

Shiv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7920 OF 2021**

Smt. Sunita Rajbali Yadav ... Petitioner

Vs.

1. Navjyoti Education Society
Through Secretary, Thane ...
2. Shivaji Vidyalaya
Through its Head Master ...
3. The Education Officer
Thane Municipal Corporation
Thane ...
4. The State of Maharashtra ... Respondents

Mr. Mayuresh S. Lagu for the Petitioner.

Ms. Deepali Y. Deherkar for Respondent No.1.

Mr. Sandeep Mishra for Respondent No.2.

Mr. Ajit R. Pitale for Respondent No.3.

Mr. P. P. Pujari AGP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 16TH NOVEMBER 2022.

PC:-

1. Heard learned counsel for the parties.

2. Learned Presiding Officer, School Tribunal, Navi Mumbai, as per order dated 5th September 2019, was pleased to dismiss the Appeal preferred by the Petitioner under the provisions of section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “MEPS Act”). The Appeal was filed by the Petitioner, as the Head Master of School had not allowed the Petitioner-teacher to sign the muster from 6th March 2018. According to the Petitioner, her case falls within category of otherwise termination. Learned Presiding Officer dismissed the Appeal mainly on the following grounds :

- (a) Petitioner has signed on muster only on 31st December 2014 (not thereafter) and the Petitioner has not produced documentary proof that in fact she has signed muster till 5th March 2018, (paragraph 13 of the judgment)
- (b) There is irregularity in advertisement dated 12th August 2014, mean to say that on that date there is no vacancy but vacancy occurred on 31st December 2014, in view of retirement of Shri Rajendra Prasad (paragraph 12)
- (c) In the advertisement the Education qualification was not mentioned.
- (d) NOC from the Education Department of TMC was not taken (paragraph 14).

- (e) Approval cannot be granted to new teacher unless surplus teachers are absorbed in view of Government Resolution No.10th June 2016 (paragraph 14).

3. According to learned Advocate for the Petitioner, in fact, when the Appeal was dismissed as time barred, the learned Presiding Officer ought not to have made the observations on merits.

4. To buttress his submission, he relied upon the judgment in case of ***Ram Kali Devi Vs. Manager, Punjab National Bank, Shamshabad and Others (1998) 9 SCC 558***. About irregularity in appointment, he made two submissions, one, there is no provision in MEPS Act that advertisement can be published prior to date of actual vacancy. He invited my attention to a copy of the advertisement filed in compilation at page 12. According to him, the NOC of the Education Officer is not required in case of minority school. So also the provisions of Government Resolution dated 10th June 2016, will not be applicable as the school run by the Management is recognised as linguistic minority school. He placed reliance on the judgment of this Court in ***Mrs. Priyanka Deepak Singh and Anr. Vs. The State of Maharashtra in Writ Petition No.6270 of 2018*** dated ***1st November 2018***. He mainly pressed for remanding the matter.

5. Learned Advocate for Respondent No.1 has supported the contention of the Petitioner and according to her the Head Master is not having any authority to terminate any teacher and power vest with the management.

6. Learned Advocate for the Head Master supported the order. On the point of signing muster, he made two submissions. The muster produced by the Petitioner before this Court was signed by the Secretary of the Society and it is not signed by the Head Master. A copy of the muster is produced at pages 39 to 74 of the compilation. When a query was made to learned Advocate for the Petitioner having produced the copies of muster before the learned Tribunal my attention is invited to pages 36 and 37. It states about seeking leave of the Presiding Officer for production of documents and list consisting of copies of muster for certain period.

7. Learned Advocate for the Head Master invited my attention to a copy of the letter written by the Petitioner dated 27th February 2015, addressed to the President of Society. She has made grievance that from 2nd March 2015, onwards the Head Master has removed her name from the muster. In order to support that there are surplus teachers, learned Advocate for the Head Master relied upon a certificate dated 13th November 2014, stating that there are four surplus teachers. It is filed along with additional documents filed by the Head Master. In order to support his contention that the procedure laid down in section 5 of the MEPS Act needs to be followed, he relied upon following judgments :--

- (i) *Vasant Shikshan Prasarak Mandal and Ors. vs. State of Maharashtra and Ors. 2017 (1) Mh.L.J. 67;*
- (ii) *Rayat Shikshan Sanstha & Anr. vs. Yeshwant Dattatraya Shinde 2009 (5) All MR 151;*
- (iii) *Chandrashekhar Dhaniram Patel vs Navshakti Vidyalaya & Ors.*

2010 All MR (Supp.) 368;

8. On the point of status of the school as minority school, he invited my attention to denial in his written statement.

9. Learned Advocate for the Education Officer submitted that the Government Resolution referred in the judgment of Mrs. Priyanka Deepak Singh and Anr. vs. State of Maharashtra & Anr. in Writ Petition No.6270 of 2018, Government Resolution dated 20th June 2014, is referred whereas the learned Presiding Officer has referred to Government Resolution of 2016. He supported the impugned order.

10. After hearing learned Advocate for respective parties and after going through the record, it appears that learned Presiding Officer has dismissed the Appeal mainly for two reasons. One is that the Appeal is not filed within time and the second is on merits. It is true that when the Petitioner has produced copies of muster, stating that she has signed upto 5th March 2018, learned Presiding Officer ought to have considered those documents. It is very true that they were produced before him on 12th July 2019. Even though he has referred to the submissions about signing of muster as per the Petitioner's case and her case of otherwise termination from 6th March 2018 in paragraph 11 of the judgment, it is clear that above referred documents were not considered by him in entire judgment. Learned Advocate for the Head Master and the Education Officer could not point out from entire judgment that these documents were considered.

11. The Head Master may be having his own version as to who could maintain muster. Be that it may, if the learned Presiding Officer could have considered that muster produced by the Petitioner and thereby arrived at a conclusion that the Appeal was time barred, that could have been reasoned observation. So, I feel that on this aspect, matter needs to be remanded to learned Presiding Officer. He may verify that the muster was, in fact, produced before him on 12th January 2019 and then take appropriate decision. He is at liberty to make observations as to whether the Secretary of the Sanstha is having any right to maintain the muster. He is at liberty to consider all the documents produced by the parties.

12. So far as appointment of the teacher is concerned, (unless surplus teachers are absorbed), this Court feels that learned Presiding Officer is under obligation to consider the observations made by this Court in various judgments including the judgment in case of Mrs. Priyanka Deepak Singh (supra). Learned Presiding Officer may also consider what is effect of particular Government Resolution and then to consider observations of this Court, so far as observation of surplus teacher and fresh appointment. This is in respect of minority school.

13. From the tenor of the judgment, it also appears that learned Presiding Officer has not given categorical finding as to whether the school run by the Management is minority school or not. Though learned Presiding Officer has referred in paragraph 11 that the status of school as linguistic minority school as undisputed, the Head Master has disputed this fact that learned Presiding Officer after going through the pleadings of parties and considering documents on record

showing status of the school as minority school ought to have decided the issue. But he has not done that.

14. As this Court is remanding the matter, the observations made about irregular appointment also needs to be set aside. Learned Presiding Officer shall also go through the provisions of the MEPS Act, as to whether there is bar of issuing advertisement prior to falling of vacancy. In view of that the matter needs to be remanded. Hence, the following order is passed :

O R D E R

- (i) Writ Petition is allowed.
- (ii) The judgment and order dated 5th September 2019 passed by the learned Presiding Officer, Additional School Tribunal, Navi Mumbai, in Appeal No.8 of 2018, is set aside.
- (iii) Parties are directed to appear before the School Tribunal on 28th November 2022, at 11 am.
- (iv) Learned Presiding Officer to decide the Appeal as expeditiously as possible in the light of observations made above and preferably within a period of six months from 28th November 2022.

(S. M. MODAK, J.)