



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14691 OF 2019

- 1] Chakradhar S/o Shivajirao Padole,
Age : 30 years, Occu : Service,
R/o : Taroda (Kh), Nanded,
Tq. & Dist. Nanded
- 2] Navnath S/o Pandurang Abadar,
Age : 37 years, Occu : Service,
R/o : Near Jain Mandir,
Malegaon Road, Nanded,
Tq. & Dist. Nanded
- 3] Manik S/o Baliram Kadam,
Age : 34 years, Occu : Service,
R/o : Nath Nagar, Nanded,
Tq. & Dist. Nanded
- 4] Ashish S/o Panditrao Chavan,
Age : 29 years, Occu : Service,
R/o : Maganpura, Nanded,
Tq. & Dist. Nanded
- 5] Munjaji S/o Madhavrao Rajegore,
Age : 36 years, Occu : Service,
R/o : Nath Nagar, Nanded,
Tq. & Dist. Nanded
- 6] Sangam S/o Tukaram Kaletwad,
Age : 29 years, Occu : Service,
R/o : Taroda (Br), Nanded,
Tq. & Dist. Nanded
- 7] Rina Vishwanath Sugandhe,
Age : 28 years, Occu: Service,
R/o : Taroda (Br), Nanded,
Tq. & Dist. Nanded

.. Petitioners

Versus

- 1] The State of Maharashtra,
Through its Secretary,
School Education & Sports Department,
Mantralaya, Extension Building,
Mumbai – 32.
- 2] Director of Education,
School Education & Sport Department,
Maharashtra State, Pune

- 3] The Dy. Director of Education,
Latur Division, Latur
- 4] Chief Executive Officer,
Zilla Parishad, Nanded,
Dist. Nanded
- 5] Education Officer (Primary)
Zilla Parishad, Nanded,
Dist. Nanded
- 6] Trishaladevi Primary School,
Dattanagar, Nanded,
Tq. & Dist. Nanded
Through its Headmaster
- 7] The Chairman / Secretary,
Lokshikshan Prasarak Mandal,
Bijur, Tq. Biloli, Dist. Nanded

.. Respondents

**WITH
WRIT PETITION NO. 4252 OF 2020**

- 1] Manik S/o Baliram Kadam
Age : 34 years, Occu : Service,
R/o. Nath Nagar, Nanded
Tq. & Dist. Nanded
- 2] Chakradhar S/o Shivajirao Padole,
Age : 30 years, Occu : Service,
R/o. Taroda (Bk), Nanded,
Tq. & Dist. Nanded
- 3] Navnath S/o Pandurang Abadar
Age : 37 years, Occu : Service,
R/o. Near Jain Mandir,
Malegaon Road, Nanded,
Tq. & Dist. Nanded
- 4] Ashish S/o Panditrao Chavan,
Age : 29 years, Occu : Service,
R/o. Maganpura, Nanded,
Tq. & Dist. Nanded
- 5] Munjaji S/o Madhavrao Rajegore,
Age : 36 years, Occu : Service,
R/o. Nath Nagar, Nanded,
Tq. & Dist. Nanded
- 6] Sangam S/o Tukaram Kaletwad,
Age : 29 years, Occu : Service,
R/o. Ashirwad Nagar,
Taroda (Kh.), Nanded,
Tq. & Dist. Nanded

.. Petitioners

Versus

- 1] The State of Maharashtra
Through its Secretary,
School Education & Sports Department,
Mantralaya, Extension Building,
Mumbai – 32.
- 2] The Deputy Director of Education,
Latur Division, Latur
- 3] The Education Officer (Primary),
Zilla Parishad Nanded, Dist. Nanded
- 4] Lokshikshan Prasarak Mandal
Bijur, Tq. Biloli, Dist. Nanded
Through its Secretary / President
- 5] Trishaladevi Primary School,
Kundulwadi, Tq. Biloli,
Dist. Nanded
Through its Head Master

.. Respondents

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Advocate for petitioners : Mr. Yogesh K. Bobade (WP/14691/2019)
 Advocate for petitioners : Mr. Ganesh V. Mohekar (WP/4252/2020)
 AGP : Mr. P.P. Dawalkar for respondents no. 1 to 3 in WP/14691/2019 and
 for respondents no. 1 and 2 in WP/4252/2020
 Mr. N.S. Kadam, Advocate for the respondent no. 5 (WP/14691/2019) and
 for respondent no. 3 in WP/4252/2020
 Advocate for respondent no. 7 : Mr. S.R. Bagal (WP/14691/2019)
 Advocate for respondents no. 4 and 5 : Mr. V.D. Salunke (WP/4252/2020)

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

**RESERVED ON : 22 JULY 2024
PRONOUNCED ON : 01 AUGUST 2024**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard. Rule in both these petitions. Rule is made returnable forthwith. At the joint request of the parties, the matters are heard together finally.

2. The petitioners in both these petitions are same except one additional petitioner in writ petition no. 14691 of 2019. Since they are claiming the same relief *qua* the respondents, in order to avoid rigmarole, the petitions are being disposed of by this common judgment and order.

3. The petitioners claim that they were appointed between year 2012 and 2014 on clear, vacant and sanctioned posts as Assistant Teachers by the respondent – management. They were granted approvals by the respondent – Education Officer (Primary), having been satisfied that they were appointed by the respondent – management by following due process, as is contemplated under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter '**MEPS Act**' and '**MEPS Rules**').

4. Though the respondent – school started getting 100% grants from the year 2016, for some or the other reason, the petitioners' salaries were not released since June 2019. Hence, writ petition no. 14691 of 2019 has been filed claiming the arrears of salary.

5. Simultaneously, while the first petition was pending, the respondent – Deputy Director of Education, by the order dated

10-02-2020 cancelled the approvals granted by the Education Officer to the petitioners' appointments, on the ground that they were appointed without compliance of section 5 of the MEPS Act and the roster was not got verified and certified from the B.C. cell, thereby violating the reservation policy. The secretary of the respondent – management had not issued appointment orders. There was no evidence led by the petitioners to that effect. Their educational qualification was also not verified. There was no advertisement, mark list or selection list. All these shortcomings were overlooked by the Education Officer. Hence writ petition no. 4252 of 2020 has been filed challenging the order of the respondent – Deputy Director of Education cancelling the approvals granted to their appointments.

6. While the petitions have been pending, respondent – management terminated the petitioners by the order of termination dated 04-05-2022. Leave was sought to amend writ petition no. 4252 of 2020. By way of amendment, it has been averred that rampant illegalities were committed by the management and the respondent – headmaster. Even crime was registered against them. The headmaster absconded and the petitioners could not get any record. It is also alleged that by the order dated 17-03-2023, ad interim relief was granted by this Court in writ petition no. 4252 of 2020 whereby the respondent – management was restrained from terminating the petitioners till the next date. Still, in breach of such ad interim relief, the

petitioners were terminated illegally and unauthorizedly without following the rules and just as an excuse, a back dated order of termination was prepared. Therefore, the relief was added by way of amendment to quash and set aside the order of termination dated 04-05-2022.

7. We have heard both the sides extensively.

8. Learned advocates for the petitioners would take us through the papers and would submit that once the Education Officer had granted approvals to the petitioners' appointments after considering all the aspects, the Deputy Director of Education had no power or jurisdiction to sit in appeal and recall the approvals after lapse of many years. Even the opportunity of hearing was not extended to the petitioners and the order of recalling the approvals was passed. They would also submit that since the managing committee members and the headmaster have been involved in several illegalities and even crime, the matter was not persuaded with the Deputy Director of Education who was seeking to re-examine the approvals granted to the petitioners. The management unscrupulously brought a back dated order, terminating the petitioners, even though interim relief was operating in their favour. The management ought to have appeared before the Deputy Director to demonstrate as to the manner in which they were appointed and the approvals were granted. They submit that

since the order of termination is palpably illegal and has been passed in violation of the interim relief granted by this Court, the petitioners need not be relegated to the remedy of statutory appeal under section 9 of the MEPS Act.

9. Per contra, the learned AGP and the learned advocate for the management would oppose the petitions, by referring to their respective affidavits in reply. At the outset, they would raise an objection regarding continuation of the writ petitions in the present form wherein even the petitioners are seeking to impugn the termination order, the remedy against which is provided by the statute under section 9 of the MEPS Act. They would, therefore, submit that the petitions be dismissed and the petitioners may be granted liberty to resort to the remedy of appeal.

10. Learned AGP and the learned advocates for the respondents would further submit that whether the impugned order of termination is legally sustainable or otherwise, whether it was passed in violation of any ad interim order of this Court or otherwise, once the relationship between the petitioners and the respondent – management has been brought to an end by a specific order of termination dated 04-05-2022 (**Exhibit – N**), this Court in exercise of the powers under Article 226 of the Constitution of India, will have limitations in scrutinizing all disputed questions of facts in the light of the rival

pleadings. In fact though there was ad interim relief, it was in operation only between 17-03-2023 and 13-06-2023. Since the order of termination was already issued, the ad interim relief granted in favour of the petitioners will not go to the root of the order of termination. They would submit that even this aspect can be agitated before the school tribunal in an appeal under section 9 of the MEPS Act.

11. They would submit that the learned advocate who was representing the management, was also not present when the ad interim relief was granted on 17-03-2023 and it was not extended beyond 13-06-2023.

12. Learned AGP and the learned advocate for the respondent – management would further submit that in fact the school has been closed long back. They would point out the record to demonstrate that only 19 students whose Adhaar cards were also not verified were shown in the UDISE+. It is not that the decision was taken abruptly. An enquiry was conducted by the committee of officers of the cadre of Block Education Officer and the Officer of the pay unit. Pursuant to such inquiry, it was reported that the management and the headmaster have managed to withdraw 100% grants since April 2017 illegally. It was a matter of criminal breach of trust and misappropriation which resulted in lodging the FIR. Even the petitioners must have connived with the management and ought to have been roped in as accused,

having withdrawn the salaries without there being any school actually running.

13. Learned AGP would submit that the Deputy Director of Education being a superior officer to that of the Education Officer (Primary), if serious allegations regarding functioning of the school by making rampant illegal appointments were reported to him, he had every power to reconsider the approvals granted to the petitioners and in the process, could lay hands on rampant illegalities, criminal breach of trust resulting in lodging of the FIR and, therefore, it cannot be said that he had no power to re-scrutinize the approvals granted by the Education Officer overlooking several such aspects.

14. Considering the dispute as to functioning of the respondent - school, as per the directions of the Court, an affidavit in reply was filed by respondents no. 4 and 5 initially through the Education Officer. Pursuant to cancellation of the approvals, enquiry was conducted by appointing a committee. One R.D. Turankar - Education Officer (Primary) Amravati was appointed as an Enquiry Officer. It was reported by the Enquiring Officer that there was no recognition to the school. It was being run by the management in collusion with the then Education Officer and offence was registered to that effect. Even earlier, the same Education Officer had filed affidavit expressly

informing, pursuant to the directions of the Court, that the respondent - school was not functioning.

15. Mr. Salunke V.D. for respondents no. 4 and 5 would submit that pursuant to the cancellation of the approval by the Deputy Director of Education, the services of the petitioners have been terminated. It was duly informed to the Education Officer and the remedy for the petitioners would lie before the School Tribunal in the form of an appeal under section 9 of the MEPS Act.

16. Learned advocate would further point out that even as per the rejoinder, only 10 students have not yet taken the transfer certificate. There is no muster roll, register of students and practically the school is closed since July 2019.

17. Having heard both the sides and having perused the record, it transpires that there are several disputed questions of facts. The very existence of the school is in question. Though there was previously approval granted by the then Education Officer, the Deputy Director of Education has, pursuant to the enquiry, arrived at conclusion that the school has not been functioning. Even a serious crime of misappropriation, criminal breach of trust and cheating has been lodged against the management, headmaster, the then Education Officer and Superintendent of Pay Unit.

18. Independently, pursuant to the directions of the Court even the incumbent Education Officer after conducting the enquiry has expressly reported that the school is practically closed. If such is the state of affairs, the petitioners being the employees, will have to resort to appropriate remedy complaining their termination or retrenchment, by resorting to the statutory provision of an appeal under section 9 of the MEPS Act. This Court with limited jurisdiction under Article 226, will not be in a position to undertake scrutiny as to the serious allegations about absence of any permission for opening the school and subsequent approvals granted, salaries paid and functioning of the school illegally, regarding which a crime has been registered. Law needs to be allowed to take its own course. If at all the petitioners intend to dispute all the above mentioned facts, in our considered view, it would be a matter covered by Rule 25-A / 26 of the MEPS Rules.

19. It is pertinent to note that there is enough material on record to demonstrate that since the dispute started in the year 2019, the Education Officer after noticing that the school has been closed or their approvals were being revoked, had expressly directed absorption of the students in nearby schools. In the light of above, in our considered view, when the school itself is not functioning, the remedy for the petitioners would lie in the form of appeal under section 9 of the MEPS Act.

20. It is as has been concluded by the Full Bench of this Court in the matter of ***St. Ulai High School and others V. Devendraprasad Jagannath Singh and others; 2007(1) Mh.L.J. 597***, grant or otherwise of approvals by the Education Officer is not a condition precedent to a valid order of appointment and disbursal of grant in aid is a matter between the management and the state.

21. The issue here is, whether the petitioners can be directed to be paid salaries in the peculiar facts. We have not been called upon to enquire and decide whether their initial appointments are legal or otherwise. Rather, we emphatically observe in the light of ***St. Ulia High School*** (supra) that the remedy for the petitioners would be in the form of an appeal under section 9 of the MEPS Act as it is a matter of orders of appointments issued by the management.

22. In the light of above, both the petitions are liable to be dismissed and are accordingly dismissed and the rule is discharged by granting liberty to the petitioners to resort to the appropriate remedy of preferring an appeal under section 9 of the MEPS Act.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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