

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

WRIT PETITION NO. 9528 OF 2019

Miss Sonali Mallikarjun Bedgnur

... Petitioner

V/s.

1.The Secretary, Dnyansampada Shikshan
Prasarak Mandal
2. Head Master, Dnyansampada Prashala,
Solapur,
3. The Education Officer
Zilla Parishad Solapur.

... Respondents

Mr.Ajay A.Joshi, for the Petitioner.

Mr.Shrishail Sakhare, for the Respondent nos.1 and 2.

Mr.S.D.Rayrikar, AGP for the State-Respondent no.3.

CORAM : G.S.KULKARNI, J.

DATE : 31 January, 2022

ORAL JUDGMENT :

1. This petition under Article 227 of the Constitution of India challenges the judgment and order dated 22 April 2019 passed by the learned Presiding Officer, School Tribunal, Solapur, dismissing the petitioner's appeal filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short '**the MEPS Act**') which assailed her removal from service as an assistant teacher.

2. The relevant facts are : An advertisement dated 2 June 2007 was issued by respondent no.1-Dnyansampada Shikshan Prasarak Mandal (for short '**the management**') to fill up vacancies *interalia*, to the posts of teaching staff. The posts being that of a Headmaster, Assistant Teacher(s) for Mathematics, Hindi, English and Psychology. Together with these posts, there were three posts of teachers which required the candidate to possess a qualification of D.Ed., which included a post reserved for a candidate belonging to the Nomadic Tribe (N.T.) category.

3. It is not in dispute that the petitioner had made an application under the said advertisement for appointment as a teacher, however, she belonged to the untrained category. It is stated that she was eligible to be so appointed, subject to the condition that she would acquire the requisite qualification for such post, within a period of five years as per the Government Resolution dated 20 April 2000. The petitioner belonged to the NT category. One of the D.Ed. post, for appointment as a teacher was reserved for NT category. This position appears to be not in dispute. In such situation and as no other application was received by the management from the said reserved category, the petitioner being eligible, she came to be appointed as an

untrained teacher. The petitioner was accordingly issued an appointment order dated 11 June 2007. This was, however, subject to the petitioner obtaining a validity to the caste certificate from the Caste Scrutiny Committee and acquiring the D.Ed. qualification. After her appointment, the petitioner had approached the Caste Scrutiny Committee for grant of a validity to her caste certificate. The Caste Scrutiny Committee issued a validity to the petitioner's caste certificate as communicated by its letter dated 15 October 2008. It is thus not in dispute that the petitioner belonged to the reserved NT category and a vacant post, in such category was available at the time of making her appointment. Such appointment of the petitioner was followed by some material events.

4. Having appointed the petitioner, the management forwarded a proposal seeking an approval to the petitioner's appointment, on probation to respondent no.3 – the Education Officer, Zilla Parishad, Solapur (for short '**the Education Officer**'). The Education Officer by his communication dated 17 August 2007, addressed to the management, informed of his approval to the petitioner's appointment, on the post of the Assistant Teacher (Reserved) in the pay scale of Rs.3050-4950, with her qualification referred as 12th standard, with

effect from 15 June 2007, for the period of her probation, which was subject to a caste validity certificate to be produced by her which was produced by her as noted above. Thereafter, another approval came to be granted by the Education Officer to the petitioner's appointment, as informed by him to the management, vide letter dated 8 August 2009. Such approval as granted to the petitioner's appointment was on the post of Assistant Teacher (Reserved), from the year 2009-10 on "100% aid". Thus, an approval to the petitioner's appointment on a fully aided post was granted by the Education Officer.

5. It is the petitioner's case that she applied to the management on 7 August 2008, that she be granted "one" hour's concession per day, as she was pursuing her D.Ed. studies. This was granted to her by the management. The petitioner accordingly pursued the D.Ed. course and having passed the D.Ed examination, was awarded "a D.Ed. degree" on 29 January 2011.

6. After the petitioner acquired the requisite qualification and as permissible to be acquired under the Government Resolution dated 27 April 2000, a regular appointment order dated 1 February 2011 which was as per the MEPS Rules, came to be issued to the petitioner by the

management. Such order recorded that with effect from 1 February 2011, the petitioner was appointed as an Assistant Teacher in the pay scale of Rs.5200-20,200/- on regular pay scale. In pursuance of such appointment, the management forwarded a fresh proposal to the Education Officer dated 17 March 2011 for approval of the petitioner's appointment. The Education Officer after due consideration of the said proposal as received from the management, granted an approval to the petitioner's appointment, communicated to the management by his letter dated 27 July 2011. Such approval as granted by the Education Officer recognized the petitioner to be an Assistant Teacher, approved to be in the pay scale of Rs.5200-20,200/- with effect from 1 February 2011.

7. It is the petitioner's case that after seven years of her initial appointment in the year 2007, and almost four years of the approval dated 27 July 2011, being granted to the regular appointment of the petitioner and when the petitioner was duly discharging her duties, to the satisfaction of the management, one Mr. Suryakant Shamrao Halli (for short "**Mr.Halli**"), a rank outsider, who was desirous to secure an appointment for his son in the employment of the school, made a complaint dated 18 December 2014 to the Education officer that the

appointment of the petitioner was illegal. This was learnt by her much later.

8. In pursuance of Mr. Halli's complaint, the Education Officer almost 11 months after such complaint, issued a show cause notice dated 14 October 2015/20 November 2015 to the Headmaster of respondent no.1-school, calling upon the Headmaster for a hearing on 30 November 2015, failing which it would be presumed that the complaint is correct and accordingly a decision would be taken.

9. On receipt of such letter/show cause notice of the Education Officer, the Headmaster by his letter dated 16 July 2016 submitted a detailed reply being the management's say, *interalia* pointing out that the complaint made by Mr. Halli was false and malafide. It was stated that Mr. Halli had made such complaints in the past, and that the Education Officer had also decided not to take any action on such false complaints. It was also pointed out that Mr. Halli's complaint as made to the State Information Commissioner was also rejected when all materials were produced by the management. The management contended that Mr. Halli was habitual in making such complaints, before various authorities, as he had a personal vendetta against the

management. In regard to the appointment of the petitioner, it was pointed out, that the petitioner's appointment was strictly in accordance with law, to which an approval as per law was granted by the Education Officer about four years back, as also earlier thereto. It was pointed out that the petitioner was discharging her duties as a permanent employee on an aided post. It was also pointed out that Mr. Halli had been making complaints to pressurize the management to appoint Mr. Halli's son. The management stated that the entire record was shown to Mr. Halli on all the appointments made by the management, despite which he had made a false complaint. It was hence, pointed out that there was no substance in the complaint as made by Mr. Halli, which was required to be rejected. Alongwith such reply, the management had enclosed all the documents including documents which were relevant to the appointment of the petitioner. There is no dispute that such reply was received from the management by the Education Officer.

10. On 30 November 2015, the Education Officer had scheduled a hearing on the said show cause notice issued on Mr. Halli's complaint. As it was not possible for the representative of the management to remain present at the hearing, an application came to be submitted to

the Education Officer on behalf of the management, to excuse his presence. It was also pointed out by the management in the said letter that a detailed reply (dated 16 July 2016) alongwith the documents was already submitted by the management and the same be considered if a decision is to be taken.

11. After about 10 months from the said date of hearing, the Education Officer passed an order dated 6 September 2016 cancelling the approval granted to the petitioner's appointment as a teacher. Such order merely recorded that a complaint was received from Mr. Halli, and that, although notices were issued to the management to remain present for the hearing on 28 September 2015, 20 November 2015 and 1 July 2016, the management was not represented. It records that as the management had failed to remain present, Mr. Halli's complaint was required to be accepted, as correct "to some extent". Merely, on such premise, the Education Officer cancelled the approval granted to the petitioner's appointment.

12. It is the petitioner's case that the management acting upon such decision of the Education Officer orally terminated the services of the petitioner with effect from 27 September 2016. In such circumstances,

the petitioner approached the School Tribunal by filing an appeal under Section 9 of the MEPS Act. Parties to the appeal were the Secretary of the Management, Headmaster of the School and the Education Officer, Solapur. It needs to be observed that before the tribunal, as the management had merely acted upon the cancellation of the approval granted to the appointment of the petitioner and as the management had no other cause against the petitioner, the management had supported the petitioner's case on the illegality of the Education Officer in cancelling the approval granted to the petitioner's appointment. The case of the management was to the effect that the appointment of the petitioner was in accordance with the Rules and Regulations. The management contended that the petitioner's appointment, was duly approved by the Education Officer from time to time and a final approval was granted to the petitioner's regular appointment on 22 July 2011, after she achieved the D.Ed. qualification, which too was obtained well within the prescribed period as stipulated under the Government Notification dated 20 April 2000. The Education Officer, however, did not file any reply to the petitioner's appeal as filed before the tribunal.

13. By the impugned order, the tribunal rejected the petitioner's

appeal. In the light of the above discussion, it is vital to note the issues framed by the tribunal in passing the impugned order which are as under :-

Sr.no.	Points	Findings
1	Whether order of oral termination of services dated 27/09/2016 in respect of the appellant at the hands of respondent nos.1 and 2 terminating her services is illegal and is liable to be quashed and set aside ?	No
2	Whether the appellant is entitled to be reinstated on her earlier post alongwith continuity in service and full back wages ?	No
3	What order ?	As per final order

14. It is on the above backdrop, the petitioner is before this Court in the present proceedings.

15. Mr.Joshi, learned Counsel for the petitioner has made extensive submissions assailing the impugned order passed by the tribunal. The first contention of Mr.Joshi, is to the effect that the impugned order suffers from an *ex facie* perversity. He submits that the primary case of the petitioner before the tribunal was of oral termination of her services by the management as also seen from the issues as framed. The oral

termination of the petitioner's services was on the ground that the Education Officer had passed an order dated 6 September 2016, cancelling the approval dated 27 July 2011 granted to the petitioner's appointment. Mr. Joshi submits that the Education Officer had passed such order without granting an opportunity to the petitioner of being heard. He submits that the Education Officer ought to have issued a show cause notice to the petitioner as also ought to have granted hearing to the petitioner in compliance of the principles of natural justice. Mr. Joshi submits that there is no application of mind to this basic issue by the learned member of the tribunal. He submits that the tribunal also failed to frame a specific issue in such context.

16. Mr. Joshi's second contention is that the tribunal overlooked that the Education Officer's order dated 6 September 2016, *ex facie*, reflected a gross illegality, inasmuch as, there was not a whisper of a reason or any observation much less any reasoning on the management's case, as pointed out in its detailed reply to the show cause notice. It is submitted that the Education Officer failed to even make a reference in regard to the petitioner's appointment being approved by the Education Officer, also as pointed out by the management to the Education Officer. It is submitted that the

Education Officer merely proceeded on the ground that as the representative of the management was not present on the date of hearing, whatever was set out in the complaint of Mr. Halli was required to be presumed to be correct and it is on such sole basis the Education Officer had passed such order. It is Mr. Joshi's submission that although the order of the Education Officer was *void ab initio qua* the petitioner, as no show cause notice was issued to the petitioner before taking away the petitioner's vested right to occupy the aided post, it is however his submission, that in any case, once the management had filed a detailed reply to the show cause notice pointing out all documents in relation to the petitioner's appointment and the approval granted to such appointment, the Education Officer could not have by-passed and overlooked such material to pass such order cancelling an approval to the petitioner's appointment. It is Mr. Joshi's submission that these basic issues, depicting the illegality of the Education Officer and blindly followed by the management, in orally terminating the long services of the petitioner, are not at all addressed by the tribunal in passing the impugned order.

17. Mr. Joshi's next submission is also in regard of an apparent illegality in the approach of the tribunal. It is his submission that the

tribunal without verifying the basic facts, entered an enquiry on an issue not raised by any of the respondents before the tribunal, namely to unnecessarily consider whether the petitioner's appointment was legal, by purportedly applying Section 5 of the MEPS Act. Mr. Joshi would submit that such inquiry was totally unnecessary and an unwarranted exercise, in the facts of the case, when no issue in regard to the legality of the petitioner's appointment was raised either by the management or by the Education officer nor was it the decision of the Education Officer. According to Mr. Joshi, the school tribunal delving an inquiry on such issue, without even framing an issue in that regard would amount to an *ex facie* legal perversity, making a ground for this Court to interfere in the impugned order passed by the tribunal.

18. Mr. Joshi would next submit that although on record the tribunal failed to appreciate that the permanent appointment of the petitioner on an aided post was approved by the Education Officer, and without the same being assailed in a matter known to law, such approval could not have been so casually interfered by the tribunal. According to Mr. Joshi, the scope of the enquiry before the tribunal was limited as to whether the management could have made an oral termination, on the basis of totally illegal order passed by the Education Officer dated 6

September 2016, cancelling the approval granted to the petitioner's appointment. He submits that the cryptic reasons which are set out in paragraphs 10 and 14 of the impugned order passed by the tribunal, would show complete non-application of mind of the tribunal in adjudicating the petitioner's appeal. It is Mr. Joshi's submission that already the petitioner has suffered immensely and is unwarrantedly dragged into legal proceedings as a consequence of the illegal order dated 6 September 2016 passed by the Education Officer. It is his submission that the basic illegality of the order passed by the Education Officer has not been touched by the tribunal which ought to have been the primary consideration in view of the decision of the Division Bench of this Court in the case of **Kum.Arti d/o. Vithalrao Warkhede Vs. The Education Officer (Secondary), Zilla Parishad, Wardha & Ors.**¹ It is thus Mr. Joshi's submission that the impugned order passed by the tribunal looked from any angle is perverse, which deserves to be quashed and set aside.

19. On the other hand Mr. Sakhare, learned Counsel for respondent no.1-management would support the petitioner's case. It is his contention that all documents concerning the petitioner's appointment

1 2011(2) ALL MR 273

were placed before the Education Officer which were not considered by the Education Officer while passing the impugned order. It is submitted that all these documents were also on the record of the tribunal. It is his submission that in fact the petitioner ought to have succeeded before the tribunal, considering the fact that the order dated 6 September 2016 passed by the Education Officer was *ex facie* illegal being contrary to the record, as no reason whatsoever was assigned by the Education Officer to come to a conclusion of cancellation of approval to the petitioner's appointment. It is submitted that the management had no option but to orally terminate the appointment of the petitioner as the approval to the petitioner's appointment was withdrawn by the Education Officer-respondent No.3.

20. Mr. Rayrikar, learned AGP appearing for the Education Officer would rely on the reply affidavit dated 16 February 2021 of Shri. Bhaskarao Shivajirao Babar, working as the Education Officer, as filed in the present petition to oppose the petition. Mr. Rayrikar, however, does not dispute that the Education Officer had not issued a show cause notice and/or had not granted a hearing to the petitioner before he could cancel the approval granted to the petitioner's appointment by his order dated 6 September 2016. It is, however, submitted by Mr.

Rayrikar that the Education officer was correct in passing such order, as a notice was issued to the management and as the representative of the management failed to remain present at the hearing, as fixed by the Education Officer, the order dated 6 September 2016 came to be passed by the Education Officer cancelling the approval granted to the petitioner's appointment. It is his contention that the Tribunal has rightly considered the issue in paragraph 13 of the impugned order, referring to the requirement of Section 5 of the MEPS Act in making the appointment of the petitioner. It is submitted that also the management had not ascertained from the Education Officer the requirement of such provision, as regards surplus teachers available with the Education department, as also the management had not issued any advertisement which was mandatory as per Section 5 of the MEPS Act. Mr. Rayrikar would, however, concede that such case is being pleaded for the first time in the reply affidavit before this Court and was never the case of the Education Officer before the tribunal or to the management. It is thus submitted that the petitioner was not entitled to an approval of her appointment and the benefits thereof.

Reasons and Conclusion :

21. I have heard Mr. Joshi, learned Counsel for the petitioner, Mr.

Sakhare, learned Counsel for the management and Mr. Rayrikar, learned AGP for the Education Officer. With their assistance, I have perused the record and the impugned order. At the outset some undisputed facts are required to be noted. Admittedly an advertisement was issued by the management on 2 June 2007 calling upon applications for filling teaching posts. One of the post advertised was a post of Assistant Teacher reserved for a candidate belonging to the NT category. Although the petitioner was an untrained teacher, the petitioner had participated, as no other candidate of such category had participated for the said post. There also appears to be no dispute in regard to the stipulations of the Government Resolution dated 27 April 2000 which in 'Annexure A' appended thereto sets out, that it would be permissible for such appointee (an untrained teacher) to acquire the requisite qualification within a period of five years of the appointment. The petitioner accordingly came to be appointed by an appointment order dated 11 June 2007. An approval was also granted to such appointment by the Education Officer by his communication dated 17 August 2007 as addressed to the management which was for the probationary period with effect from 15 June 2017, which was subject to producing a caste validity certificate. The petitioner, accordingly had obtained a validity to her caste certificate. There was thus no dispute

that the petitioner belonged to the NT category. It is also not in dispute that by a further communication of the Education Officer dated 8 August 2009, as issued to the management, a second approval was granted to the petitioner's appointment for the academic year 2009-2010 as an 'Assistant Teacher' in the reserved category, in the pay scale of Rs.3050-4950. It is also not in dispute that the petitioner during her employment acquired such qualification and was granted a D.Ed. Degree on 29 January 2011. The petitioner therefore, ceased to be an untrained teacher having acquired such qualification as permissible under the said Government Resolution and was entitled to be an Assistant Teacher on the regular pay scale fixed for such post. For such reason, the petitioner was issued a requisite appointment order dated 1 February 2011 by the management, appointing her as an Assistant Teacher on the pay scale of Rs.5200-20200/- to which she would be legitimately entitled. In pursuance of such appointment order, a fresh proposal for approval of petitioner's appointment was made to the Education Officer by the management on 17 March 2011, as she was already working on an aided post. By a communication dated 27 July 2011, the Education Officer informed the management of an approval to the petitioner's appointment as the Assistant Teacher in the pay scale of Rs.5200 – 20200 with effect from 1 February 2011. These are the

admitted facts in so far as the appointment of the petitioner is concerned.

22. It appears from the record that after about three years of such final approval being granted to the petitioner's appointment, by the Education Officer and after about seven years after her initial appointment, Mr. Halli made a complaint dated 18 December 2014 to the Education Officer alleging that the petitioner's appointment was illegal. It clearly appears that Mr. Halli's complaint was a belated complaint, more particularly considering the fact that the petitioner was already in service of the institution from June 2007 and thereafter, even after the petitioner acquired the requisite qualification, an approval to that effect was granted by the Education Officer on 27 July 2011. The Education Officer having received Mr. Halli's complaint, issued a show cause notice to the management, which was replied by the management pointing out that the complaint is false and be dismissed. All documents in relation to the petitioner's appointment and the approval of the Education Officer in that regard were pointed out. It was also pointed out that Mr. Halli was a habitual complainant, and was pursuing such complaint, with a personal malice and only to secure appointment in favour of his son. There were clear allegations of

malafides against Mr.Halli as set out by the management in its reply. Moreover, Mr.Halli had nothing to do with the school management and admittedly he was a rank outsider. Thus Mr. Halli's complaint was not of a person who could be aggrieved by a selection procedure in which he had a personal interest as that of a participant. Although the issue before the Education officer was limited, it appears that the Education Officer for some reason dragged the issue and delayed deciding the show cause notice for quite some time. He also did not take a decision despite an extensive reply being received from the management. This is quite apparent from the record. It appears that when the Education Officer scheduled a hearing on 30 November 2015, on such day a letter was addressed on behalf of the management that the representative of the management would not be in a position to remain present, it was however pointed out that a detailed reply was already submitted by the management alongwith the documents which be taken into consideration in case a decision is to be taken. The Education Officer in this situation proceeded to pass an order dated 6 September 2016 which was almost after more than two months from the date of a hearing fixed by him, by which the petitioner's approval as Assistant Teacher was cancelled, without assigning any reason merely on the ground that as the management was not represented at the hearing,

Mr. Halli's complaint was required to be accepted. This without any prior notice much less a show cause notice to the petitioner.

23. In the above circumstances, in my opinion, there is an apparent illegality in the impugned order passed by the tribunal, which overlooks the inherent and incurable illegality in the order dated 6 September 2016 passed by the Education Officer which formed the basis for the petitioner's oral termination. A perusal of such order passed by the Education Officer would, in fact, shock the conscience of the Court. It could not have been a different situation before the tribunal, if the principles of rationality and reasonableness were to be considered. This for more than one reason. Firstly, for the reason that the education officer completely discarded and had chosen not to refer to the reply of the management being the reply dated 16 July 2016 and the documents submitted alongwith such reply which were about 32 pages which contained documents relevant to the appointment of the petitioner. There is not a whisper of reference to any of these documents in the impugned order, much less any discussion thereon. Secondly and what is more astonishing, is that even assuming that the management for some reason was not to submit any reply or submit the documents to the Education Officer, it was impermissible for the

Education Officer in his character as a public officer, not to verify the departmental record, in relation to the appointment of the petitioner and the approval granted by him on three occasions in the past. It was not the case that the management had acted recklessly. It was a case where the management had made a proposal from time to time in regard to appointment of the petitioner and on which the Education Officer after applying his mind had granted initial approvals and a final approval being granted on 27 November 2011. It was the duty of the Education Officer to apply his mind to the departmental record, for the reason that to cancel the approval to the petitioner's appointment involved reviewing and/or recalling his earlier decision, which could have been done, only after following a due procedure in law. That the petitioner's appointment was in accordance with Section 5 of the MEPS Act was already considered by the Education Officer when he granted an approval to the petitioner's appointment firstly vide communication dated 8 August 2009 and secondly while granting approval on a regular basis vide communication dated 27 July 2011. Admittedly, the show cause notice did not specifically raise any issue invoking Section 5 of the MEPS Act. The Education Officer is not permitted to act so recklessly in discharging of his official duties to cancel the approval granted to an appointment, without hearing the person in whose

favour such approval was granted and without assigning any reason in the order, and that too merely on the ground that the representative of the management had not remained present. In the present context, there cannot be an illegality more serious as this. Moreover, on such careless action of the Education officer, the employment rights of an employee like the petitioner whose appointment was approved by his own earlier decision, were taken away by the Education Officer which had not only remained in operation for more than five years but was also acted upon. To undo such decision of the Education Officer, certainly involved reconsideration of his own decision. The Education Officer in the impugned order does not show any reason as to why his own decision and actions of granting a previous approval to the petitioner's appointment was bad and illegal. It would be thus a case for the departmental head of the Education Officer to inquire as to why the Education Officer has passed such orders, if those were not warranted in law granting approval to the petitioner. The Education Officer does not take that position in passing order dated 6 September 2016 that his earlier orders were illegal.

24. As noted above, a perusal of the order passed by the Education Officer clearly indicates that he had conferred upon himself some

extraneous powers and authority totally unknown to law in passing the order dated 6 September 2016 as the Education Officer has not been conferred any power to decide the representation made to him only on a non-traverse. Even otherwise, the present case was not at all a case of a non-traverse, as the management had submitted a detailed reply denying the contents of the show cause notice and the Education Officer was requested to consider such reply. However, conveniently, the Education Officer chose not to consider such reply which was a substantive reply of the management to the show cause notice.

25. This apart, the Education Officer in the present case had overlooked all norms of fairness and rationality inasmuch as he did not find it convenient to issue a show cause notice to the petitioner who would be affected the most by the adverse order which he would be passing against the petitioner. The consequence of the impugned order is that the petitioner was directly affected as the approval to her appointment which was enjoyed by the petitioner, on the basis of which the petitioner was availing the fruits of the aided post, namely that she was drawing salary and taking benefits as an aided employee, was being taken away by such order passed by the Education Officer. The Education Officer did not even bother to foresee the severe

consequences his order would bring about to the concerned employee. Such was the nature of the order passed by the Education Officer.

26. It is most unfortunate to notice that the learned Presiding Officer of the School Tribunal who was supposed to bear in mind such settled principles of law and rationality, has overlooked these tenets, which were fundamental to the adjudication of the petitioner's appeal. The petitioner had approached the tribunal with a case of oral termination purely on the basis of the Education Officer cancelling the approval of the petitioner's appointment by his order dated 6 September 2016. It was judicially expected of the tribunal that when such was the issue, the focus could not have ever been diverted to an issue which not raised in any of the pleadings before the tribunal. The tribunal had not even framed an issue on any question falling under the provisions of Section 5 of the MEPS Act regarding the petitioner's appointment. The tribunal cannot take the parties by a surprise in deciding an issue not raised before it. Admittedly, neither the show cause notice as issued by the Education Officer, nor the order passed by him canceling petitioner's approval, touch any issue on matters falling under Section 5 of the MEPS Act. In such situation, there was no occasion for the tribunal to delve on such issue as adjudicated by the tribunal in the

impugned order and more significantly when such question did not fall for consideration of the tribunal being not raised by any of the parties not even by the Education Officer. It was not a case where the Education Officer was considering a fresh proposal from the management and was taking a decision whether to approve or not to approve the appointment made by it.

27. The tribunal has referred to two decisions of this Court to reach to a conclusion as recorded in the impugned order. The first decision is a decision of the Full Bench of this Court in **St.Ulai High School vs. Shri.Devendraprasad Jagannath**², and secondly the decision in **Jaimala Ramteke Vs. Presiding Officer School Tribunal**³. In my opinion, the reference to both these decisions was not relevant in the context of the present case.

28. In **St.Ulai High School** (supra) the Full Bench of this Court has held that grant of approval by the Education Officer was not a condition precedent for valid appointment and it was material only for disbursement of grand-in-aid. The tribunal in the present case has observed that it is for this reason the petitioner ought to have proved

2 2007(1) Mh.L.J. 597

3 2009(5) Mh.L.J. 333

that her appointment was in accordance with Section 5 of the MEPS Act. In my opinion, the tribunal was not correct in reaching such conclusion in the facts of the present case by applying the law as laid down in the said decision of the Full Bench. This for the reason that an issue under Section 5 did not arise in the present proceedings before the tribunal as such issue was not raised by either of the parties before the tribunal. It was neither the case of the management nor the case of the Education Officer that the petitioner's appointment was illegal. The Education Officer in the order dated 6 September 2016 had not made a whisper of an observation on the appointment of the petitioner being illegal in cancelling the approval, and it is for such reason the tribunal had also not framed any issue as noted above, so as to give an opportunity to the parties to meet any issue on Section 5 of the MEPS Act.

29. The decision in **Jaimala Ramteke** (supra) was also not applicable in the facts of the case. In **Jaimala's case** (supra) the Court following an earlier decision of the Division Bench in **Anna Manikrao Pethe vs. Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati and others**⁴ had held that it was mandatory for the school

4 1997(3) Mh.L.J. 697

tribunal to follow three preliminary issues before deciding the matter on merits namely (i) whether the school was a recognized school as defined under the M.E.P.S. Act; (ii) whether the appointment of the concerned teacher was made as per Section 5 of the M.E.P.S. act and Rules thereof & (iii) Whether such appointment has been proved by the Education Officer in pursuance of the provisions of the Act as well as Rules framed thereunder including the Government Resolutions issued from time to time regarding reservation etc. In the said case, Jaimala – the petitioner therein had contended that she had completed her probation satisfactorily and hence had acquired the status of a permanent employee. She contended that her services could not be terminated by issuance of one month notice and could be terminated only after a due inquiry was undertaken by following the mandatory provisions of Rules 33 and 37. It is in this context, the learned Single Judge has observed that the Court examined the case of the petitioner applying the provisions of Section 5. These are not the facts in the present case as noted above. In fact the position in law stands clarified in the subsequent decisions as discussed hereinbelow.

30. The Division Bench in **Sadhana Janardhan Jadhav Vs. Pratibha**

Patil Mahila Mahmandal & Ors.⁵ while considering the decision of the Full Bench of this Court in **St.Ulai High School vs. Shri.Devendraprasad Jagannath**⁶, as also the decision in **Anna Manikrao Pethe vs. Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati and others**⁷ (which was considered by the Court in deciding Jaimal's case (supra),) has clarified the legal position in the light of the law as laid down in catena of the decisions of the Supreme Court. The Division Bench has held that a preliminary issue (in the present case it would have been a regular issue), as to whether the appointment is made in accordance with Section 5 of the MEPS Act and the Rules framed there under, should be framed, only if it arises and is properly substantiated in the pleadings of the parties to the appeal. It was held that the School Tribunal should decide all the issues at the same time without trying any or some of them as preliminary issues. In such context in paragraphs 17 and 19 the Division Bench has observed thus:-

“17) In the instant case, the only defence of the management in the written statement was, that the Education officer did not grant approval to the appointment of the appellant in the school because she was M.A.B.Ed. and not D.Ed. That was also the case of the Education officer. It was neither the case of the management and Respondent No.4 nor the Education Officer, who were the only contesting respondents before the School Tribunal, that the appointment of the appellant was bad for want of advertisement before making her appointment. However, the Tribunal recorded a finding that the appellant did not produce advertisement to show

5 2013(2) Mh.L.J.484

6 2007(1) Mh.L.J. 597

7 1997(3) Mh.L.J. 697

that her appointment was made after publication of advertisement and thus did not discharge the initial burden of proof and held that her appointment was not in accordance with Section 5 of the MEPS Act and dismissed the appeal.

... ..

19. We, therefore, hold in the light of the law laid down by the Apex Court that the preliminary issue as to whether the appointment of the appellant is made in accordance with Section 5 of the MEPS Act and the Rules there under, should not be framed mechanically in the first place and **should be framed only if it arises and is properly substantiated in the pleadings of the parties to the appeal** and further at that the School Tribunal should decide all the issues at the same time without trying any or some of them as preliminary issues.”

(emphasis supplied)

The Division Bench thus as a principle of law has laid down that an issue should be framed only if it arises and is properly substantiated in the pleadings of the parties to the appeal and that such issue also ought not to be framed as a preliminary issue. Thus in the present case the approach of the tribunal in rejecting the petitioner’s appeal by the impugned order on an issue namely the applicability of Section 5 of the MEPS Act, which had not arisen and substantiated in the pleadings of the parties, certainly would amount to perversity.

31. The tribunal has also overlooked that the consequence of the decision dated 6 September 2016 of the Education Officer was clearly to undo his own decision of granting approval and that too in a most cavalier manner and by a one line observation that merely because the representative of the management remained absent, the complaint of

Mr.Halli should be accepted as correct. If this was the only reason as set out by the Education Officer and without the Education Officer discussing in what manner the appointment of the petitioner was in any manner illegal, it was the judicial duty of the tribunal, while exercising adjudicatory powers, which were judicial, to consider all these issues. The tribunal in the present case has completely misdirected itself in not correcting the illegality committed by the Education Officer. Whosoever was the Education Officer, the Secretary of the concerned department would issue him a warning and impart training as to how the complaints are required to be decided in exercise of a quasi-judicial powers so that in future no person suffers injustice at the hands of such officer. Such observations are required to be made being deeply pained by the casual and careless approach adopted by the Education Officer as seen in the facts of the present case.

32. Mr. Joshi's contentions are thus required to be accepted in totality that this is a gross case where the petitioner has suffered not only at the hands of the Education Officer but also is adversely affected by the impugned orders passed by the tribunal. Mr. Joshi would be also correct in his contention that the tribunal was under an obligation to consider the patent illegality of the orders passed by the Education Officer inasmuch as the entire foundation of the petitioner's case was

on the order dated 6 September 2016 issued by the Education Officer and on the basis of which the consequent action of oral termination was imposed on the petitioner by the management. Mr. Joshi has rightly contended that the Education Officer, therefore, could not have taken a decision without examining the documents submitted by the management and the Education Officer's own record. Mr. Joshi is also correct in his contention, relying on the decision of **Kum.Arti d/o. Vithalrao Warkhede (*supra*)** that it was an obligation of the tribunal in adjudicating the petitioner's appeal to also decide the legality of the Education Officer's communication dated 6 September 2016. The Division Bench in such decision has clearly held that the tribunal has jurisdiction to decide on any decision taken by the Education Officer, if it is relevant for the adjudication of the issue before it. Exactly, this is what has been side tracked by the tribunal. The Division Bench in paragraph 6 has observed thus:-

“6. We find substance in this submission. It is clear that in a given case, the question whether approval to the services of the teacher has been wrongly refused or granted might itself be a question that may arise for determination in an appeal. The present case is one such example. The petitioner's services have been terminated on the ground that the Education Department has refused to grant approval to her services. In such a case, we have no doubt that the question whether the petitioner has been wrongly refused approval is a question that will arise for determination before the School Tribunal. We are of the view that a School Tribunal, which has the jurisdiction to decide whether the dismissal, removal or otherwise termination of the services of a teacher by the management is wrongful or not, has

the power to decide whether reason for such termination, i.e. whether the refusal of approval is right or wrong, as an ancillary or incidental question. The want of an express enumeration of powers does not exclude such incidental powers as are reasonably necessary to accomplish the purpose of deciding whether the dismissal of termination of services is wrongful or not. We might notice that in relation to another aspect, this Court has held that the School Tribunal is vested with the incidental power to decide the question of seniority of a teacher while considering his appeal that he has been wrongfully superseded.”

33. In the aforesaid circumstances, the order/communication dated 6 September 2016 of the Education Officer was patently illegal and could not have been acted upon by the management. The oral termination of the petitioner, therefore, was *ex-facie* illegal. As a consequence, the impugned order passed by the tribunal is required to be set aside. It is accordingly set aside. The petitioner needs to succeed in her appeal. The prayers as made in the appeal in terms of prayer clauses (b) and (c) are allowed. The petitioner, thus, would be entitled to reinstatement along with all consequential benefits including backwages, which shall be disbursed to the petitioner within a period of six weeks from today, by release of the grants in respect of the post held by her.

34. The petition is allowed in the above terms. No costs.

(G.S.KULKARNI, J.)