

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 182 OF 2019

PETITIONERS:

1. Jaibharat Mahila Sewa Sanstha,
through Joint Secretary,
Om Nagar, Nagpur-24.
2. Ujjawal Uccha Prathamik Shala,
through its Head Master,
Om Nagar, Nagpur-24.
3. Ku. Sangita Ramchandra Kalamkar,
Aged about : 39 years,
Occupation : Service,
R/o. 534, Nehru Nagar, Nagpur.

V E R S U S

RESPONDENTS :

1. State of Maharashtra,
Through its Secretary,
School Education and Sports
Department, Mantralaya,
Extension, Mumbai - 32.
2. Deputy Director of Education,
Nagpur Division, Nagpur.
3. Education Officer (Primary),
Zilla Parishad, Nagpur.

Shri A. D. Mohgaonkar, Advocate for petitioners.

Shri S. D. Sirpurkar, Assistant Government Pleader for respondent
Nos.1 and 2.

Shri G. G. Mishra, Advocate for respondent No.3.

**CORAM: SANDEEP K. SHINDE AND
MRS. VRUSHALI V. JOSHI, JJ.**

JUDGMENT RESERVED ON : 21/11/2022

JUDGMENT PRONOUNCED ON : 29/11/2022

JUDGMENT : (PER SANDEEP K. SHINDE, J.)

1. **Rule.** Rule made returnable forthwith.
2. Heard finally with the consent of learned counsel appearing for the parties.
3. This petition under Articles 226 and 227 of the Constitution of India takes exception to the order dated 18/09/2018 by which the Deputy Director of Education, reviewed and revoked the order dated 12/08/2014 granting permission to the appointment of the petitioner No.3 on non-teaching post in the school run and managed by petitioner No.1 - Jaibharat Mahila Sewa Sanstha, Nagpur.

In brief, facts of the case are as under :-

4. In terms of proviso to sub-section (1) of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, "MEPS Act"), the petitioner - Jaibharat Sanstha vide communication dated 12/11/2013 followed by reminder dated 03/01/2014 sought to ascertain from the Education Officer (Primary), Zilla Parishad,

Nagpur, whether there was any suitable person available on the list of surplus persons maintained by him for the post of Peon. Indisputably, the Education Officer did not respond to it. Consequently, petitioner - Sanstha, after following the procedure, contemplated under Rule 9 of the MEPS Rules, vide order dated 30/03/2014 appointed petitioner No.3 on non-teaching post - Peon in petitioner No.2 - school. Whereafter in terms of provisions of Rule 8(2) of Rules, particulars of his appointment were forwarded to Education Officer. After which on 12/08/2014, Education Officer (Primary) granted permission to appoint petitioner No.3 on non-teaching post, on probation, for two years. Upon completing probation period of two years, when approval was sought for his permanent appointment on non-teaching post, the Education Officer vide communication dated 30/05/2018, declined the approval, on the ground that before appointing petitioner No.3 on non-teaching post, "NOC" in terms of proviso to sub-section (1) of Section 5 of the MEPS Act was not sought. As such, Education Officer proposed to revoke / cancel permission dated 12/08/2014, and accordingly, recommended to Deputy Director to cancel it. Whereafter, the Deputy Director of Education, taking recourse to Government Resolution dated

02/05/2012 accepted the recommendations of the Education Officer, and held that unless the surplus non-teaching employees / persons available on the list of surplus persons are absorbed to the extent of 100%, the petitioner No.3 could not have been appointed, and accordingly, permission dated 12/08/2014 was cancelled. Thus, this petition.

5. Heard Shri A. D. Mohgaonkar, learned counsel for the petitioners, Shri S.D. Sirpurkar, learned Assistant Government Pleader for respondent Nos.1 and 2 and Shri G. G. Mishra, learned counsel for respondent No.3.

6. The impugned order is not sustainable in view of the fact, that before appointing the petitioner No.3 on non-teaching post of peon on probation, the petitioner No.1 had complied with proviso to sub-section (1) of Section 5 of the MEPS Act, which is evident from communication dated 12/11/2013 followed by next communication dated 03/01/2014. As such, the contention of the respondents that there was no compliance of provisions of sub-section (1) of Section 5 by the petitioner No.1 stands rejected. Yet, another reason for refusing the approval was that while granting permission on 12/08/2014, Government Resolution dated

02/05/2012 was ignored by the Education Officer. We find this contention and or ground for refusing the approval is equally untenable. Reason being, while granting permission on 12/08/2014, Government Resolution dated 02/05/2012 was in force. However, having had, ignored the said Government Resolution at the material time, it was not open to the Education Officer to decline approval on that ground. For all that, Education Officer could not have recommended to revoke or cancel permission dated 12/08/2014, nor could have refused approval to the appointment of petitioner No.3 on non-teaching post in the school run and managed by petitioner No.1.

7. Learned AGP would contend that, in view of the decision to reconstitute the staffing pattern of the Aided Secondary and Higher Secondary School, vide Government Resolution dated 12/02/2015, management of the private schools was directed not to make new appointment and warned management and the concerned Education Officer, of prosecution in case they breach of mandate of the Government Resolution. Thus, learned AGP would contend that, in view of mandate of Government Resolution dated 12/02/2015, the Education Officer could not have granted approval to the appointment of petitioner

No.3 on non-teaching post. On these grounds, learned AGP would justify the impugned order.

8. We do not agree with the submissions of learned AGP for the reason that, initial appointment of the petitioner No.3 on sanctioned post of peon was made on 30/03/2014. That was followed by permission dated 12/08/2014 granted by the Education Officer (Primary). Whereafter, petitioner No.3 successfully completed her probation period in August, 2016. The Government Resolution dated 12/02/2015 sought to be relied on, by the AGP has no retrospective application, inasmuch as petitioner No.3's initial appointment was made in March, 2014. Therefore, the order declining approval to the appointment of petitioner No.3 by taking recourse to Government Resolution dated 12/02/2015 is not sustainable. In so far as the Government Resolution dated 23/10/2013 and the Government Resolution dated 02/05/2012 are concerned, both the Resolutions were in place and in force on 12/08/2014, while the Education Officer granted permission to appoint the petitioner No.3 on non-teaching post. For all these reasons, the impugned order dated 18/09/2018 is quashed and set aside. In consequence, the respondent No.2 shall grant approval to the appointment of petitioner No.3 on non-

teaching post - Peon in the school of petitioner No.2 and accordingly, issue order within six weeks from today. Needless to say that petitioner No.3 is eligible to claim all consequential benefits upon the Deputy Director of Education / Education Officer granting approval to her appointment.

9. Rule is made absolute in the above terms. The petition is disposed of with no order as to costs.

[MRS. VRUSHALI V. JOSHI, J.]

[SANDEEP K. SHINDE, J.]

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