

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4243 OF 2022

(FIROZ VIDYA SAMITI & ANR...VS.. SADIQUE RAMJAN ALI & AN R.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.A. Dhabe, Advocate for Petitioners.
Shri V.N.Patre, Advocate for Respondent No.1
Shri K.L.Dharmadhikari, A.G.P. for Respondent No.2

CORAM : ANIL S. KILOR, J.
DATED : FEBRUARY 22, 2023.

1. Heard.
2. The order, dated 10/03/2022, passed by the School Tribunal, rejecting application moved by the petitioners to lead evidence, is under challenge in this writ petition.
3. The learned counsel for the petitioners submits that in earlier round of litigation, this Court has directed the Tribunal to frame the issues as per the judgment in the case of *Anna Manikrao Pethe ..vs.. Presiding Officer, School Tribunal*, reported in 1997(3) Mh.L.J. 697. However, vide impugned order, the learned Tribunal has refused to frame the issues as per the judgment in the case of *Anna Pethe* and also not allowed the petitioner to lead evidence.
4. It is submitted that while deciding the appeal under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the MEPS Act") it is

obligatory on the part of the Tribunal to go into the validity of the appointment and to examine whether the appointment was made as per Section 5 of the MEPS Act. It is submitted that by not framing such issue, the Tribunal is giving a go-by to the important issue. He, therefore, submits that the impugned order is illegal and bad in law.

5. The learned counsel for the petitioners, further submits that though there was a compromise in earlier round of litigation and as per that compromise the respondent was reinstated with continuity of service, the reinstatement was not on the post of Assistant Teacher in the High School, but in the Middle School. He, therefore, submits that the appointment of the respondent cannot be treated in the High School and it is not permissible.

6. On the other hand, the learned counsel for the respondent/ employee points out that there were no directions issued by this Court in the earlier round to frame issues as per judgment in the case of *Anna Pethe* (supra) on the contrary this Court has observed that the Tribunal is at liberty to frame the issue in accordance with the decision in *Anna Pethe*.

7. It is pointed out that after considering the matter on merit, the Tribunal has arrived at a conclusion that there is no need to frame issue in accordance with the decision in the case of *Anna Pethe*. He further submits that paragraph Nos.9 and 10 of the order dated

07/01/2022 passed by this Court in Writ Petition No. 3970 of 2021 is sufficient to show that the clarification was made by this Court as regards the effect of compromise. At the same time the Tribunal was directed to consider the submission of the respondent/ employee, namely that once the departmental enquiry was conducted by following the procedure under Sections 35 and 36 of the MEPS Act, the employee cannot be termed as 'temporary employee'.

8. The learned A.G.P.supports the impugned order.

9. In the light of the rival submissions of the parties, I have perused the writ petition, documents filed along with the writ petition and the impugned orders.

10. Firstly, the submission of the learned counsel for the petitioner that there were directions issued by this Court vide order dated 07/01/2022 to the Tribunal to frame the issues in accordance with the judgment in the case of *Anna Pethe* (supra), is misconceived, as there are no such directions issued by this Court. On the contrary, a liberty was granted to the Tribunal to frame the issue in accordance with the decision in the case of *Anna Pethe* (supra).

11. In this case, after considering the material available on record if the Tribunal is arrived at a

conclusion that there is no need to frame the issue, it cannot be faulted with.

12. As far as the apprehension of the petitioner that because no issue was framed by the Tribunal as to whether the appointment of the respondent-employee was made as per Section 5 of the MEPS Act, the Tribunal will not decide the said issue, this apprehension is also misconceived in view of paragraph Nos. 9 and 10 of the order of the Court dated 07/01/2022. When this Court has categorically clarified that the compromise in itself does not amount to waiver, as it mistakenly assumed by the Tribunal. At the same time this Court permits the respondent/employee to argue that in view of the enquiry conducted and the termination is after enquiry, he cannot be treated as temporary employee, sufficiently shows that a care has been taken by this Court by keeping open the issue as regards the appointment of the respondent No.1, whether the appointment of the respondent No.1 is as per Section 5 of the MEPS Act. Thus, the second contention of the petitioners is misconceived.

13. In the circumstances and for the reasons recorded herein above, I do not find any merit in the present writ petition.

The Writ Petition stands **dismissed**. No order as to costs.