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

WRIT PETITION NO. 6883 OF 2018

Shri Pravin Raghunath Pawar and Anr.

... Petitioners

Versus

State of Maharashtra and Anr.

... Respondents

Mr. Narendra V. Bandiwadekar a/w Mr. Vinayak R. Kumbhar i/by
Mrs. Ashwini Navjyot Bandiwadekar for the Petitioners.

Mr. N. K. Rajpurohit, AGP for the State-Respondent Nos. 1 and 2.

**CORAM: R. D. DHANUKA AND
R. N. LADDHA, JJ.**

DATE : 21st DECEMBER, 2021.

P.C. :-

. Rule. Mr. Rajpurohit, learned AGP waives service for the respondents. By consent of parties, petition is heard finally.

2. By this petition filed under Article 226 of the Constitution of India, the petitioners have impugned the order dated 28th February, 2018 passed by the respondent no.2 for granting approval to the appointment of the petitioner no.1 as peon-shikshan sevak w.e.f. 12th September, 2016 in the aided secondary school of the petitioner no.2 and to release the grant-in-aid for payment of monthly honorarium for a period of three years from the date of appointment.

3. Mr. Bandiwadekar, learned counsel for the petitioners invited our attention to the impugned order dated 28th February, 2018 insofar as the

petitioner no.1 is concerned and would submit that the proposal submitted by the Management for approval is rejected on the ground that there was ban on appointment of the employee under Government Resolution dated 12th February, 2015. He submits that the petitioner no.2 is a minority institution and thus Section 5 of the MEPS Act would not apply to the minority institution. He relied upon the judgment of this Court delivered on 27th June, 2019 in case of **Mr.Jaydev Subhash Manerkar v/s. State of Maharashtra and Ors.** Writ Petition No. 7962 of 2017 and in another Writ Petition No. 4350 of 2017 and also an unreported judgment delivered on 16th July, 2021 in Writ Petition No. 4273 of 2019 in case of **Shital Kumar Patil v/s. State of Maharashtra and Ors.** This Court in both the judgments adverted to the Judgments of Hon'ble Supreme Court and held that Section 5(1) of the MEPS Act does not apply to the minority institutions and thus the Government Resolution pressed in service by the respondents would not apply to the petitioner no.2 institution.

4. Mr. Rajpurohit, learned AGP for the respondents could not distinguish the judgments relied upon by Mr. Bandiwadekar, learned counsel for the petitioners. In our view, the judgment of this Court referred to aforesaid would apply to the facts of this case. We are respectfully bound by the said judgments and we do not propose to take any different view in the matter.

5. The order passed by the respondent no.2 is contrary to the provisions of Section 5(1) of the MEPS Act and the principals of law laid down by this Court in the judgments referred to aforesaid and

deserves to be quashed and set aside. The petitioner no.1 thus has made out a case for approval of his appointment.

6. We accordingly pass the following order :-

- (a) Writ Petition is allowed in terms of prayer clause (b).
- (b) The approval to the appointment of the petitioner as prayed shall be granted within four weeks from today. The name of the petitioner no.1 shall be entered in the Shalarth ID within two weeks thereafter and shall release the consequential benefits including the payment of salary within two weeks from the date of entering the name of the petitioner no.1 in Shalarth ID.
- (c) The petitioner no.2-Management is directed to submit fresh proposal for appointment to the petitioner no.2 as peon on regular pay scale from 12th September, 2019 after expiry of three years as peon-shikshan sevak within two weeks from today. Upon receipt of such fresh proposal from the petitioner no.2-Management, the respondent no.2 shall consider the said proposal within four weeks thereafter and shall release the necessary grant-in-aid in favour of the Management in respect of such appointment within four weeks from the date of granting such approval.
- (d) Rule is made absolute accordingly. There shall be no order as to costs.
- (e) Parties to act on an authenticated copy of this order.

[R. N. LADDHA, J.]

[R. D. DHANUKA, J.]