed as Head Mistress, he/she can be absorbed in other school. This is a general rule applicable to all schools. It is not specified whether it will be applicable to lady teachers appointed as Head Mistress in girls' schools. The first part lays down that such Head Master can be absorbed in other school of the same management. However, if there is additional Head Master in the said management, then the Head Master or Head Mistress shall be absorbed in the vacant post of a teacher and pay protection should be given to him or her. The rule further lays down that when there is vacancy by retirement or for any other reason of the post of Head Master, the teacher who is reverted from the post of Head Master should be given preference in promotion to the post of Head Master. This rule can be easily applied in case of reversion of a Head Master

from a general school. The question arises when a lady teacher though not the senior-most is promoted as a Head Mistress on a girls' school on account of she being the senior-most lady teacher and the post of Head Mistress of the girls' school is abolished, how she can be absorbed.

23. The rules of interpretation are well settled. All the rules will have to be considered together and to be read harmoniously. While interpreting provisions of one rule, there should not be violation of another rule. This Government Resolution cannot override the express provision of any rule. In this regard, reliance is rightly placed by learned Advocate for the petitioner in **Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wire Industries (2008) 13 SCC 1**. In para 7 of the judgment, the Apex Court observed :

“7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarification/circulars issued by the State Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law.”

24. In **Vivekant s/o Bhaiyaji Raghorte Vs. state of Maharashtra and ors., 2016 (5) Mh.L.J.774**, similar view is taken as follows :

“10 With great respect to the respondent/State Government, we will have to state that the opinion of the State Government cannot have a superseding effect over the statutory enactment and rules. No precedence is required to hold that the Government Resolution cannot supersede the subordinate Legislation and that too, when it is required to be published after a previous publication and is required to be approved by both the Houses of the Legislature.

12. Needless to state that the Hon'ble Supreme Court in the case of *State of Maharashtra and others vs. Sanjay K. Nimje*, reported in 2007 (3) Mh.L.J. (S.C.) 795 = (2007) 14 SCC 481 had an occasion to consider the case arising out of the said Act and Rules and Their Lordships have in unequivocal terms held that the Government Resolution cannot apply where the provisions of the Act and Rules framed thereunder are applicable”.

25. Considering the provisions of Rule 3 (4) of MEPS Rules, we hold that a lady teacher appointed as Head Mistress in Girls' school can be absorbed in other Girls' schools of the said management in case her post is abolished on any count. Clause 2.5.3.2 of the Government Resolution dated 28.8.2015 is valid to that effect. However, she can be absorbed on same post only in similar type of schools of the same management i.e. the schools only meant for girls to which Rule 3 (4) of the MEPS Rules would be applicable. Such Head Mistress of a girls'

school on abolition of the post cannot stake any claim for the post of Head Master of a general school in violation of the seniority rule as laid down in Rule 3 (3) of the MEPS Rules. The lady teachers have a right to supersede the teachers as Head Mistress only in girls' schools and not in any general school. This provision of seniority as laid down in Rule 3 (3) of the MEPS Rules is held mandatory.

26. In similar facts in **Asha Vs. Deputy Director of Education, (Sec.), NGP., 2003 (3) Mh.L.J. 1010**, Full Bench of this Court (Nagpur Bench) held :

“39. On the backdrop of the above referred facts, the legal position, which emerges is as follows :

I) The post of Head of the Girls' School in view of sub-rule (4) of Rule 3 of the MEPS Rules can be filled in only by the senior-most lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service irrespective of her seniority vis-a-vis male teachers. It is, therefore, clear that Head of the Girls' School is not interchangeable with the Head of the Boys' School/co-educational School, if the said post is held by the senior-most male teacher as per the common seniority list. Consequently, it renders post of the Head of Girls' School a single post cadre and policy of reservation cannot be made applicable to the post of Head of the Girls' School.

(ii) Similarly, if the Management is running different Schools - one of them is for Girls only and the Management wants to maintain a separate seniority list of teachers in the said Girls' School, it is required to resolve accordingly in view of Note 7 of Schedule “F” of the MEPS Rules. Such decision shall not be revocable at any time in

future and the Management shall be required to give the time in future and the Management shall be required to give the candidates to be appointed to the teaching posts in the said Girls' School a clear understanding that they shall not have any claim on the promotional posts in other Schools run by the same Management. In such situation, the post of Head of the Girls' School, by necessary implication, would be a single post cadre since the same is uninterchangeable with the Head of other Schools (Boys or co-educational School) run by the same Management and, therefore, policy of reservation directly or indirectly cannot be made applicable to the Head of the Girls' School.

(iii) However, in an exceptional and rare situation, which in fact is remote, the Management, which runs more than one School and one of them is the Girls' School, in view of Rule 41 of the MEPS Rules, may be entitled to transfer services of members of the teaching staff from one School to another. So far as post of Head of the Girls' School is concerned, the same can be filled in only the senior-most lady teacher irrespective of her seniority vis-a-vis male teachers as per sub-rule (4) of Rule 3 of the MEPS Rules and so far as Head of the Boys' School is concerned, it can be filled in only by the senior-most male or female teacher from the common seniority list and nobody else and, therefore, Management may be in a position to transfer Head of the Boys' School, if she is a lady, whenever there is a vacancy in the post of Head of the Girls' School. However, Management cannot do it vice versa because Head of the Girls' School though is a lady, but not necessarily the senior-most teacher from the common seniority list, cannot be appointed as Head of the Boys' School, which again renders post of Head of the Girls' School uninterchangeable. However, if we presume that the Head of the Girls' School is the senior-most lady teacher from the common seniority list and if the

Management in view of Rule 41 transfers her as Head of the Boys' School, interchangeability in such post would continue only so long as both these posts are held by the senior-most lady teachers from the common seniority list. In such situation, if the policy of reservation is made applicable to the post of Head of the Girls' School directly or indirectly, then the moment the post of Head of the Boys' School or co-educational School at later point of time is filled in by the senior-most male teacher from the common seniority list, interchangeability in these two posts would come to an end, resulting in hundred per cent reservation in respect of post of Head of the Girls' School, which ultimately would violate the guarantee given to the citizens belonging to the open category under Article 16(1) of the Constitution and is impermissible in law.

40. We answer the reference as under :

Where one Management runs different Secondary Schools, one of which is exclusively a Girls' School, the post of Head Mistress in the Girls' School must be treated as a single isolated post and cannot be subjected to reservation either by applying roster or as per Rule 9 (10) (a) of the MEPS Rules, 1981."

27. In **Vijaya w/o Jyotirao Jadhav Vs. The State of Maharashtra & Ors., 2016 (5) ALL MR 486**, it is held that for the purpose of promotion to the post of Head Master, the rule of seniority is mandatory. It is the date of appointment which is relevant and not the date of promotion to the post of Assistant Head Master.

28. The provisions of Government Resolution dated 28.8.2015 will have to be read harmoniously with the general law of seniority. As per Rule 3 (3) of the MEPS Rules it will have to be held that a lady teacher appointed to the post of Head Mistress in a girls' school will be entitled to claim absorption as a Head Mistress in any girls' school of the same management and if there is no such girls' school, then she can claim absorption as Assistant Teacher with pay protection. She cannot claim absorption as Head Mistress of a school of general category to which Rule 3 (3) of MEPS Rules is not applicable. Clause 2.5.3.2 of Government Resolution dated 28.8.2015 making provision of general nature is invalid to the extent referred above.

29. Respondent no.3 - Education Officer tried to justify his order, which is contrary to the discussion referred above on the ground that the Head Mistresses were in category 'B' whereas the petitioner was Assistant Teacher as category 'C'. Nonetheless, the moment the post of Head Mistress of a girls' school is abolished she will come to the category of Assistant Teacher in the same seniority list and her absorption shall be governed by the general rules 3 (3) or 3 (4) of MEPS Rules. By virtue of her promotion, respondent no.5 lady cannot claim absorption as Head Mistress in a school of general category which would be violative of Rule 3 (3) of the MEPS Rules.

30. Respondent no.5 has tried to hold her claim to the post of Head Mistress on the ground that she is the senior-most from reserved category. Though there are three schools, two of them are girls' schools for which there is reservation only for lady teachers. Therefore, Vinayakrao Deshmukh High School and Junior College is the

only school meant for all teachers to which probably the reservation would not apply. The issue regarding reservation and roster has to be considered by the management while making recommendation and by the Education Officer (Secondary) while accepting or rejecting the recommendation. The appointment of respondent no.5 was made by the impugned order by the Education Officer not on the basis of her reservation. Hence, the impugned order is liable to be set aside.

31. It is also claimed that there was a dispute in the management and the management was not authorised to make any recommendation and the competent authority to appoint Head Master was the Education Officer (Secondary). We are not aware of the subsequent changes of acceptance or rejection of any change reports by the Assistant Charity Commissioner.

32. We direct respondents no.3 and 4 to consider all the aspect again. We, therefore, pass the following order :

- ORDER -

(I) The impugned communication dated 7.6.2017 issued by Education Officer (Secondary), Zilla Parishad, Osmanabad appointing respondent no.5 as Head Mistress of Late Vinayakrao Deshmukh Vidyalay and Jr. College, leet, is hereby quashed and set aside.

(II) If the management of respondent no.4 is under the persons authorised by Assistant Charity Commissioner, the management shall consider the issue of grant of promotion to an eligible Assistant

Teacher to the post of Head Master at late Vinayakrao Deshmukh Vidyalay and Jr. College, let as per rules on the basis of seniority, eligibility and other service record as well as roster, if applicable on the basis of reservation policy and send its proposal within one month from today to the Education Officer. If there is no such authorised management, the Education Officer (Secondary) (Respondent no.3) shall consider the said proposal on the basis of above parameters and shall decide who should be appointed as Head Master on the basis of seniority and whether the approval should be granted or not. He shall decide the issue by giving opportunity to the concerned within one month after receipt of proposal and if there is no management, within 2 months from the receipt of this judgment.

(III) As far as respondent no.5 is concerned, she is entitled for absorption and pay protection in the same institute either as Head Mistress of any girls' school or as Assistant Teacher as per Clause 2.5.3.2 of Government Resolution dated 28.8.2015.

(IV) The management/Education Officer shall take appropriate decision as per the provisions of law (on the basis of seniority).

33. It is clarified that we have not decided whether the petitioner is the senior-most eligible teacher or not.

34. The consequences of the quashing of impugned order shall necessarily follow.

35. Writ Petition is allowed accordingly.

36. In view of disposal of Writ Petition, Civil Application Stamp no.4800 of 2018 and Civil Application No.5219 of 2018 are disposed of.

37. Rule is made absolute in above terms with no order as to costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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