

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

WRIT PETITION NO. 3995 OF 2019

Bhaskar Sonerao Deshmukh,
Age; 51 years, Occ; Service,
R/o; Janwal, Taluka Chakur,
District; Latur.

...PETITIONER

VERSUS

1. Ahilyabai Holkar Shikshan
Prasarak Mandal, Karepur,
Taluka Renapur, Dist. Latur.
Through its Secretary.
2. The Assistant Commissioner,
Social Welfare, Latur Division,
latur.

...RESPONDENTS

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Advocate for the petitioner : Mr. S.R.Barlinge
Advocate for Respondent No.1 : Mr. V.D.Sapkal (Senior Advocate)
AGP for the Respondent No. 2/State : Mr. S.G. Sangle
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CORAM : KISHORE C. SANT, J.

**DATE OF RESERVATION : 13.06.2023
DATE OF PRONOUNCEMENT : 04.09.2023.**

JUDGMENT :

1. Rule. Rule made returnable forthwith, by consent of the parties.

2. This petition is directed against the judgment and order passed by the Regional Deputy Commissioner, Social Welfare, Latur Division Latur dated 24.07.2018. The Petitioner was appointed as Assistant Teacher in the Ashram School run by Respondent No. 1, who came to be terminated by holding an inquiry by Respondent No. 1. The petitioner's challenge to the termination order came to be turned down by the impugned order, the Petitioner is, therefore, before this Court.

3. The facts in short are that the Petitioner was duly appointed to the post of Assistant Teacher on 18.11.1996. His appointment in the Ashram School run by Respondent No. 1 was confirmed in the academic year 2019.2000 on receiving an approval by the concerned authority. The Petitioner, later on came to be appointed to the post of Head Master from the academic year 2001-2002. He worked as such till his termination. In 2010-2011, the Petitioner was subjected to an inquiry by the Management by issuing notice dated 21.11.2011 under the signature of the President. On completion of an inquiry, it is held that the charges against him are proved and accordingly the report was submitted. On receipt of the report

from the Inquiry Officer, an order dated 03.08.2012 came to be passed terminating the Petitioner. The Petitioner challenged this order before Respondent No. 2 i.e. the Regional Deputy Commissioner, Social Welfare, Latur, Region Latur, as the Petitioner was working in the Primary Ashram School.

4. It is the case of the Petitioner that an Inquiry was not properly conducted. No sufficient opportunity was afforded to him to participate in the inquiry. An inquiry was against Rules 36, 37 of the MEPS Rules. The charges were not properly framed. Though the Petitioner was very much present in the School, he was shown as absent before the Inquiry Committee. The persons holding an inquiry were interested persons with bias. The President of the School is practicing Advocate, and therefore, it was necessary to allow the Petitioner to be represented through a Lawyer, however, he was not allowed to engage a lawyer. The appellate authority has not properly applied its mind. In support of the petition, the petitioner submitted that in view of Rule 36 (6) of the Rules, the meetings of the Inquiry Committee should be held in the School Premises during normal School hours or immediately thereafter. In view of Section 37 he submits that the charges were baseless and no proper charges were framed.

There is no specific charge framed against the petitioner. The learned Advocate Mr. Barlinge, on these submissions prayed for allowing this Writ Petition.

5. Mr. Sapkal, the learned Senior Counsel for Respondent No. 1 submits that all the submissions of the Petitioner are in absence of pleadings to that effect. About the violation of Rules 36 and 37 there is no pleading in the petition. He attacked the petition stating that in fact no appeal was maintainable before respondent No. 2 as the services of the Petitioner are covered under MEPS Rules. In such case, the Petitioner ought to have approached to the School Tribunal, by way of filing an appeal. Appeal filed before Respondent No. 2 was not at all maintainable. About the merits of the matter, he submits that the points which are now tried to be canvassed before the Court were not pressed before the Appellate Authority. He, further submits that as a matter of record the Petitioner himself avoided an inquiry and therefore, the appellate authority has rightly held that the Petitioner avoided participation in the proceedings. Though the impugned order was passed in the year 2012, an appeal was filed in the year 2015. There is no explanation for such inordinate delay. The appellate authority

itself has no jurisdiction. The service conditions of the Petitioner are governed by Primary Ashram (Primary) School Code. The Petitioner approached the wrong forum. He, further, submits that the petition deserves to be rejected.

6. In rebuttal, the learned Advocate for the Petitioner submits that in fact Respondent No. 1 having appeared before the Appellate Authority cannot now raise a ground of jurisdiction of the Appellate Authority.

7. Both the parties have relied upon the following judgments, which are considered for the purpose of deciding this Writ Petition.

“(a) 2017 DGLS (Bom.) 2119 (Aurangabad Bench)
- Apang Vikas and Shikshan Sanstha, Sonai, Nandurbar and Another Vs. Jyoti Dulesing Ranawat and Others,

(b) 2002(3) Mh.L.J. 659 (Full Bench) - Suryakant Sheshrao Panchal Vs. Vasantrao naik Vimukta Jati Bhatakya Jamati Aadarsh Prasarak Mandal and Ors.

(c) 2007 (3) Mh.L.J. 707 (Full Bench, Nagpur),
National Education Society, Nagpur and another Vs. Mahendra s/o Baburao Jamkar and another,

(d) 2018 (4) Mh.L.J. 474 – (Equivalent Citation)

(e) 2002(3) Mh.L.J. 750 (Full Bench) - Anil Amrut Atre Vs. District & Sessions Judge,

Aurangabad and another.

(f) **2009 (2) Mh.L.J. 121 (Bom.)** - Matoshri Ramabai Ambedkar Vidyarthi Vasatigruh Trust and another Vs. Bharat D. Hambir and another.

(g) **2011 (4) (Bom.C.R.) 459 (Full Bench)**, Komal Rugwani Vs. State of Maharashtra and Ors.

(h) **2023 (2) Mh.L.J. 763 (Full Bench) (Bombay High Court)** - Hashmiya Bahrul Fiz Social Welfare Association vs. Abdullah M. Shukur Qureshi and Others.

(i) **Writ Petition No. 8347 of 2019 (Aurangabad High Court)** - Sudev Nagnath Kamble Vs. The Secetary Ahilyabai Holkar Shikshan Prasarak Mandal, Karepur, Tq. Renapur District Latur,

(j) **Writ Petition No. 1359 of 2009 (Division Bench, Aurangabad)** - Shankar s/o Laxmn Rawate and Ors. Vs. The State of Maharashtra and Ors.,

(k) **Writ Petition No. 5020 of 2003** - Shri Janjagriti Shikshan Prasarak Mandal and Another Vs. The State of Maharashtra and Others (Nagpur Bench).

(l) **2013 (4) Mh.L.J. 244 (Division Bench, Bom.)** – Latika Rajaram Mane Vs. State of Maharashtra and Others.

(m) **2006 (9) SCC 782 (Supreme Court)** – Dagdu Vs. President, Anandrao Naik Shikshan Prasarak mandal and Others.

(n) **2000 (1) Mh.L.J. 658** - Ganpati s/o Kondbaji Sant Vs. Sant Gulab Baba Shikshan Sanstha Umrer and Others.

(o) **2000 (2) Mh.L.J. 786** – Gopal Damduji Shel

Watkar Vs. Gramin Uddhar Society, Kamptee and another,

(p) **2007 (3) Mh.L.J. 627** - Punjaram w/o Dharmaji Wogdarkar Vs. Presiding Officer, School Tribunal. Amravati and another, R

(q) **1998 (1) Mh.L.J. 826** - Mahalaxmi Shikshan Sanstha Vs. The State of Maharashtra and Others,

(r) **1997 (3) Mh.L.J. 235** - Kashiram Rajaram Kathane Vs. Bhartiya R. B. Damle Gram Sudhar Tatha Shikshan Prasara Society and Others.

(s) **2011 AIR (SCW) 4326** - Secretary, Sh. A.P.D. Jain Pathshala & Ors. Vs. Shivaji Bhagwat More and Ors.

10. In the judgment of **Sonai Apang** (supra), the School had approached this Court against the order passed by the Divisional Social Welfare Officer, Nashik directing to reinstate the respondent. The said School was run for the persons with disabilities and the proceedings was undertaken under the provisions of The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation), Act, 1995. The respondent therein was appointed as Cook. Later on, her services were brought to an end. The respondent challenged the termination before the Divisional Social Welfare Officer. The question of jurisdiction of the Divisional Social Welfare Officer

was called in question stating that the said authority was not validly created under the Statute for the adjudication and therefore, the decisions cannot be said to be binding upon the parties. It was contended that the executive powers of the State cannot be extended to create judicial Tribunal and an authority for exercising judicial powers rendering judicial decisions. One more question that was considered as to whether the Ashram School in question can not be termed to be private School within the meaning of Section 2 (20) of the M.E.P.S. Act. It was held that the executive powers of the State would not be extended to create Judicial Tribunal and the order impugned in the said petition was set aside by allowing the petition. It was held that the said School can not be said to be a School under Section 2 (20) of the M.E.P.S. Act.

11. In Full Bench Judgment in the case of **Surya Kant** (supra) was considered and it is held that the question was as to whether the provisions of M.E.P.S. Act are applicable to the Ashram School running the School from 1st to 7th Standard or at intermediate level. It was also considered the employees working in the Primary Ashram School can approach to the

School Tribunal as and when they would fall within the ambit of term Private School. The references were answered that the Secondary and Higher Secondary Ashram School or Primary School are the "Private Schools" within the meaning of Section 2 (20) of the M.E.P.S. Act and any employee of the said School has a remedy of appeal under Section 9 of the said Act. It was further held that for the Ashram School the remedy is provided of an appeal. It was answered that the employees working in the Primary Ashram School or another School are not equal in the ambit of "Private School" and cannot approach the School Tribunal under Section 9 of the M.E.P.S. Act.

12. In the case of Anil Atre (supra), again a question was referred to the Full Bench after considering the provisions of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and after considering Rule 23(2) of the said Rules held that the appellant authority is required to apply its mind and to pass speaking order.

13. In the case of Dagadu (supra) a question was as to whether a teacher of non recognized Primary School in

Maharashtra can approach to the School Tribunal. It was held that an appeal needs to be filed before the Divisional Social Welfare Officer. It was held by the Hon'ble Supreme Court that when the Ashram Schools are imparting education only to the Primary School from Standard 1st to 7th either of the Director or of the Boards as defined in the Act. Therefore, it is not a Private School, within the meaning of Section 2 (20) of the M.E.P.S. Act. It was held that the Tribunal would not have jurisdiction to entertain an appeal as the employees of the Primary Ashram School cannot be termed as employees of Private School. Therefore, the question was cropped up as to what remedy is available to the employees of the Ashram School. It was held that such employees can file an appeal before the Divisional Social Welfare Officer. The Hon'ble Supreme Court had also considered the judgment in the case of Suryakant.

14. In the case of Matoshri Ramabai Ambedkar (Supra) and Komal Rugwani (supra), this Court by considering the judgment of Suryakant held that since the Primary Ashram School is not recognized by one of the stipulated authorities and therefore, the employees of the School cannot approach the

School Tribunal.

In the case of Hashmiya Bahrul (supra), is this case it was held that the employees of D.Ed. and B.Ed. Colleges are not recognized under the M.E.P.S. Act, therefore, cannot file an appeal under Section 9 of the M.E.P.S. Act. In this case also the case of Suryakant was also considered.

15. In the case of Shankar (supra) the ratio of in the case of Suryakant Panchal's was followed. So far as Latika Mane's case (supra) is concerned, the provisions of the Maharashtra Right of Children to Free and Compulsory Education Act and the Rules thereunder also were considered. In that case the Petitioner was appointed as Assistant Teacher in the School in Primary Section. Her appeal was dismissed by the School Tribunal holding that the School Tribunal has no jurisdiction. The School Tribunal had relied upon the judgment in the case of Komal (supra). The definition in the said Act was considered under **Section 2 (n)** of the Act which defines the School as below :

“School” means any recognized school imparting elementary education and includes -

(i) a school established, owned or controlled by the appropriate Government or

a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority”

16. This judgment has come after the Act, 2009, which came into force i.e. the Right Of Children To Free And Compulsory Education Act, 2009 and the Maharashtra Right Of Children To Free And Compulsory Education Rules, 2011. Rule 20 of the said Rules is considered in this case. It is held that the very object of Rule 20 of the Rules, 2011 is considered which gives jurisdiction to entertain appeals by Primary School Teachers in respect of matters referred to in Rule 20. The jurisdiction is confirmed upon by the School Tribunal constituted under the MEPS Act. The judgment given in the light of the judgment in the case of Komal (supra), it states that it is receiving an aid or grant i.e. Clause 2 (n) (ii) and in Clause 2 (n) (iii) as it belonged to a specific category as given in Section 2 (n) of the R.T.E. Act

Section 20 in clear terms provides that a teacher or

an employee can raise grievance in cases covered by Clause (a) and (b). Section 20 (2) clearly stipulates that the said appeal shall be governed by the provisions of Section 8, 9, 10, 11, 12, 13 and 14 of the MEPS Act and Rules 39 and 43 of the MEPS Rules. It is further held that a remedy under Section 9 of the MEPS Act is made available to the Primary School Teachers is not confined only to the orders given in Clause (a) and (b) but also include in the decision of the Management regarding the service conditions. This Court finds that from the judgment in the case of Latika (supra) it is clear that the School Tribunal who is having jurisdiction to entertain an appeal in cases of a teacher of Primary School which also would include a School i.e. 'Ashram School'. This Court finds substance in the submissions of Mr. Sapkal, the learned Senior Advocate that in the present case the petitioner putforth in the definition of Primary School and it states that it receiving an aid or grant i.e. Clause 2 (n) (ii) and in Clause 2 (n) (iii) as it belonged to a specific category as given in Section 2 (n) of the R.T.E. Act. There is one more judgment given by the High Court, Nagpur Bench in Writ Petition No. 5020 of 2003 in the case of Shri Janjagriti (supra), wherein a challenge was raised to an order passed by the Divisional Social Welfare

Officer, whereby, an appeal of the employee was allowed by directing to reinstate in service. The said Writ Petition came to be allowed by keeping it open for the employee to avail appropriate remedy, according to law, if so advised. Considering both these judgments, this Court finds that the proper remedy for the petitioner is to approach to the School Tribunal established under the MEPS Act.

17. From the said definition, the Court also considered Section 20 of the Act providing the Grievance Redressal Mechanism for the teachers for the purpose of Section 24 (2) of the said Act giving right to the employees to file an appeal to the School Tribunal as stated in Section 8 of the M.E.P.S.Act. It was thus, held that it was the judgment given with reference to the Latika (supra). The reference was answered that the School Tribunal has jurisdiction to entertain an appeal.

18. Thus, by relying upon these judgments, the learned Advocate for the petitioner Mr. Barlinge submits that the Petitioner had rightly approached the Divisional Social Welfare Officer against the termination order.

19. So far as the judgments relied upon by Mr. Sapkal,

learned Senior Advocate for the respondents are concerned, in the case of **Ganpati** (Supra) Rule 36 (1) and 2 (b) of the M.E.P.S. Rules was considered. In that case the Petitioner was serving as a Headmaster. The Petitioner was malafiedly transferred to another School on the strength of the students, thus it was amounting to reducing the status of the Petitioner as the pay scales depending on the strength of the students, the Petitioner, was thus, approached the High Court. The statement of allegations was served by the C.E.O. to the Management, calling upon the explanation. Pursuant to that an inquiry was proceeded. The said order was challenged. By considering Rule 36 (1) of the Rules it was held that it is the President who was legally competent to issue the allegations for the purpose of seeking explanation. In that case since the explanation was called by the C.E.O., the entire action was held to be vitiated. In that case the School Tribunal had dismissed an appeal. The High Court on considering the allegations allowed the Petitioner by quashing and setting aside the order passed by the School Tribunal.

20. In the case of **Gopal Damduji** (supra) it was held that an inquiry against head of the institution as to who can

composite Inquiry Committee was considered by holding that the President of the Institution himself was Conveyor of the Inquiry Committee by considering Rule 36 (2) of the Act. In the said case it was held that again the Management have every right under Sub Rule (1) & (2) of Rule 36 and the petition was allowed.

21. In the case of **Punjaram** (supra) a question was as to whether a practicing Lawyer can be a member of an Inquiry Committee and also Conveyor of the Committee. He was also Presiding Officer appointed by the management. The Presiding Officer appointed by the Management was the Chief Executive Officer who recorded the statements in Primary Inquiry was also having a law degree. It is held that the employee could have defended in better manner if he was allowed to engage a lawyer.

22. So far as **Mahalaxmi's** (supra) case is concerned, it is held that a delinquent employee has to supply two copies of the documents tendered by the Management by way of employment.

23. In that case one of the members of the Committee i.e. the President of the Management herself gave evidence in support of the charge levelled against the delinquent employee. In that view of the matter, it was held that an inquiry was

vitiated as the convenor i.e. the President of the Society has incurred disability as she gave evidence.

24. In the case of **Kashiram** (supra) it is held that the President of the Management Society herself gave evidence in support of the charge levelled against the delinquent Headmaster. She was also one of the 3 members of the Inquiry Committee. In that case it was held that the inquiry was vitiated, as the Conveyor President of the Society incurred disability by giving evidence.

25. In the case **Secretary, Sh. A.P.D. Jain Pathshala** (supra) the Hon'ble Apex Court has held that the Government cannot create a forum by executive instruments or by passing a Government Resolution. In the said case a challenge was to the jurisdiction of the forum created for the grievances of the Shikshan Sevaks appointed under the scheme. As per the scheme the Shikshan Sevaks were to be appointed on payment of Ex-honorarium for a term of one year in the school. If the work is found satisfactory, they were to be absorbed into service as teachers. In case of a dispute the Grievances Redressal Committee was constituted consisting of three members for

deciding the issues of selection, appointment, re-appointment or mid-cancellation of the appointment. It was held that the Expert Statutory Forum created by the executive orders cannot be recognized in view of Article 162 of the Constitution of India. It was held that in view of the Constitution nor any Statute empowers the High Court to create or constitute a quasi judicial Tribunal for taking dispute as it does not for the legislative powers. It was held that the High Court also cannot direct to the Executive Branch of the State Government to create or constitute a quasi judicial Tribunal otherwise than by the legislative statute. The argument is therefore, made that when no specific provision is made by any statute for the Ashram School employees to approach the Divisional Welfare Social Officer. The said authority does not get jurisdiction to entertain the grievances. This Court, finds that in the present case it is admitted that the petitioner happens to be an employee of the Primary Ashram School. Though initially the employees of the Ashram School were not subject to the jurisdiction of the School Tribunal in view of the legal position as it stood prior to the Right to Education Act. However, after coming into force of the Right to Education Act in view of Section 20 now even the Ashram

School teachers are covered as per Section 20 (2) of the Act. Since in this case the petitioner's services were terminated after coming into force the Right to Education Act, the proper forum for the petitioner was to approach the School Tribunal established under the MEPS Act.

26. Coming to the merits of the case, this Court finds that no case is made out by the petitioner of violation of Rule 36 or the Rule 37. The learned Divisional Social Welfare Officer has observed that it is the petitioner who did not whole heartedly participated in the inquiry proceedings. It is the petitioner who was seeking unnecessary adjournments. Even by posing that this Court had granted a stay wherein infact no stay is granted by this Court. This Court also finds substance in the submission of learned Senior Advocate Mr. Sapkal that though the arguments are advanced on various aspects, there is no pleadings in the petition to that effect. Taking into consideration over all aspects, this Court finds that the petitioner could not make out the case calling for interference at the hands of this Court, firstly that the Divisional Social Welfare Officer was not a forum to approach in the case of termination by the Ashram School. In view of Section 20 of the Right to Education Act.

Secondly this Court finds that even on merits, no case is made out by the petitioner. This Court, finds that the petitioner had approached the wrong forum. This dismissal shall not come in the way of the petitioner if he wants to approach the proper forum to raise her grievances. With this, this Court holds that no interference is called for. The petition is dismissed. The petitioner is at liberty to approach the proper forum as indicated above.

(KISHORE C. SANT)
JUDGE

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