

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

66 WRIT PETITION NO.14163 OF 2018

**SURESH NAGO NERKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr. Panpatte V. S.
AGP for Respondent : Mr. A.R. Kale
Advocate for Respondent : Mr. Maniyar Irfan D.

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**CORAM : S. V. GANGAPURWALA AND
MANGESH S. PATIL, JJ.**

DATE : 06/08/2019

PER COURT :

1. The approval granted to the appointment of the petitioner on 30.08.2004 is canceled under the impugned order by the Deputy Director of Education, Nashik.
2. We have heard Mr. Panpatte, the learned counsel for the petitioner and Mr. Kale, the learned A.G.P.
3. The petitioner was appointed on clock hour basis on 11.01.1993. The petitioner was terminated. The petitioner filed an appeal before the School Tribunal bearing Appeal No.36/2000. The School Tribunal allowed the appeal filed by the petitioner under order dated 29.03.2003. The issues framed before the School Tribunal are as

under:-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether school is recognized one under the MEPS Act ?	: Yes
2) Whether appellant was appointed u/s. 5 of MEPS Act ?	: Yes
3) Whether the appointment is approved by Education Officer ?	: Yes
4) Whether alleged termination on 17.10.2000 is illegal and liable to be set aside?	: Yes
5) Whether appellant is entitled for relief claimed ?	: Yes
6) What order ?	: Appeal allowed

4. The School Tribunal directed the respondent Nos.1 and 2 to reinstate the present petitioner as a regular Assistant Teacher and further directions were given to the respondent No.4 that if respondents Nos.1 and 2 does not comply with the order, he shall get the order implemented and submit the report within 3 months. The Deputy Director of the Education was also party to the appeal.

5. It is submitted that though the petitioner was earlier appointed from 1993 on clock hour basis, the approval to the appointment of petitioner is granted from the year 2003 and since the year 2004 the approval was continued. Under the impugned order, the approval has been canceled. The approval has been canceled mainly on two counts. First, advertisement does not appear to have been

given and second, the due selection process was not followed.

6. In view of the judgment of the School Tribunal as referred to above, it would not be open for the Deputy Director of Education who was party to the appeal to hold otherwise. The operative part of the order of the School Tribunal reads thus :-

“ORDER”

- (1) The appeal u/s. 9 of MEPS Act 1977 challenging the alleged termination dated 17.10.2000 is hereby allowed declaring that said termination is illegal hence set aside.
- (2) The respondent No.1 is directed to reinstate the appellant as a regular Asstt. Teacher within 40 days from the date of this order and report the compliance.
- (3) On failure of respondent No.1 and 2 to comply with this order the recommendations be made to respondent No.4 Dy. Director of Edu. U/s. 11(3) of MEPS Act to get implement the order and submit report within three months.
- (4) The parties be intimated accordingly and advance copy be sent to respondent No. 4 for his information.”

7. The School Tribunal has already held that the appellant was appointed under Section 5 of the MEPS Act. The Deputy Director of Education cannot sit over the judgment of the School Tribunal.

8. Considering the above, the impugned order to the extent of

the petitioner is quashed and set aside. Writ petition is disposed of.

No costs.

9. In view of the fact that the impugned order is set aside, the consequences would follow.

(MANGESH S. PATIL, J.)

(S. V. GANGAPURWALA, J.)

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