

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8796 OF 2011

Smt. Nasim Turabddin Mushrif	]... Petitioner.
Aged 49 years, Occ. Service,	]
R/o. C/o. Turabddin Mushrif, Mujawar,	]
Galli, Gangli Wes Miraj (near Darga)	]
Dist. Sangli.	]

V/s.

1	Shams Education Society,	]	
	C/o. Hajarat Pir Khaja Samana Mira	]	
	Urdu Girls High School, High School	]	
	Road, Miraj, Dist. Sangli,	]	
	through the President	]	
		]	
2	The Education Officer (secondary)	]	
	Zilla Parishad, Sangli.	]	
		]	
3	The Deputy Director of Education	]	
	Kolhapur Region, Kolhapur.	]	
		]	
4	Smt. Hangad Jubeda Nasurddin	]	
	Hajarat Pir Khaja Samana Mira	]	
	Urdu Girls High School, High School	]	
	Road, Miraj - 416410, Dist. Sangli.	]	
		]	
5	Shri Javed Ibrahim Jamadar,	]	
	Aged 39 years, Occu. Nil,	]	
	R/o. Miraj, Dist. Sangli (Intervenor)	]	
		]	
6	The Ld. Presiding Officer,	]	
	School Tribunal, Kolhapur	]	
		]	...Respondents.

Mr. N. V. Bandiwadekar, Advocate for the Petitioner.
Ms. Smita G. Mane, Advocate for Respondent No.1.
Mr. C.D. Mali, AGP for Respondent Nos. 2 & 3.
Mr. Sunil Dighe, Advocate for Respondent No. 4.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 05, 2019.

ORAL ORDER :

1 Heard Mr. Bandiwadekar, learned counsel for the Petitioner; Ms. Smita Mane, learned counsel for Respondent No.1; Mr. C.D. Mali, learned AGP for Respondent Nos. 2 & 3; and Mr. Sunil Dighe, learned counsel for Respondent No.4. None has appeared for Respondent No. 5, though served.

2 By filing this Petition under Articles 226/227 of the Constitution of India, Petitioner seeks quashing of order dated 19.07.2011 passed by the School Tribunal, Kolhapur in Appeal No.11 of 2000 as well as the order dated 19.01.2000 issued by Respondent No.1, demoting the Petitioner from the post of Head Mistress of the school by the name of Hajarat Pir Khaja Samana Mira Urdu Girls High School at Miraj in district Sangli (school in question, hereinafter) and further seeks a direction to Respondent Nos. 1, 2 & 3 for restoring the Petitioner to the post of Head Mistress with all consequential benefits, such as, continuity in service etc..

3 It is contended by the Petitioner that the school in question is a private secondary school, receiving aids from the government. It is also a minority educational institution.

4 Petitioner came to be appointed as under graduate teacher / Assistant Teacher in the school vide order dated 30.05.1989 w.e.f. 01.06.1989. At the time of appointment of the Petitioner, her educational qualification was graduation in science (B.Sc.)

5 In April, 1993, while in service, Petitioner obtained B.Ed. Degree. Thus her qualification became B.Sc.,B.Ed. and in the process she became a trained graduate teacher, entitling her to enter category "C" in the seniority list of Teachers as per Schedule "F" appended to the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 framed under Section 16 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,1977.

6 In 1993, Respondent No. 1 had notified the name of the Petitioner with three other teachers for promotion to the post of Head Master/Mistress and it

was forwarded to the Deputy Director of Education, Kolhapur Region, i.e. to Respondent No. 3 for approval through Respondent No.2.

7 By order dated 23.11.1993 passed under Section 3(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act", for short hereinafter), Respondent No.3 accepted the name of the Petitioner and three other teachers, as notified by Respondent No. 1.

8 Following the above, order was passed on 24.06.1994 by Respondent No.1, appointing the Petitioner as Head Mistress of the school w.e.f. 01.05.1994. Consequently, Petitioner started working as Headmistress of the school from 01.05.1994.

9 At this stage, it may be mentioned that as per Rule 3 (1)(b) of the Maharashtra Employees Private Schools (Conditions of Service) Rules, 1981 (briefly, the MEPS Rules, hereinafter), eligibility for the post of Headmaster / Headmistress of a secondary school is graduation with Bachelor's degree in teaching and having not less than five years' full-time teaching experience after graduation in a secondary school; out

of which at least two years' experience shall be after acquiring Bachelor's degree in teaching.

10 Insofar Petitioner is concerned, at the time of her appointment as Headmistress w.e.f. 01.05.1994, she had completed 4 years 11 months of teaching from the date of her joining w.e.f. 01.6.1989. Thus there was a shortfall of one month's experience insofar Petitioner was concerned. Rule 3(2) of the MEPS Rules, however, provides for relaxation of the said requirement by the Deputy Director, who may after recording reasons in writing grant or refuse such relaxation.

11 In terms of the aforesaid provision, Respondent No. 1 submitted proposal to the Education Officer (Secondary) i.e. Respondent No. 2 for relaxation of the qualifying service of the Petitioner by one month. Respondent No. 2 forwarded the said proposal to Respondent No.3 on 27.02.1997. Respondent No. 3 accepted the proposal and granted relaxation insofar qualifying service of the Petitioner is concerned vide order dated 19.09.1997. However, it was clarified that Petitioner would be entitled to salary in the pay scale of Headmistress only from the date she had completed five years' of teaching experience.

12 While the matter rested thus, Respondent No. 2 issued order dated 15.01.2000, cancelling approval granted to the appointment of Petitioner as Headmistress. Approval was cancelled on the ground that appointment of the Petitioner was not made by the authorized school committee of Respondent No. 1. The above order dated 15.01.2000 was issued on the basis of a letter dated 15.12.1999 issued by the then Secretary of Respondent No. 1. Be that as it may, Respondent No.1 issued a consequential order dated 19.01.2000, demoting the Petitioner from the post of Headmistress to Assistant Teacher and at the same time, making Respondent No.4 as In-charge Headmistress of the school.

13 Aggrieved by the aforesaid reduction in rank, Petitioner filed an appeal under section 9 of the MEPS Act, before the School Tribunal, Kolhapur (the Tribunal, for short) which was registered as Appeal No. 11 of 2000. Appeal was contested by Respondent No.1 as well as by Respondent Nos.2 & 3. By the impugned order dated 19.07.2011, appeal filed by the Petitioner was dismissed.

14 Hence, this Writ Petition.

15 Before referring to the impugned order of the Tribunal, it would be apposite to advert to the orders passed by Respondent No.2 dated 15.01.2000 and the consequential order of Respondent No. 1 dated 19.01.2000.

16 As per order dated 15.01.2000, Respondent No.2 withdrew the approval to the appointment of the Petitioner as Headmistress and two others as Assistant Teacher and Laboratory Attendant on the ground that their appointments in the school were not made by the authorized school committee. It was mentioned that since approval was withdrawn, liability for payment of future salary would not be on the government. Consequent upon the aforesaid order, Respondent No.1 passed the order dated 19.01.2000, directing the Petitioner to work as Assistant Teacher with further direction to hand over charge of the post of Headmistress to Respondent No. 4.

17 From the above what is evident is that approval to the appointment of Petitioner to the post of Headmistress was withdrawn on the ground that the appointment was made by the school committee of Respondent No.1, which was construed to be unauthorized. This was the only ground on which the approval was withdrawn. Unfortunately, from a perusal

of the impugned order passed by the Tribunal, it is seen that the Tribunal had gone into the issue as to eligibility of the Petitioner to be promoted to the post of Headmistress. It was not the issue on the basis of which approval was withdrawn. Even otherwise also there was a shortfall of only one month insofar as experience eligibility of the Petitioner was concerned, which was relaxed by Respondent No.3, which relaxation order has not been challenged by anybody.

18 Learned counsel representing Respondent No.1 submits that internal dispute as to the management of Respondent No.1 has now been sorted out and the present management of Respondent No. 1 supports the case of the Petitioner.

19 On the other hand, learned counsel for Respondent No.4 fairly submits that after the reduction in rank / demotion of the Petitioner, Respondent No. 4 served as Headmistress In-charge of the school. Keeping in mind the best interest of the school and the students, she had handed over charge of the post of Headmistress to the Petitioner in the year 2016, which is recorded in the order of this court dated 15.10.2018. His submission is that from the year 2000 till May, 2016 for a long period of 16 years, Respondent

No. 4 discharged her duty as in charge Head Mistress of the school administration, looking after its administration.

20 In this proceeding, court is concerned with the legality and validity of the reduction in rank of the Petitioner from Headmistress to Assistant Teacher and the consequential order of the School Tribunal upholding such reduction.

21 Insofar claim of Respondent No.4 is concerned, it is the settled legal position that holding a post on incharge basis confers no right on the incumbent to the post and no claim to a post can be maintained on the basis of in-charge service.

22 As already noted above, short point for consideration is whether action of Respondent No. 1 in demoting the Petitioner from Head Mistress to Assistant Teacher is legal and valid. Related issue is whether, in the context of change in the management, decision taken by the previous body would ifso-facto become null and void. As a corollary to the above, the next issue would be whether the authority granting approval can recall the order of the approval on change of management.

23 Learned counsel for the Petitioner has placed before court a division bench judgment of this Court in the case of **Murlidhar Janrao Kale vs. State of Maharashtra**, reported in 2011 (1) Mh. L.J. 849 as well as a subsequent decision of a division bench of this Court dated 15.01.2018 in the case of **Roshan Kavalrao Thakare vs. Education Officer (Secondary) Zilla Parishad, Nashik** in Writ Petition No. 6892 of 2014 and other connected cases, in support of the proposition that the Education Officer has no authority to go into the question regarding dispute between two groups of management.

24 Recalling the order of approval on the basis of change in the management, would virtually amount to reviewing his own decision by the Education Officer. Learned counsel for the Respondents are unable to show any provision in the MEPS Act as well as in the MEPS Rules, empowering the Education Officer to review his own order.

25 It is a settled proposition that unless the statute provides a power of review, there can be no inherent power of review .

26 Moreover, merely because there is a dispute between two groups regarding management of Respondent No. 1, decision taken by the group which was in charge of management at the relevant point of time, does not automatically become null and void upon change of management. This aspect of the matter was overlooked by the Tribunal which has resulted in an erroneous finding.

27 That apart, Petitioner was holding the substantive post of Headmistress. She could not have been demoted to the lower post of Assistant Teacher without following the due process. Demotion in the contextual facts would amount to reduction in rank which is nothing but a penalty. In such circumstances, due procedure as well as principles of natural justice were required to be followed. Non-compliance of the procedural requirements as well as the principles of natural justice has vitiated the impugned action which was overlooked by the School Tribunal.

28 On a query by the Court, Mr. Bandiwadekar, learned counsel for the Petitioner submits that the Petitioner will attain the age of superannuation in April, 2020. Respondent No. 4 has a longer service career at her disposal. Certainly her case may have to be

considered by Respondent No.1 on superannuation of the Petitioner. But, as already noticed, in this litigation, court is concerned with the limited issue of reduction in the rank of the Petitioner by Respondent No.1, as upheld by the School Tribunal. From the discussions made above, both the decisions are found to be erroneous, totally unsustainable in law and are accordingly set aside.

29 Consequently, Petitioner shall be reinstated in the post of Headmistress with all notional benefits including continuity of service.

30 Writ Petition is accordingly allowed but with no order as to costs.

(UJJAL BHUYAN, J.)

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