

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

**WRIT PETITION NO. 7880 OF 2018**

ALKA CHINTAMAN PALKHE  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Barlinge S. R.  
AGP for Respondents No. 1 & 2 : Mr. S. G. Karlekar  
Advocate for Respondent No. 3 : Mr. P. R. Patil  
Advocate for Respondent No. 4 :  
Mr. N. S. Choudhary  
Advocate for Respondents No. 6 & 7 :  
Mr. S. V. Natu

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

**DATE: 28<sup>th</sup> FEBRUARY, 2019**

**PER COURT :**

1. Mr. Barlinge, learned Advocate for the petitioner submits that the impugned order has been passed without considering the provisions of Rule 3 (1) (a) (ii) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (*hereinafter referred to 'MEPS Rules'*). The petitioner was appointed in the year - 1989 as an 'Assistant Teacher' and thereafter in the year

1990 was appointed as 'Headmistress'. The learned counsel submits that even approval is granted to the appointment of the petitioner as 'Headmistress' from the year 1990 by the Education Officer. The learned counsel submits that the petitioner is entitled to compute the 12 years service as 'Headmistress' from 1990.

2. Mr. Natu, learned counsel for the respondent / institution submits that in fact the school was recognised in the year 1990. The strength of the school was less than 200 students. The petitioner was only officiating as 'Headmistress'.

3. Mr. Chaudhari, the learned counsel for respondent no. 4 submits that the Education Officer has rightly considered the provision under Rule 3 (1) (a) (i) of the MEPS Rules, it is only after completion of five years of service the petitioner could be recognised as 'Headmistress' in the year – 1995, and from the year 2007 would

be entitled for senior pay scale.

4. Mr. Chaudhari, the learned counsel further submits that the approval granted to the petitioner as 'Headmistress' from the year - 1990 was erroneous.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. It is not disputed by any of the parties that the petitioner was seniormost teacher. It is also not disputed that the strength of the students at the relevant time was less than 200 students. In view of that, Rule 3 (1) (a) (ii) of the MEPS Rules would apply. It is only a primary school having enrollment of above 200 students for standards 1 to 7, seniormost teacher who has put in not less than 5 years of service is the requirement and for any other primary school the seniormost teacher can be appointed as Head.

7. It is not disputed that the petitioner was

officiating as Head of the school. The petitioner's appointment as 'Headmistress' is also approved from 01.06.1990. The Education Officer under the impugned order has relied on Rule 3 (1) (a) (i) of the MEPS Rules, which was erroneous.

8. In the light of above, the impugned order is quashed and set aside. The petitioner would be entitled for the senior scale pay from 01.06.2002. In view of that, the petitioner shall be paid the senior scale pay on completion of 12 years i.e. from 01.06.2002. As far as the request to grant the actual monetary benefit to the petitioner from the year 1990 till 01.06.2002 is concerned, we are not inclined to grant the same. However, the same shall be counted for notional purposes and for further increments and pension purpose.

9. Writ Petition stands disposed of accordingly.  
No costs.

**[A. M. DHAVAL, J.]      [S. V. GANGAPURWALA, J.]**

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