



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

WRIT PETITION NO. 7355 OF 2024

1. Komal D/o Balaji Awatirak,
Age : 22 years, Occu. : Service as
Shikshan Sevak,
R/o Katkalamba, Tq. Kandhar,
Dist. Nanded.
 2. Pooja D/o Balaji Wadje,
Age : 29 years, Occu. : Service as
Shikshan Sevak,
R/o At/Post Mukhed,
Tq. Mukhed, Dist. Nanded.
- .. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. Deputy Director of Education,
Latur Division, Latur,
Gandhi Chowk, Latur.
3. The Education Officer (Primary),
Zilla Parishad, Nanded.
4. The Superintendent,
Pay Unit (Primary),
Zilla Parishad, Nanded.
5. Gurudev Shikshan Sanstha,
Mukhed, Tq. Mukhed, Dist. Nanded,
Through its Secretary.
6. Gurudev Vidya Mandir Primary
School, Mukhed, Tq. Mukhed,
Dist. Nanded,

Through its Head Master.

.. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioners.

Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents/State.

Shri S. B. Ghute, Advocate for the Respondent Nos. 3 and 4.

Shri I. D. Maniyar, Advocate for the Respondent Nos. 5 and 6.

**WITH
WRIT PETITION NO. 6729 OF 2024**

Mulla Khalil Usmansab,
Age : 43 years, Occu. : Service as
Assistant Teacher,
R/o Near Laxmi Temple, Banhelki,
Latur, Tq. Latur, Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur,
Tq. and Dist. Latur.
3. The Education Officer (Primary),
Zilla Parishad, Latur.
4. The Superintendent, Z. P. Latur
Pay and Provident Fund Unit
(Primary Section),
Zilla Parishad, Latur,
Tq. and Dist. Latur.
5. Rahemaniya Taleemi Society,
Nilanga, Tq. Nilanga, Dist. Latur,
Through its Secretary.

6. Gulshan-A-Altah Urdu Primary
School, Chincholi, Tq. Nilanga,
Dist. Latur, Through its Head Master. .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioner.

Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents/State.

Shri U. B. Bondar, Advocate for the Respondent Nos. 3 and 4.

Shri A. P. Deshmukh, Advocate for the Respondent Nos. 5 and 6.

**WITH
WRIT PETITION NO. 6737 OF 2024**

Syed Javed Syed Chand,
Age : 43 years, Occu. : Service as
Shikshan Sevak,
R/o Chand Syed, Near Santoshi Mata
Mandir, Vikas Nagar, Degloor Road,
Udgir, Latur, Tq. & Dist. Latur. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur,
Tq. and Dist. Latur.
3. The Education Officer (Primary),
Zilla Parishad, Latur.
4. The Superintendent, Z. P. Latur
Pay and Provident Fund Unit
(Primary Section),
Zilla Parishad, Latur,
Tq. and Dist. Latur.

5. Rahemaniya Taleemi Society,
Nilanga, Tq. Nilanga, Dist. Latur,
Through its Secretary.
6. Gulshan-A-Altah Urdu Primary
School, Chincholi, Tq. Nilanga,
Dist. Latur, Through its Head Master. .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioner.

Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents/State.

Shri U. B. Bondar, Advocate for the Respondent Nos. 3 and 4.

Shri A. P. Deshmukh, Advocate for the Respondent Nos. 5 and 6.

**WITH
WRIT PETITION NO. 6735 OF 2024**

Hasmi Syed Wasiq Ahnad Syed Ahmad,
Age : 41 years, Occu. : Service as
Assistant Teacher,
R/o Hashmi Syed, 5585, Baba Nagar,
Shelhal Road, Nideban, Latur
Tq. & Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. Deputy Director of Education,
Latur Division, Latur,
Tq. and Dist. Latur.
3. The Education Officer (Primary),
Zilla Parishad, Latur.
4. The Superintendent, Z. P. Latur
Pay and Provident Fund Unit
(Primary Section),

Zilla Parishad, Latur,
Tq. and Dist. Latur.

5. Rahemaniya Taleemi Society,
Nilanga, Tq. Nilanga, Dist. Latur,
Through its Secretary.
6. Gulshan-A-Altaf Urdu Primary
School, Chincholi, Tq. Nilanga,
Dist. Latur, Through its Head Master. .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioner.

Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents/State.

Shri U. B. Bondar, Advocate for the Respondent Nos. 3 and 4.

**WITH
WRIT PETITION NO. 6738 OF 2024**

Himayat Mehabub Patel,
Age : 40 years, Occu. : Service as
Assistant Teacher,
R/o Kalan Galli, Arba, Khadakpura,
Ausa, Latur Tq. Latur, Dist. Latur. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. Deputy Director of Education,
Latur Division, Latur,
Tq. and Dist. Latur.
3. The Education Officer (Primary),
Zilla Parishad, Latur.
4. The Superintendent, Z. P. Latur
Pay and Provident Fund Unit

(Primary Section),
Zilla Parishad, Latur,
Tq. and Dist. Latur.

5. Rahemaniya Taleemi Society,
Nilanga, Tq. Nilanga, Dist. Latur,
Through its Secretary.
6. Gulshan-A-Altah Urdu Primary
School, Chincholi, Tq. Nilanga,
Dist. Latur, Through its Head Master. .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioner.

Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents/State.

Shri U. B. Bondar, Advocate for the Respondent Nos. 3 and 4.

Shri A. P. Deshmukh, Advocate for the Respondent Nos. 5 and 6.

**WITH
WRIT PETITION NO. 7977 OF 2024**

Shri Mahesh S/o Kalyanrao Patil,
Age : 39 years, Occu. : Service as
Assistant Teacher
R/o Wadmurambi, Tq. Deoni,
Dist. Latur.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Divisional Chairman / Secretary,
Maharashtra State Secondary &
Higher Secondary Education Board,
Divisional Board, Latur behind
Rajasthan High College, Suit Mill
Isa, Gajanan Nagar, Latur.

3. The Deputy Director of Education,
Latur Division, Latur, .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioner.
Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents 1 to 3.

**WITH
WRIT PETITION NO. 10913 OF 2024**

Shri Vilas S/o Diliprao Jadhav,
Age : 34 years, Occu. : Service as
Assistant Teacher
R/o Phule Nagar, Nanded
Tq. & Dist. Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur,
Tq. and Dist. Latur.
3. Janta Shikshan Prasarak Mandal,
Umardari, Tq. Mukhed, Dist. Nanded,
Through its President/Secretary.
4. Shivaji Secondary and Higher Secondary
Vidyalaya, CIDCO, Nanded,
Tq. & Dist. Nanded,
Through Principal. .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioner.
Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents 1 and 2.
Shri I. D. Maniyar, Advocate for the Respondent Nos. 3 and 4.

**WITH
WRIT PETITION NO. 10938 OF 2024**

Krishnanand S/o Premrao Sirsewad
Age : 32 years, Occu. : Service as
Shikshan Sevak,
R/o At Post Bhis,
Tq. Kinwat, Dist. Nanded.

.. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya, Mumbai – 32.
 2. The Deputy Director of Education,
Latur Division, Latur,
 3. Walmiki Sevabhavi Sanstha, Bhokar
Tq. Bhokar, Dist. Nanded,
Through its President/Secretary.
 4. Kai. Laxmanrao Ghisewad (Swatantra)
Junior College, Bhokar,
Tq. Bhokar, Dist. Nanded,
Through Head Master.
- .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioner.

Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents 1 and 2.

Shri I. D. Maniyar, Advocate for the Respondent Nos. 3 and 4.

**WITH
WRIT PETITION NO. 10956 OF 2024**

1. Suyakant S/o Datta Wankhede,
Age : 29 years, Occu. : Service as
Assistant Teacher,
R/o Betsangavi, Tq. Loha,
Dist. Nanded.

2. Kishan S/o Balaji Kapase,
Age : 34 Years, Occu. : Service
as Assistant Teacher,
R/o Shirur Tajband, Tq. Ahmedpur,
Dist. Latur.
3. Kiran S/o Hiranman Shinde,
Age : 30 years, Occu. : Service
As Assistant Teacher,
R/o At Gopalchawadi Nanded,
Copalchawadi, Tq. & Dist. Nanded. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur,
3. Shri Shivaji Mofat Education Society,
Kandhar, Tq. Kandhar, Dist. Nanded,
Through its Secretary.
4. Shri Shivaji Secondary and Higher
Secondary High School, Halda,
Tq. Kandhar, Dist. Nanded,
Through its Head Master.
5. Shri Shivaji Secondary and Higher
Secondary High School, Kurula,
Tq. Kandhar, Dist. Nanded,
Through its Head Master. .. Respondents

Shri Sachin S. Deshmukh, Advocate i/by Shri V. S. Panpatte,
Advocate for the Petitioners.

Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents 1 and 2.

Shri I. D. Maniyar, Advocate for the Respondent Nos. 3 to 5.

**WITH
WRIT PETITION NO. 10291 OF 2024**

1. Kalyani Vijay Patil,
Age : 33 years, Occu. : Service
R/o Manwel, Tq. Yawal,
District Jalgaon.
2. Sagar Kailas Magare,
Age : 31 Years, Occu. : Service
R/o Sawata Mali Chowk, Lasur,
Tq. Chopda, District Jalgaon.
3. Sohan Arun Halde,
Age : 30 years, Occu. : Service
R/o Adawat, Tq. Chopda,
District Jalgaon. .. Petitioners

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
School Education Department,
Mantralaya, Mumbai.
2. The Education Officer (Secondary),
Zilla Parishad, Jalgaon. .. Respondents

Shri Sudhir R. Barlinge, Advocate for the Petitioners.
Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents 1 and 2.

**WITH
WRIT PETITION NO. 10817 OF 2024**

- Smt. Sangita Gangadhar Dhande,
Age : 33 years, Occu. : Service
as Assistant Teacher,
R/o Gut No. 09, P. No. 71/B,
Juna Kautha Road, Nanded,
Tq. Nanded, Dist. Nanded. .. Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Education Department,
Mantralaya. Mumbai – 32.
2. The Deputy Director of Education,
Latur Division, Latur.
3. The Education Officer (Primary),
Zilla Parishad, Nanded.
4. Aryan Shikshan Prasarak Mandal,
Nanded, Tq. & Dist. Nanded,
Through its President/Secretary.
5. Arya Hindi Vidya Mandir, Nanded,
Near Old Mondha, Tq. & Dist. Nanded,
Through its Head Master. .. Respondents

Shri Irfan D. Maniyar, Advocate for the Petitioner.
Shri Amarjitsing B. Girase, Govt. Pleader a/w Shri R. S. Wani
and Ms. Saie S. Joshi, A.G.P. for the Respondents 1 and 2.

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

CLOSED FOR JUDGMENT ON : 15.10.2024
JUDGMENT PRONOUNCED ON : 25.10.2024

JUDGMENT (Per Shailesh P. Brahme, J.) :-

. Rule. Rule is made returnable forthwith. Heard both
the sides finally at the admission stage with their consent.

2. Predominant challenge in these petitions is to the
validity of the Government Resolution dated 27 March 2024

issued by the School Education and Sports Department, Government of Maharashtra, consequently the communications/orders passed by the Education Officers/Deputy Directors of Education are also questioned. We propose to decide these petitions by this common judgment and order. We are referring to the paper book of Writ Petition No. 7355 of 2024 and Writ Petition No. 6737 of 2024.

3. The petitioners before us are the employees of the respondent/private managements working in the schools run by them. They are aspiring for service benefits under the provisions of the Maharashtra Employees of Private Schools (Condition of Service Regulation) Act, 1979 and Rules 1981 (hereinafter for the sake of brevity and convenience referred as to the 'Act of 1979' and 'Rules of 1981') for which the approval of the officers of the Education Department is imperative. Their proposals seeking approvals have been turned down by the officers of the Education Department, which is common cause for each of them to approach the High Court.

4. After filing the petitions, petitioners are confronted with Government Resolution dated 27.03.2024 which is an impediment in entertaining the petitions for having alternate remedy created under it. Hence they are challenging G. R. Dated 27.03.2024 (for short 'impugned G.R.') along with communications/orders of the officers of the Education Department.

5. The controversy involved in these petitions pertains to the service conditions of employees of aided and unaided private schools. In each petition the decision of the officers of the education department has been questioned. Such recurring causes and their repercussions have been considered elaborately by the division bench at the Principal seat at Bombay in group of petitions vide **judgment dated 16.04.2024 in the matter of Nitin Bhika Tadge and another Vs. The State of Maharashtra and another in Writ Petition No. 204 of 2019.** Before passing final orders on 16 April 2024 in those matters various interim orders/directions were issued.

6. To curtail unnecessary litigation which is causing harassment to the employees and the management, the State came out with a policy. Considering National Litigation Policy of 2010 and to reduce burden on the state exchequer, the Government Resolution dated 27.03.2024 was issued by exercising powers under Article 162 of the Constitution of India. The appellate forums are created for the employees and the managements. The orders passed by the officers of the education department are made amenable to challenge before the appellate forums. It provides alternate efficacious remedy to the petitioners before us. They are aggrieved by creation of appellate forums by the impugned G. R. If the challenge is sustained, then we have to examine validity of the orders/communication issued by the officers of the education department impugned in the individual petitions before us.

7. The learned counsel Mr. Sachin S. Deshmukh appearing for the petitioners has made following submissions :

- (A) The forums created by Clause 1(a), (b) and (c) of the impugned G. R. have trappings of quasi judicial forum or a Tribunal, which is impermissible.
- (B) Creation of quasi judicial forum is against the law laid down by the Supreme Court in the matter of Secretary, Sh. A. P. D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others reported in *2011 (13) SCC 99* and judgment of the division bench in the matter of **Swati Shivaji Lawhare Vs. State of Maharashtra and others judgment dated 07.05.2021 in Writ Petition No. 940 of 2018.**
- (C) The impugned G. R. laying down the nature of grievances, forums, procedure and implementation is against Sec. 16(4) of the Act of 1979.
- (D) Creation of forums by such G. R. violates principles of separation of powers.
- (E) The State Government has taken inconsistent stand in their affidavit in reply filed in Writ Petition No. 6737 of 2024 in respect of nature of the forum.
- (F) The individual impugned orders passed by the officers of the education department in each petition are against the settled legal position and unsustainable.

8. To oppose the petitions, the respondent Nos. 1 and 2 have filed affidavit in reply in Writ Petition No. 6737 of 2024, which is requested to be referred to in all the petitions. Mr. Amarjitsing Girase, the learned Government Pleader repels the submissions of the petitioners in following manner :

(a) The impugned G. R. is valid, reasonable and it is issued under peculiar facts and circumstances to deal with the matters which are not covered by Act of 1979 and Rules of 1981.

(b) All the grievances/matters covered under the impugned G. R. are beyond the purview of statutory remedies provided under the Act of 1979 and Rules of 1981 or any other forums.

(c) The impugned G. R. is issued under Article 162 of the Constitution of India. It does not create any quasi judicial authority, or Tribunal as contemplated by Articles 223-A and 223-B of the Constitution of India.

(d) The forums created by the impugned G. R. are purely administrative/executive filters.

(e) The matters which are covered by the forums are not lis between the parties bearing adversarial overtures.

(f) The procedure to be followed by the forums is not akin to the one followed by a Tribunal or a quasi judicial authority. The members of the Committee are all executives of the State

Government.

(g) The judgment cited by the petitioners in the matter of Secretary, Sh. A. P. D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others (supra) and **Swati Shivaji Lawhare Vs. State of Maharashtra and others** (supra) are not applicable because the forums created by the government resolutions which were impugned in those matters are not akin to the forums created by the impugned G. R.

(h) Reliance is placed on the judgment of the division bench of this Court at Principal Seat at Bombay in the matter of **judgment dated 16.04.2024 in the matter of Nitin Bhika Tadge and another Vs. The State of Maharashtra and another in Writ Petition No. 204 of 2019.**

(i) In the alternative, it is submitted that the matters be referred to the Hon'ble the Chief Justice for reference to a larger bench.

9. Having heard both the sides, a question which falls for our consideration is as to whether the Government Resolution dated 27.03.2024 creates quasi judicial forums ?

10. Background of impugned G. R. :

(i) The terms and conditions of the service of employees of private schools are governed by the Act of 1979 and Rules of 1981. The State Government is empowered to frame rules to

provide minimum qualification for recruitment, recruitment procedure, scales, categories of employees, qualification, etc. By Section 8 of the Act of 1979, a Tribunal is constituted which is a quasi judicial authority to decide the matters covered by Section 9 of the Act of 1979. By way of Sec. 10 procedure to be followed by the Tribunal is provided. All the matters pertaining to the service conditions are not covered by Section 9 of the Act of 1979. Jurisdiction of the Tribunal is restricted to the extent of dismissal or removal or reduction in rank or supersession. No forum is provided either to the management or to the employees rendering services in the private school for their grievances in respect of approvals, transfers, registration in online portal for disbursal of salaries, revision of scales, retiral benefits, work load, abolition of the posts, absorption of surplus employees, etc.

(ii) The schools regulated by the Act of 1979 are aided as well as unaided. To cater the need of education, private managements are permitted to run schools. Government provides them grant in aid. This obligation is within perview of directive principles of State policy under the Constitution of India. It is the obligation of the officers of the education department to oversee that the service conditions are meticulously followed, grants are properly utilized and the schools are being run in accordance with National Education Policy.

(iii) The officers of the education department are empowered to grant approvals, sanctions for various purposes

after considering the proposals received from the managements. Though they are expected to discharge these duties punctually and in accordance with law, frequently there are lapses and derelictions. As no remedy is provided under the Act of 1979 or the Rules of 1981, employees of the private managements approach the High Court. Large number of cases are filed in the High Court. A judicial cognizance has been taken by the division bench of this Court at the principal seat in the matter of **Nitin Bhika Tadge and another Vs. The State of Maharashtra and another** (supra) in para Nos. 9, 10 and 11 of the judgment giving the statistics regarding such matters pending at the principal seat and the benches. To reduce this litigation, the government has come up with the impugned G. R. A need is felt to provide appellate forum for rectification of the mistakes committed by the officers of the education department so that every now and then the stake holders need not have to approach the High Court.

(iv) It is relevant to notice the concern expressed by the division bench in the matter of **Nitin Bhika Tadge and another Vs. The State of Maharashtra and another** (supra). In paragraphs Nos. 4 to 6, 10 to 12 of the judgment it has been explained as to how the matters come to the High Court and pile up. A judicial notice has also been taken of the steps taken by the State Government by issuing various government resolutions to cope up with the problem. A reference to the National Litigation Policy of 2010 has been made in paragraph No. 20. It is relevant to refer to paragraph Nos. 21 and 37 of the

judgment which reads thus :

21. One factor that contributes to this litigation is that once the Court lays down a precedent and the State does not contest it, the State Government does not issue clarifying directives to the authorities of the Education Department to ensure compliance with the law. The Education Authorities persist with similar erroneous decisions, leading to repetitive legal challenges and subsequent reversals, adding unnecessarily to the judicial workload. The sheer volume of petitions on identical matters surpassing almost five digits across the Principal Seat and benches in Nagpur and Aurangabad underscores the proliferation of needless litigation. This compels management to divert resources and time from their core responsibilities, impacting the quality of education.

37. The constant burden of litigation between teachers, Management, and the State Government harms society in several ways. Firstly, it puts unnecessary strain on school management and teachers, diverting their time and resources from teaching and learning. This affects the quality of education and creates uncertainty within employees and management. Moreover, the financial costs associated with litigation are significant. Litigation drains resources that could otherwise be invested in improving educational facilities.

(v) To reciprocate the concern expressed by the division bench, the State Government has come out with the strategy in the form of impugned G. R. An endeavour of the State Government is not that to introduce any alternate forum to the existing statutory forums. We have also collected data from the Registry of the bench at Aurangabad which also throws light on the recurring litigation, post division bench judgment in the matter of **Nitin Bhika Tadge and another Vs. The State of Maharashtra and another** (supra). From June 2024 to mid October 2024, 110 number of writ petitions are filed ventilating grievance which fall outside of the purview of the statutory

forum and which are questioning the actions of the officers of the education department. We propose to examine validity of the impugned G. R. in the backdrop of the aforementioned circumstances.

11. Nature of the forums, grievances and the procedure provided under the impugned G. R. :

(I) The preface to the impugned G. R. is self explanatory, which is as follows :

Government of Maharashtra

Department of School Education and Sports

Government Resolution No. : Grievance 2019/P.No.75/TNT 4

Madam Kama Road, Hutatma Rajguru Chowk, Mumbai 400032,

Date :- 27 March, 2024

Read :- Government Resolution of Serial No dt. 7 March 2024.

Introduction :-

The Maharashtra Private Schools Employees (Conditions of Service) Regulation Act, 1977 does indeed establish provisions for a school tribunal under Section 8. There is currently no formal mechanism in place to address grievances that do not fall within the jurisdiction of the School Tribunal. It has been observed that the number of court cases is increasing due to the lack of a system for filing appeals/complaints against the order passed by the field authorities on the application of teachers and non-teaching staff of private aided/unaided/partially aided schools and educational institutions. The Hon'ble High Court, Bombay while giving judgment in the petitions No. 11613/2014 and 2527/2017 filed against the Higher and Technical Education Department, the Hon'ble Court has also directed the School Education Department to create a Grievance Redressal Mechanism. According to the Government Resolution dated 18.12.2018 of the Department of Higher and Technical Education, a Grievance Redressal Committee has been constituted to take action on the complaints of teachers/non-teaching staff and officers. On the same lines, Grievance Redressal Committees have been formed by

this Department as per Government Resolution dated 20th July 2019, 29th August 2019, and as per Government Resolution dated 01st October 2019 to take action on the complaints of private aided/partly unaided/unaided (partially aided), teaching and non-teaching staff in the School Education Department. However, the Hon'ble High Court while deciding the Writ Petition No.1182/2024 filed in the Hon'ble High Court, Bombay has directed to reform the Grievance Redressal Mechanism. Accordingly, a reformed Grievance Redressal Committee/Appellate Authority was constituted as per the Government Resolution referred to deal with the grievances of private aided/unaided/unaided (partially aided), teaching and non-teaching staff and educational institutions in the school education department.

But in the Writ Petition No. 1182 /2024 the Hon'ble Bombay High Court issued instructions from time to time, that it was under the consideration of the Government to issue a Government Resolution containing instructions in a more elaborate form superseding the Government Resolution in the above reference Read.

(II) The learned counsel for the petitioners adverted our attention to Clause Nos. 2 to 6 of the impugned G. R. to make out a point that the forums created under clause 1(a), (b) and (c) have trappings of quasi judicial forums. He would emphasize use of the words matters, appeal, disputes, hearing, evidence, arguments, opportunity of hearing and decision, which according to him are indicative of proceedings before the quasi judicial authority. The procedure for hearing the complaints/appeals laid down by Clause 4 is the adjudicating mechanism. Therefore, it is vehemently argued that quasi judicial forum or tribunal has been created by the impugned G. R.

(III) The nature of the grievance is stated in clause No. 2. These matters are not covered by Sec. 9 of the Act of 1979. No forum is available to ventilate the grievance pertaining to

enlisted matters in Clause No. 2. Frequently, writ petitions under Article 226 and 227 of the Constitution of India are resorted to, albeit, the remedy of civil suit is always available, but it may not be efficacious. The members of the committees constituted by Clause 1(a) (b) and (c) are the officers of the education department. They are officers of higher in rank and experts. The judicial officers, retired judicial officers or legal experts are not included in the committees.

(IV) The matters which are covered by Clause 2 are pertaining to administrative functions of the officers of the education department. Those are not the quasi judicial functions. The appellate forum is meant for rectifying the mistakes of the subordinates and to oversee that service conditions, statutory provisions and law laid down by various courts are followed. The appellate forums are provided by way of filtering mechanism, to weed out illegalities, infirmities and to follow the binding precedent. Instead of approaching the High Court and burdening its work, aggrieved individual or management can resort to these forums for redressal.

(V) In our considered view use of words like appeal, evidence, hearing, decision, etc. are not to be understood in legal parlance and are decisive factors. They are used in colloquial language. The purport is not to confer quasi judicial powers. The words hearing, arguments and evidence are not necessarily meant to suggest trappings of quasi judicial function. These are

merely indicative of fair play, which ordinarily needs to be followed while discharging any administrative function.

(VI) Clause 3 of the impugned G. R. provides for the procedure for filing complaint/appeal. The employees as well as management can approach the appellate forums. The impugned G. R. does not prohibit the stake holder from approaching any Court of law, neither is there any provision to treat the decision as final and binding. This is a distinguishing feature of these forums. Similarly, there is no provision for the officers of the education department to challenge the decision. Hence what is preferred to the appellate forum under impugned G. R. is not a *lis*. There is no adjudication of rights and liabilities of the parties in strict sense. Therefore, we are not convinced by the submissions of the learned counsel for the petitioners that the forum created and procedure laid down for deciding the matters have the trappings of quasi judicial forum.

(VII) No power has been conferred on the committees created by the impugned G. R. :

- (i) to summon the witness,
- (ii) administer an oath,
- (iii) to compel attendance of witness,
- (iv) to examine witnesses on oath,
- (v) to receive evidence,

No remedy of appeal or revision or review is provided against the decisions of committee. The jurisdiction of civil Court or other forums has not been excluded expressly or impliedly. The

committee does not enjoy powers U/Sec. 340 of the Code of Criminal Procedure. Therefore, it is rightly submitted that the committees are not creation of any forum under Article 223-A, and 223-B of the Constitution of India. The committees are in the nature of executive forum and they are sought to achieve the purpose narrated in the introductory para of the impugned G. R.

12. Competence of the State Government to issue impugned G. R. :

Impugned G. R. has been issued under the powers of Article 162 of the Constitution of India. It is not a subordinate legislation. It is not issued by resorting to provisions of Sec. 16(4) of the Act of 1979. As has been recorded earlier, no forum was available for the employees and the managements to challenge executive actions/decisions/order of the education department in respect of matters covered by Clause 2 of the impugned G. R. Only remedy was either to approach the High Court or to file a suit. To fill up the void, the appellate forums have been created by the impugned G. R. Apparently, impugned G. R. is issued in consonance with the National Education Policy of 2010, to curtail recurring litigation and to reduce the burden on the exchequer.

13. The State Government has adequate powers under Article 162 of the Constitution of India to promulgate the policy for the matters which cannot be subjected to proceedings before the statutory forums. With an avowed objective impugned G. R.

has been issued. We do not see that there is violation of any provision of Constitution or any law or public policy. The executive powers of the state extends to the matters covered by Clause 2 of the impugned G. R. in respect of which legislature of the State has a power to make laws.

14. A gainful reference can be made to law laid down by the Supreme Court in the matter of P. H. Paul Manoj Pandian Vs. P. Veludurai reported in *(2011) 2 SCC 105*. Para No. 19 reads as follows :

“19. Departmental circulars are a common form of administrative document by which instructions are disseminated. Many such circulars are identified by serial numbers and published, and many of them contain general statement of policy. They are, therefore, of great importance to the public, giving much guidance about governmental organization and the exercise of discretionary powers. In themselves they have no legal effect whatever, having no statutory authority. But they may be used as a vehicle in conveying instructions to which some statute gives legal force. It is now the practice to publish circulars which are of any importance to the public and for a long time there has been no judicial criticism of the use made of them. Under [Article 162](#) of the Constitution, the executive power of the State extends to matters with respect to which the State Legislature has power to make laws. Yet the limitations of the exercise of such executive power by the Government are two fold; first, if any Act or Law has been made by the State Legislature conferring any function on any other authority - [in that case](#) the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him. Secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the Legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor. Once a law occupies the field, it will not be open to the State Government in exercise of its

executive power under [Article 162](#) of the Constitution to prescribe in the same field by an executive order. However, it is well recognized that in matters relating to a particular subject in absence of any parliamentary legislation on the said subject, the State Government has the jurisdiction to act and to make executive orders. The executive power of the State would, in the absence of legislation, extend to making rules or orders regulating the action of the Executive. But, such orders cannot offend the provisions of the Constitution and should not be repugnant to any enactment of the appropriate Legislature. Subject to these limitations, such rules or orders may relate to matters of policy, may make classification and may determine the conditions of eligibility for receiving any advantage, privilege or aid from the State. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare state the functions of Executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is co-terminus with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State Executive can make regulations and issue Government Orders with respect to it, subject, however, to the constitutional limitations. Such administrative rules and/or orders shall be inoperative if the Legislature has enacted a law with respect to the subject. Thus, the High Court was not justified in brushing aside the Government Order dated November 16, 1951 on the ground that it contained administrative instructions. The respondent could not point out that the said order was repugnant to any legislation enacted by the State Government or the Central Government nor could he point out that the instructions contained in the said Government Order dated November 16, 1951 were repugnant to any statutory rules or the Constitution. In fact, there was neither any enactment nor any statutory rule nor any constitutional provision as to how the contractor, who has entered into contracts with the Government, should be permitted to contest election, more particularly, when a request is made by the contractor to terminate his contracts so as to enable him to contest the election. There is no manner of doubt that in this branch of

jurisdiction there was absence of statutory enactment, regulations and rules and, therefore, this Court is of the firm opinion that the Government had all authority to issue Government Order dated November 16, 1951 to fill up the gaps. Thus the case of the respondent that his three contracts were terminated before he filed nomination papers will have to be judged in the light of the contents of Government Order dated November 16, 1951. Viewed in the light of the contents of the Government Order dated November 16, 1951, there is no manner of doubt that there was no valid termination of the contracts by the Government and those contracts were subsisting on the date when the respondent had filed his nomination papers and also on the date when the nomination papers of the respondent with other candidates were scrutinized by the Returning Officer.”

15. Reliance can also be placed on the judgment of the division bench of this Court at the principal seat in the matter of Rashtriya Shikshan Sangh and others Vs. State of Maharashtra and others reported in *2022 (6) Mh. L. J. 266*. Para Nos. 13 and 14 of the judgment read thus :

“13. Article 162 deals with the executive powers of the State. Reading of the said Article makes it clear that the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws. The proviso clause to the said Article also states that in any matter with respect to which the Legislature of State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited to, the executive power expressly conferred by any law made by the Parliament.

14. The power of the State Government to issue executive directions is confined to filling up the gaps or covering the area which otherwise has not been covered by the existing statutory Rules, and such instructions or orders must be subservient to the statutory Rules. The executive power of the State under Article 162 of the Constitution of India is co-extensive with the legislative power, and when the field of law is occupied by a Legislative Act, the exercise of executive

power is not available. The Government cannot supersede statutory Rules by administrative instructions. Still, if the Rules are silent on any particular point, the Government can fill the gaps by framing Rules and issuing instructions not inconsistent with the already-framed Rules. In *R.N. Nagarajan v. State of Mysore*, 2 the Supreme Court has observed that it is necessary to mention that if there is a statutory rule or an Act on the matter, the executive must abide by that Act or Rule and it cannot in exercise of the executive power under Article 162 the Constitution ignore or act contrary to that Rule. A Constitution Bench of the Supreme Court in *Ram Javva Kapoor v. State of Punjab*, 3 held:

“The State in exercise of its executive powers is charged with the responsibility and duty of carrying on the general administration of the State so long as the State Government does not go against the provisions of the Constitution or any law the width and amplitude of its executive powers cannot be circumscribed. If there is no enactment covering a particular aspect certainly the Government can carry on the administration by issuing administrative directions or instructions until the Legislature makes a law in that behalf.

16. We can even rely on the latest judgment of the Supreme Court in the matter of Anun Dhawan and others Vs. Union of India and others reported in *[2024] 2 SCR 812*. Para No. 8 of the judgment is as under :

“8. It is well settled that the scope of judicial review in examining the policy matters is very limited. The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the courts advisors to the executive on the matters of policy which the executive is entitled to formulate. The Courts cannot direct the States to implement a particular policy or scheme on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, would be the subject of judicial review.”

17. We, are therefore, of the considered view that it is within the competence of the State Government to issue

impugned G. R. and no fault can be found. As the committees under impugned G. R. are exercising administrative functions only, there is no question of violation of principles of separation of powers.

18. The scope of judicial review :

The petitioners have not made any endeavour to demonstrate any arbitrariness or flagrant unreasonableness in policy in question. We have already recorded backdrop which led the State Government to come up with the policy. The dire necessity of such policy has been eloquently explained in the judgment rendered by the division bench in the matter of **Nitin Bhika Tadge and another Vs. The State of Maharashtra and another** (supra). There is no violation of any provision of Constitution or State or Central law. The parameters of judicial review in policy matters of the Government are settled.

19. In the matter of Secretary, Sh. A. P. D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others (supra), Government Resolution dated 27.04.2000 was under consideration. The grievance committee was constituted under the policy of the State to decide the grievances of the Shikshan Sevaks. All the complaints of Shikshan Sevaks were to be decided by the grievance committee. Following questions arose for the consideration of the Supreme Court :

- (i) Whether the High Court can direct the State Government to create a quasi judicial forum; and whether creation of such a forum by an executive order, by the State Government, in pursuance of such a

direction, is valid?

(ii) Whether the High Court could, by a judicial order, exclude the jurisdiction of civil courts to entertain any suits or applications in respect of disputes raised by Shikshan Sevaks?

(iii) Whether the High Court was justified in holding that when the Grievance Committee holds that the order of termination is bad or illegal, it does not amount to ordering reinstatement, but the Shikshan Sevak would as a result continue to be in the employment of the employer?

(iv) Whether the orders dated 2.5.2008 and 5.8.2008 of the High Court call for interference?

It was held that the State Government had created a quasi judicial forum by the government resolution which was impermissible. The tribunals with adjudicatory powers could be created by statutes only and not otherwise. In the case before the Supreme Court grievance committee was empowered to decide the matters of termination, reinstatement, appointment, etc. which are within the jurisdiction of the Tribunal U/Sec. 9 of the Act of 1979. A single member committee of retired judge was constituted. The grievance committee for Shikshan Sevaks constituted by G. R. dated 27.04.2000 was having all powers of quasi judicial forum and, therefore, that G.R. was quashed. In the present matters, issues which are not covered by Sec. 9 of the Act of 1979 are referable to the forums. These are the distinguishing features of government resolution in the matter before the Supreme Court and impugned G. R. in the present

matter. In that view of the matter, we find that the judgment rendered by the Supreme Court is not applicable to the present case.

20. In **Swati Shivaji Lawhare Vs. State of Maharashtra and others** (supra), it was a matter in respect of grant of approval to the appointment of a cook in an Ashram school receiving grant in aid from the State Government. A remedy of appeal was created by Government Resolution dated 03 August 2017. The creation of the forum by that government resolution was challenged relying on the judgment in the matter of Secretary, Sh. A. P. D. Jain Pathshala and others Vs. Shivaji Bhagwat More and others (supra). The appellate forums were created by G. R. dated 03.08.2017 for the employees of Ashram schools run by VJNT, OBC or Special Backward Class categories. The District Social Welfare Officer, Assistant Commissioner, Joint Commissioner were entrusted with the powers to decide the disputes. Thereafter, appeal was provided to Deputy Director cum Deputy Commissioner and thereafter second appellate forum was created of higher rank officers. The creation of the forum in the case in hand is for matters which are out of the purview of Sec. 9 of the Act of 1979. The employees of Ashram schools to whom G. R. dated 03.10.2017 was applicable had statutory remedy available for their grievances. Therefore, it was held that constitution of appellate authorities was not by any statute, but by the executive powers which was impermissible. We have elaborately discussed the background for issuing impugned G. R. The judgment of the

division bench is also not applicable to the present case.

21. We, therefore, hold that impugned G. R. has not created any quasi judicial forum or tribunal. It is within the legislative competence of the State to promulgate it. It is therefore valid and enforceable.

22. The petitioners have alternate remedy available of approaching the appellate committee/forum created under the impugned G.R. We, therefore, do not propose to examine merits of the matter individually. We relegate the parties to the appellate forum.

23. We find no merit in the challenge to the impugned G.R. We, therefore, pass following order :

ORDER

(i) All writ petitions are dismissed.

(ii) The petitioners shall be at liberty to approach the appellate committee/forum available under the Government Resolution dated 27.03.2024. If they prefer to approach the Committee within a period of four (04) weeks from today, their appeals shall be entertained on merits and shall not be dismissed on the ground of limitation provided therein.

(iii) Rule is discharged.

[SHAILESH P. BRAHME, J.] [MANGESH S. PATIL, J.]

bsb / Oct. 24