



63-J-WP-102-24

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.102 OF 2024

Ku. Archana Janrao Kambe,
Aged 51 years, Occu. Special Teacher,
R/o Plot No.5, Chintamani Nagar 2,
Omkar Nagar, Besa Road, Nagpur

... Petitioner

-vs-

1. Shri Sant Gadge Maharaj Bahuudeshiya Shikshan
Sanstha, Hudkeshwar (Bu.), Nagpur
Through its Secretary,

2. The Head Master,
Niwasi Muk Badhir, Vidyalaya,
Hudkeshwar (Bu.), Nagpur,
Tah. & District Nagpur

3. The District Social Welfare Officer,
Zilla Parishad, Nagpur

... Respondents

Shri V. N. Patre, Advocate for petitioner.

Shri S. G. Joshi, Advocate for respondent Nos.1 and 2.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : February 20, 2024

Oral Judgment : (Per : Nitin W. Sambre, J.)

Heard.

Rule. Rule made returnable forthwith. Heard finally with
consent of learned counsel for the parties.

The challenge in the petition is to the communications dated
12th and 13th December 2023 issued by respondent No.1-Management
of which the petitioner is an employee in the capacity of Special

Teacher working in respondent No.2-School.

2. The petitioner after having been appointed as a Special Teacher in 2005 came to be charge-sheeted vide Statement of Allegation in September 2023 thereby constituting an Inquiry Committee. Sub-rule (2) of Rule 72 of the Special School Code, 2018 contemplates the representation to be given to the nominee of the delinquent Special Teacher on the Inquiry Committee.

3. The petitioner accordingly nominated a retired employee whose nomination came to be rejected vide impugned communications/orders on the ground that sub Rule (2) of Rule 72 of Special School Code does not contemplate nomination of retired employee. That being so, the present petition.

4. The contention of Shri V. N. Patre, learned counsel appearing for the petitioner is that the impugned communications/orders is contrary to the very mandate recorded by this Court in the order dated 24th January 2019 delivered in Civil Application No.131/2019 in Writ Petition No.8430/2018 (*Satish vs. State of Maharashtra and ors.*). According to Shri Patre, the provisions of Rule 72 are *pari materia* with the provisions of Rule 36(2) of the Maharashtra Employees of Private

Schools (Conditions of Service) Regulation Rules, 1981 (for short, MEPS Rules, 1981). The said Rule fell for interpretation before the Full Bench of this Court in the matter of *Shikshan Prasarak Mandal, Awasari (BK) and another vs. Ramesh Bhimrao Narayankar and ors.* **2016(2) Mh.L.J. 677.** It is claimed that the Full Bench while interpreting the said provision avowed that to achieve the object of statute viz. to ensure that employees have security and stability in service so as to enable them to effectively and efficiently discharge their duties towards pupils and guardians in particular and the institution and society in general, should be borne in mind. As such the Rule has to be read to be benefit of the employee. He would further claim that the object of permitting nomination of representative of the delinquent employee on the Inquiry Committee is to avoid bias or prejudice or malafide on the part the Management. According to the learned counsel if provision of Rule 36 of MEPS Rules, 1981 is compared with Rule 72 of the Special School Code, it is seen that said provision is *pari materia*. In such an eventuality, the impugned communications/orders thereby rejecting the claim of the petitioner for nominating her representative who is retired State Awardee Teacher cannot be sustained.

5. As against above, Shri S. G. Joshi, learned counsel for

respondent-Management would urge that the communications/orders impugned are in tune with the provisions of Rule 72 of Special School Code. According to him an attempt on the part of the petitioner is to stall the inquiry proceedings. That being so he would claim that the petitioner is liable to be dismissed.

6. We have considered the rival contentions.

The fact about the petitioner's services being governed by Special School Code, 2018 is not disputed by either of the sides.

Even otherwise it can be borne out of the record and upon plain reading of Rule 36 of MEPS Rules, 1981 and Rule 72 of Special School Code that both these provisions are *pari materia*. The respective counsel do not dispute the aforesaid factual matrix. As such this Court so as to evaluate the claim of the petitioner would proceed on the basis of aforesaid admitted factual matrix.

7. We have already perused the order dated 24th January, 2019 delivered in CAW No.131/2019 in Writ Petition No.8430/2018 wherein a similar issue was canvassed. This Court has already recorded a finding in the said order against respondent No.1 who in turn contrary to said finding has proceeded to issue the impugned communications/orders.

8. Apart from above, the contention of Shri V. N. Patre, learned counsel for the petitioner that the issue is governed by Full Bench judgment in *Shikshan Prasarak Mandal* (supra) can also be inferred from plain reading of the observations made in the said judgment. A support can be drawn from the observations made in paragraph 51 which read thus :

“ 51. In the view that we have taken, it is not necessary to scan the “Scheme of National Award to Teachers” which has been formulated by Government of India, Ministry of Human Resource Development Department of School Education and Literacy, New Delhi. Mr Bandivadekar has placed a copy of the scheme only because he wanted to emphasise the conditions of eligibility of teachers for consideration for the awards. Apart from their teaching abilities, their expertise, it is apparent that the main considerations for conferring the award are the reputation in the local community, his/her academic efficiency and desire for its improvement, his/her genuine interest in and love for children; and his/her involvement in the social life of the community. The proforma for recommending a teacher has several columns and items which take care of the above qualities. Equally, the guidelines which are comprehensive in character would guide the selection process. Beyond the emphasis on the legal argument, Mr. Bandivadekar placed before us the scheme only as a supporting material. We do not think that any further reference is necessary. In the light of the above, the question/issues referred for our consideration are answered as under :

(i) Whether a Teacher or Headmaster on whom State/National Award has been conferred, who is to be chosen as a third member in an Inquiry Committee constituted under the Maharashtra Employees

of Private Schools (conditions of Service) Regulation Act, 1977 and Rules, 1981, can be a retired Teacher/Headmaster or has essentially to be an in service Teacher/Headmaster ?

Ans. As teacher or headmaster on whom State/National Award is conferred and who is chosen as a third member of the Inquiry committee under MEPS Rules, 1981, can be a retired teacher or headmaster.

(ii) Which of the judgments of the Divisions Benches in the case Leelatai d/o Annapa Patil and Sudha d/o Bhaskarrao Saikhede lay down a binding precedent regarding the age of the Award Winning Teacher/Headmaster ?”

Ans. For the reasons indicated above, the view taken by a Division Bench of this court in case of Sudha d/o Bhaskarrao Saikhede vs. Yashodabai Shikshan Sanstha, reported in 2003 (4) Mh.L.J. 659 commends itself to us and while concurring so also approving it, we overrule all contrary views and rendered in the three decisions of this Court referred in detail above.

9. In the light of above factual matrix it has to be held that the impugned communications/orders dated 12th and 13th December 2023 go contrary to the very scheme and object of Rule 72(2) of the Special School Code. It has to be further held that the issue is squarely covered by judgment in *Shikshan Prasarak Mandal* (supra).

10. That being so, both the impugned communications/orders dated 12th and 13th December 2023 are hereby quashed and set aside. Respondent No.1-Management is directed to accept the nomination of

the petitioner's proposed representative forthwith.

11. In the backdrop of the fact that this Court while deciding Civil Application No.131/2019 on 24th January 2019 has already recorded a finding on the aforesaid issue against the respondent-Management, it is made clear that in case in future if it is noticed that respondent-Management is trying to victimise the petitioner without there being any basis, the Court will be constrained to saddle exemplary costs on the respondent-Management.

12. As such the writ petition is allowed in terms of prayer clauses (i) and (ii).

13. No order as to costs.

(Abhay J. Mantri, J.)

(Nitin W. Sambre, J.)