

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

WRIT PETITION NO.13043 OF 2021

SHRI BALIRAJA SHIKSHAN SANSTHA THROUGH ITS SECRETARY AND
ANOTHER
VERSUS
MAHESH NARAYANRAO BILOLIKAR AND ANOTHER

WITH
WRIT PETITION NO.13250 OF 2021

SHRI BALIRAJA SHIKSHAN SANSTHA THROUGH ITS SECRETARY AND
ANOTHER
VERSUS
DAIVASHALA SADASHIVRAO MATEKAR AND ANOTHER

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Advocate for the Petitioners : Shri Shinde Chandrakant K.
Advocate for Respondents 1 : Shri Ganesh V. Mohekar
AGP for Respondent 2/ State : Shri A.A. Jagatkar
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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 24th February, 2022

Per Court:

1. The present writ petitions are filed being aggrieved by the orders passed by the School Tribunal rejecting the applications filed by the petitioners raising a ground of maintainability of the appeals filed by the respondent No.1/ employees before the School Tribunal, Latur, since they are teachers employed in the D.Ed. College and therefore, Section 9 of the Maharashtra Employees of

Private Schools (Conditions of Service) Regulation Act, 1977 (for short “the MEPS Act”), which is the remedy available to the employees of private schools, is not applicable to them. These applications came to be rejected vide the impugned orders dated 27.10.2021 and this has constrained the petitioners to approach this Court.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents No.1/employees and perused the writ petitions along with annexures including the impugned order.

3. Certain facts are not in dispute. The petitioner No.1 is an educational institution, registered under the Maharashtra Public Trusts Act and the Societies Registration Act and runs petitioner No.2 College, which is the D.Ed College. The respondents No.1 were employed as lecturers in petitioner No.2 and since their services were discontinued, they approached the School Tribunal at Latur challenging their dismissal along with the applications for condonation of delay. The delay being condoned, the appeals came to be entertained on merits and in terms of the order passed by this High Court, a preliminary objection of the petitioner Management about the maintainability of the appeals came to be decided.

The objection raised by the Management is to effect that the appeal does not pertain to any of the matters specified in Section 9 of the MEPS Act and since the remedy provided under Section 9 is available to the employees working in private schools, it cannot be invoked by the present respondents/ employees.

4. Shri Shinde, the learned counsel for the petitioner/ Management, while elaborating his arguments, would invite my attention to the definition of “private school” as defined in Section 2(20) of MEPS Act, 1977, which reads thus:-

“2(20) “Private School” means a recognised school established or administered by a Management other than the Government or a local authority.”

He would also invite my attention to the definition of “employee” as defined in Section 2 (7) of the MEPS Act, which reads thus:-

“2(7) “Employee” means any member of the teaching and non-teaching staff of a recognized school and includes Assistant Teacher (Probationary)”

Another definition in relation to the term “private school”, on which the learned counsel, Shri Shinde has focused his attention is the definition of the term “recognized” as defined in

Section 2(21) to mean, “*recognized by the Director, the Divisional Board or the State Board, or by any officer authorised by him or by any of such Boards*”.

5. By inviting my attention to phraseology used in Section 9 of the MEPS Act, the learned counsel would submit that the School Tribunal is constituted for providing the remedy to the employees of private schools and Section 9 adumbrates, notwithstanding anything contained in any law or contract for the time being in force, any employee in a private school, who is dismissed or removed or whose services are otherwise terminated or who is reduced in rank, by the order passed by the Management or who is superseded by the Management while making an appointment to any post by promotion, and who is aggrieved by such action, shall have a right to appeal and may appeal against any such order or supersession, to the Tribunal constituted under Section 8 of the MEPS Act.

6. The emphasis of the learned counsel is on the words “in a private school” used in Section 9(1) and his submission is, the private school has to be read and interpreted in the manner as it has been defined in the MEPS Act as a recognized school established and administered by the Management other than the government or the

local authority.

By relying upon the aforesaid definitions, the submission of the learned counsel for the Management is, the petitioner No.2/ D.Ed. College is not private school and therefore, the remedy is not available to its employees under the MEPS Act, the foremost reason being, it is the D.Ed. College, which does not receive recognition as contemplated under Section 2(21) of the MEPS Act. Relying upon the aforesaid parameters as set out in the scheme of the MEPS Act and the rules made thereunder, the learned counsel Shri Shinde would submit that the D.Ed. College, which imparts education to persons for being appointed as teachers and assistant teachers, is not covered within the definition of “private school”.

7. The learned counsel Shri Shinde has relied upon the Full Bench decision of this Court in the case of *Anil Dattatraya Ade vs. Presiding Officer, School Tribunal, Amravati Division and others, 2003 (2) Mh.L.J. 316*, where the issue arose before the Full Bench was as to whether, the employees of pharmacy institutions are governed by the MEPS Act and rules framed thereunder. He would also rely upon the decision of this Court in the case of *Salunkhe Jayawant Vishnu and others vs. State of Maharashtra and others,*

2019 (1) Mh.L.J. 506, pertaining to the pay scale being applicable to the employees working in the department of pharmacy, who were recruited as teachers and non teaching staff.

8. Per contra, the learned counsel for the respondents/ employees would submit that the Regulations, framed in exercise of powers conferred by Section 32(2) of the National Council for Teacher Education Act, 1993, known as “National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 (for short “NCTE Regulations, 2014”), are currently in force and the said Regulations define the norms of recognition and procedure for the teachers education.

The Regulations placed on record would reveal that they are applicable to all matters relating to teacher education programmes for preparing norms and standard and procedure for recognition of institutions, commencement of new programmes, addition of sanctioned intake in the existing programmes including recognition for commencement of new teacher education programmes, permission for introduction of new programmes in existing teacher education institutions, duly recognized by the Council as well as permission for additional intake, permission for

shifting or relocating of premises of existing teacher education institutions and permission for closure or discontinuation of recognized teacher programmes or institutions. The norms, in short, govern the regime of the teacher education programmes and the colleges imparting teachers education are subjected to said Regulations of 2014. The Regulations prescribe the eligibility of the institutions for consideration of their applications for imparting the said programmes and in detail, provide for the manner in which in such permissions can be granted. Clause No.5 deals with the staff and clauses 5.1 and 5.2 prescribe for faculty qualifications. Clause 5.4 sets out terms and conditions of service, which is relevant for adjudication of the present dispute and it reads thus:-

“5.4 Terms and Conditions of Service.

The terms and conditions of service of teaching and non teaching staff including selection procedure, pay scales, age of superannuation and other benefits shall be as per the policy of the State Government/ Affiliating Body.”

9. On 03.12.2021, when the notice was issued by this Court in these petitions, it made reference to the observations of the Division Bench of this Court at the Principal Seat in Writ Petition No.9808/2013 and connected petitions (*Gururaj Vasantrao Kulkarni*

vs. The State of Maharashtra and others) decided on 28.02.2019, where the State Government has admitted that the D.Ed. Colleges are governed by service conditions as per the MEPS Act and Rules, 1981.

10. The respondents/ employees have filed the common affidavit in the two petitions and they have categorically made reference to Regulation No.5.4 of the NCTE Regulations, 2014 and also specifically referred to various communications from the School Education Department of various dates, where, it is directed that the services of the employees in the D.Ed. Colleges are regulated/ regularized as per the provisions of the MEPS Act and Rules. Apart from this, the decision delivered by the Division Bench in Writ Petition No.9808/2013 (supra) has been relied upon as a precedent having binding effect.

It is further stated in the affidavit that if the remedy of the MEPS Act and Rules is not available, even civil remedy is not available to them in the wake of the Full Bench decision of this Court in *St. Ulai High School vs. Devendraprasad Jagannath Singh, 2007 (1) Mh.L.J. 597 (FB)*. In paragraph 10 of the affidavit, the following statement is made :-

“10. We say and submit that, even as per the amended provisions of MEPS Act, 1977 and Rules 1981 the definition of Junior College of Education has been inserted in clause 10 of section 2, it is administered and management in view of section 2(12), it is private school within the meaning of section 2(20). It is also school within the meaning of section 2(24) and as per MEPS Rules, 1981 as per rule 3 clause (1) sub clause (b), clause (2), clause (4), 5(b) the word Junior College of Education will find. Rule 6 prescribes, the minimum qualification for the teachers and non teaching staff in Primary School..... Junior College of Education, rule 7 prescribes scales of pay and allowances Junior College of Education etc. on words which shows that the provisions of MEPS Act, 1977 and Rules 1981 are fully applicable to the employees in the D.Ed. Colleges. So far as contention in respect of the appeals suffers from nonjoinder of necessary parties are concerned, such ground is raised first time before this Hon’ble High Court and it was not raised in the application below Exh-13 filed by petitioners on 22.10.2021. Therefore, such contention liable to be rejected.”

11. The learned AGP submits that the State has already made it’s stand clear before the Division Bench in Writ Petition No.9808/2013 with connected matters and the relevant paragraph of the affidavit of the State has been relied upon by the Division Bench to permit the employees in the D.Ed. Colleges to be governed by the MEPS Act and Rules.

12. The State Government has, therefore, specifically taken a stand, based on Regulation No.5.4 to the effect that till the regulations or norms are specifically framed for governing the service conditions of teachers employed in the D.Ed. College, they shall be continued to govern by the MEPS Act and Rules. The said statement was also made before the Division Bench in Writ Petition No.9808/2013 and group of writ petitions decided on 28.02.2019.

13. The issue before the Division Bench arose when the relief was claimed in the petition that the Court should declare that the MEPS Act and Rules shall apply to the D.Ed. Colleges, which are running within the State of Maharashtra and such of the petitioners before the Court, who were thrown out of service or are otherwise terminated, have a remedy of appeal by invoking Section 9 of the MEPS Act.

In answer to the said petitions, an affidavit was filed by the State Government, which contained a following statement:-

“8. With reference to Para 13 of the Writ Petition, which contains the Grounds for the petition, I say and submit that no separate service rules have been prepared under N.C.E.T., Act and made applicable to the employee in recognized D.Ed. Colleges. The N.C.E.T. Act deals with the recognition of D.Ed. Colleges in the country. Under the circumstances it is presumed that the employees in D.Ed. Colleges will

be governed by Service Conditions as per M.E.P.S. Act, 1977 and M.E.P.S. Rules, 1981 till the separate service conditions rules are prepared, prescribed and applied to them. Considering this aspect the contentions raised by the petitioner, it is felt that it deserves consideration. However, since the D.Ed. College in which the petitioner has worked is a Permanently No Grant Basis, the liability of payment of salary lies on the Respondent No.4 Trust and hence the management of the said Trust only is liable to face all the consequences arising out of termination of the Petitioner and not these Respondents.”

By referring to said statement made an affidavit by the State Government, the Division Bench made the following observations :-

“On a perusal of this paragraph, it is evident that the understanding of respondent Nos.1 to 3 is that the law, namely, the MEPS Act and the MEPS Rules, applies till separate service conditions are prescribed and applied to the teachers or employees in the D.Ed. Colleges. No such separate rules are prepared, prescribed and applied to them, presently. In the absence thereof, there cannot be a vacuum nor these employees can be left without remedy. Once the substantive law applies, then all provisions, including Section 9, will apply, is the understanding of the Government.”

Apart from the aforesaid observation, the Division Bench accepted the understanding of the State Government because it deemed it expedient not to permit the petitioners/ employees to rush

the High Court challenging the termination orders or making their grievances that their services are otherwise terminated, since in the absence of a remedy available u/s 9 of the MEPS Act, they will have to approach the High Court by invoking Article 226 the Constitution of India.

14. The observation made by the Division Bench, though based on the understanding of the State Government, was to continue till the teachers or employees in the D.Ed. Colleges are governed by separate rules. The Division Bench has specifically observed that in absence of such rules being framed, there cannot be a vacuum nor these employees can be left without remedy. Therefore, in view of the understanding of the State Government and particularly when regulation No.5.4 of the NCTE Regulations, 2014 prescribes that as far as terms and conditions of service are concerned, it is left to the State Government to decide the terms of conditions of service of the teaching and non teaching staff of the D.Ed. Colleges including their selection procedure, pay scales, age of superannuation and other benefits, etc.. Since the State Government had chosen to make the provisions of the MEPS Act and MEPS Rules applicable to them and even when this Court specifically directed the

State Government to clarify its stand on the said issue, the State Government through the learned AGP reiterated the stand before me to the effect that the teaching and non-teaching staff of the D.Ed. colleges is governed by the MEPS Act and Rules.

15. In the wake of the above, the School Tribunal, which assumes jurisdiction on the basis of the order passed by the Division Bench of this court and the specific stand of the State Government that the teaching and non teaching staff of the D.Ed. College including the present respondent Nos.1/ employees, who were working as teachers and came to be terminated from services, are held to be amenable to the jurisdiction of the School Tribunal and the objection raised by the petitioner Management has been rightly rejected.

16. The settled position of law being that, there can be no wrong, without remedy and when the learned counsel Shri Shinde was specifically asked as to what is the remedy available to the employees, he states that if there no remedy specifically provided, then, the general remedy can be availed of. This submission is countenanced by the observation made by the Division Bench in the order dated 28.02.2019 and when the State has chosen to confer the

remedy of Section 9 of the MEPS Act to the employees of the D.Ed. colleges, the Management cannot stop the remedy being availed, unless it is contrary to some other alternate remedy, which is available in law.

17. Reliance placed by the learned counsel for the petitioner on the observations of the Full Bench in the case of *Anil Dattatraya Ade (supra)*, particularly paragraphs 45-A to 47 are carefully perused by me.

The reference to the Full Bench was made in the wake of the conundrum existing on the issue of applicability of the MEPS Act, 1977 to the pharmacy institutions and the question that was made over to the Larger Bench was whether, the employees of the pharmacy institution are governed by the MEPS Act, 1977. This issue was referred to, in the wake of the view taken that the MEPS Act would not apply to the Polytechnic institution, which is technical institution and pharmacy institutions are also technical institutions.

While answering the question in affirmative and making the remedy under the MEPS Act available to the employees of the pharmacy institutions, the Full Bench had made certain observations and the learned counsel for the petitioner has put his fingers on

paragraphs 45-A to 47. In the said paragraphs, the Full Bench has recorded general principle of law that whether, an Act would apply to a particular institution, would depend upon the interpretation of the relevant provisions of law. This is exclusively a judicial function and expression of opinion by the petitioner or by the State Government is immaterial and cannot bind the Court. If on proper interpretation, the Court feels that the provisions of the Act would apply to a particular institution, opinion by any authority that the provisions would not apply does not alter the legal position.

18. The learned counsel for the petitioner is right in inviting my attention to the said accepted position. However, this observation does not take his case any further since, as far as the D.Ed. Colleges are concerned, it is not the State Government's stand that the MEPS Act and Rules are applicable, but it is the NCTE Regulations, 2014 which set out the norms and standards for teachers education and since the NCTE being conferred with the powers under Section 32(2) of the National Council for Teacher Education Act, 1993, has framed the NCTE Regulations, 2014 and while determining the terms and conditions of service of the staff, as stipulated in Clause No.5.4, the NCTE has left it to the State Government/ affiliating body to

determine their terms and conditions of service, which would include selection procedure, pay scales, age of superannuation and other benefits, etc. to be conferred upon the employees of the D.Ed. Colleges. When the NCTE left it to the discretion of the State Government, the State Government decided to make the MEPS Act and Rules applicable to the staff of the D.Ed. Colleges. It is not the case, which is contemplated in paragraphs 45-A to 47 of the Full Bench decision, as it is not interpretation of the State Government that the MEPS Act and Rules are applicable to the teaching and non teaching staff of the D.Ed. Colleges, but when the NCTE conferred the powers on the State Government to decide the terms and conditions of the staff working in the D.Ed. Colleges, the State has deemed it appropriate to govern their service conditions as per the MEPS Act and Rules till the separate service conditions are prepared, prescribed and applied to them. This is a stop-gap arrangement worked out by the State Government and if the State Government comes up with distinct service conditions for the staff of the D.Ed. Colleges, the State Government may revoke the applicability of the MEPS Act and Rules and may provide some other remedy. However, as long as no separate Act or Rules are framed, scenario cannot exist

that the staff in the D.Ed. Colleges is left without formulation of any condition of service. The question is not only of providing the remedy of an appeal, but the NCTE Regulations, 2014 contemplate broader area i.e. terms and conditions of service and the remedy of appeal is only one aspect of it and these benefits are left to the wisdom of the State Government by the NCTE Regulations, 2014. It is in this background, the State has exercised the powers conferred on it by the NCTE Regulations, 2014 and particularly clause 5.4 and decided to govern the staff of the D.Ed. Colleges by the MEPS Act and Rules.

This is completely different situation than the one which prevailed before the decision of the Full Bench in *Anil Ade (supra)* and the observations relied upon are in reference to the said context.

19. Further, the judgment in the case of *Salunkhe Jayawant Vishnu (supra)*, also stands on a different footing and is of no succor to the learned counsel for the petitioners.

20. In the wake of the above discussion, the impugned orders passed by the School Tribunal are upheld and the Writ Petitions are dismissed.

21. At this stage, Shri Shinde, the learned counsel for the petitioners, requests for stay to the above order. However, in the

wake of the reasoning recorded above and when the State Government itself, on the basis of regulation No.5.4, has explicitly declared that the remedy u/s 9 of the MEPS Act is available to the employees of the D.Ed. Colleges, I do not deem it fit to grant the stay. Hence, the request for stay is rejected.

kps

(SMT. BHARATI H. DANGRE, J.)