

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 460 OF 2023**

Abdul Jabbar Shaikh

...Petitioner

Versus

The State of Maharashtra Through Its Principal
Secretary School Education And Sports & Ors

...Respondents

Mr Amrut Joshi, with Akhil Kupade, for the Petitioner.

Mr NC Walimbe, AGP, for State.

Mr Sujeet Bugade, for Respondent No.5.

Mr Omkar Mane, for Complainant.

**CORAM G.S. Patel &
 Dr Neela Gokhale, JJ.**

DATED: 30th January 2023

PC:-

1. Rule. The contesting Respondents waive service. Rule returnable forthwith.

2. In our view, the Petition deserves to be allowed on one simple legal ground. By an impugned order of 30th December 2022 passed by the 4th Respondent, The Education Officer (Secondary), Zilla Parishad, Solapur, the authority has purported to review his predecessor's earlier order. The fact that the officer who passed the

ARUN
RAMCHNDRA
SANKPAL

Digitally signed
by ARUN
RAMCHNDRA
SANKPAL
Date: 2023.01.31
10:01:00 +0530

order purported to be reviewed was another person only makes matters that much worse.

3. The Petitioner holds an M.A. B.Ed. He was appointed to a vacant post of an assistant teacher in the Solapur Social Association Urdu High School and Junior College of Science, Solapur. This is the 6th Respondent and it is run by the 5th Respondent.

4. There is no dispute about the legality of the Petitioner's initial appointment. The Petitioner was on probation from 20th January 1996. This appointment was in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the governing Act, the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

5. On 3rd February 1996, the management sent a detailed proposal to the 4th Respondent for formalising his appointment and seeking approval. That approval followed with effect from 20th January 1996, the date of commencement of the probation. Later, the Petitioner was appointed as an assistant teacher in the trained graduate pay scale with effect from 1st April 2003. For this the management also sent a detailed proposal for approval to the 4th Respondent. That was granted on 11th June 2003.

6. The Petitioner served for more than 12 years and became entitled to be appointed as the Headmaster of the school. The management decided to appoint the Petitioner as the Headmaster

inter alia invoking Section 3(2) of the MEPS Act. His appointment as Headmaster was from 1st September 2007 by the Trust. Once again, the management submitted a proposal on 5th September 2007 for approval of the appointment of the Petitioner as a Headmaster. Even this received approval from the 4th Respondent on 8th October 2007 with effect from 1st September 2007 in a regular pay scale.

7. The Petitioner's appointment was extended periodically. He was due to retire by superannuation on 31st December 2022, in the midst of the educational term of 2022-2023. Therefore, the management passed a resolution on 6th October 2022 granting him an extension in the post of Headmaster to avoid prejudice to the school and the students. This extension was as contemplated by Rule 17(2) of the MEPS Rules. The extension was till the end of the academic term for 2022-2023 since the Petitioner was retiring by superannuation in the middle of the academic year.

8. Even for this extension the management sought approval from the 4th Respondent. The 4th Respondent granted its approval on 10th November 2022 subject to certain conditions which the Petitioner states have been fulfilled. Again, that extension was only to the end of that academic year.

9. It seems then that some persons claiming to be aggrieved and who are represented before us today saying they were trustees or committee members made complaints to the 4th Respondent. It is unfortunate that in this contest between rival claimants to

management and trusteeship, a person like the Petitioner who has served the institution, college and its students for nearly two decades should be caught in the crossfire and should have to suffer like this. We are not concerned with the merits of that dispute or with the change reports that are said to be filed with the Charity Commissioner. Those will be dealt with in accordance with law. We are expressing no opinion in that regard. There are also civil suits filed in various Courts. Even those are of no consequence so far as we are concerned. What is relevant is that on 30th December 2022 the officer then temporarily holding charge in the office of the 4th Respondent, in purported exercise of some power of the review, sought to upset, overturn and reverse the previously approved extension proposal dated 10th November 2022.

10. That the individual who did this so-called review was a different person, and that, too, while temporarily holding charge, makes matters infinitely worse.

11. It is well settled that a power of review is not inherent. It has to be specifically conferred by statute or must exist by an unmistakable necessary implication.¹ The rule against inferring a power of review is that assuming a power of review constantly leads to uncertainty. The rule of law demands above all finality and certainty in decision-making processes, and it is never open to an authority to constantly review previous orders in this fashion. Even

1 *Narshi Thakershi v Pradyumansinghji Arjunsinghji*, (1971) 3 SCC 844; *Ram Sahu v Vinod Kumar Rawat*, (2020) SCC OnLine 896; *SREI Infrastructure Finance Ltd v Tuff Drilling Pvt Ltd*, (2018) 11 SCC 470; *Lily Thomas v Union of India*, (2000) 6 SCC 224; *Vikram Singh v State of Punjab*, (2017) 8 SCC 518; *Surendra Mohan Arora v HDFC Bank Ltd*, (2014) 15 SCC 294.

where powers of review are conferred, they are extremely circumscribed and can be exercised only in very limited circumstances. The approval to the extension was properly sought and granted. The only reason for the so-called review was the pendency of disputes between trustees in civil courts and before the Charity Commissioner. The approval was reversed more or less in anticipation of the result of those litigations and disputes. That is hardly sufficient reason. The extension approval also creates undoubted rights in favour of the Petitioner. It has consequences to the college and the students. The approval is, therefore, not purely ministerial to admit of the exception to the general rule requiring a specific conferment of the power of review.

12. We are unable to see from the impugned order, a copy of which is annexed as Exhibit “A” to the Petition, how the 4th Respondent could possibly have reviewed the 30th November 2022 order in the manner in which he did. This is not a power that could be conferred by the rules. It has to be conferred by the statute. There is no provision shown to us by which the 4th Respondent could possibly exercise any such power of review.

13. In this view of the matter, the Petition succeeds. Rule is made absolute in terms of prayer clause (b) which reads thus:

“(b) This Hon’ble Court may be pleased to examine the legality, validity and propriety of the impugned order dated 30/12/2022, whereby, the Respondent No.4 (In-charge Education Officer) has cancelled/revoked the approval to the extension granted to the Petitioner for the post of Headmaster, AND, thereafter, this Hon’ble Court may be

further pleased to quash and set aside the same declaring that the impugned order is illegal, arbitrary and in egregious violation of Rule 17(2) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981”.

14. No costs.

(Dr Neela Gokhale, J)

(G. S. Patel, J)