



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

**WRIT PETITION NO.2247/2021**

1. Bhartiya Vikas Shikshan Sanstha,  
Through its Secretary, Namdeo Bhawan,  
126/1, Somwari Quarters,  
Behind S.B. City College, Raghuji Nagar,  
Nagpur – 400009.
2. Shri Sudhakarao Zade Ucha Prathmik Shala,  
Through its In-charge Headmaster, Bhagwan  
Nagar, Banerjee Layout, Nagpur-27

.....**PETITIONERS**

**...V E R S U S...**

1. Aruna W/o Shailendra Renghe,  
Aged-major, R/o Plot No. 40,  
Behind Bhagwati Lawn, Talmale Estate,  
Trimurti Nagar, Nagpur.
2. The Education Officer (Primary),  
Zila Parishad, Nagpur.

...**RESPONDENTS**

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Mr. A. C. Dharmadhikari, Advocate for petitioner.  
Mr. A. D. Mohogaonkar, Advocate for respondent No1.  
Mr. S. Majid, Advocate for respondent No.2.  
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**CORAM:- ANIL L. PANSARE, J.**

**DATE OF RESERVING THE JUDGMENT :- 03.12.2024**

**DATE OF PRONOUNCING THE JUDGMENT :- 10.12.2024**

**JUDGMENT**

Issue Rule returnable forthwith. Mr. A. D. Mohogaonkar, learned counsel for respondent No.1 and Mr. S. Majid, learned counsel for respondent No.2, waive service of Rule on behalf of respondent Nos.1 and 2. With consent of learned counsel for the parties, the petition is taken up for final hearing.

2. The petitioners are aggrieved by the judgment and order dated 01.04.2021 passed by the School Tribunal, Amravati in Appeal No.45/2015, thereby setting aside the termination order dated 11.07.2015. The School Tribunal has further directed the petitioners - original respondents to reinstate respondent No.1 - original appellant from the date of termination and also to give continuity in service and full back-wages along with consequential benefits.

3. The reasons assigned for setting aside the termination order is non compliance of Rules 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (hereinafter referred to the 'MEPS Rules'.)

4. Having heard both sides and having gone through the material placed before me, it transpires that petitioner No.1 is a society and petitioner No.2 is school run by the society. Respondent No.1 was appointed as Assistant Teacher with effect from 02.07.1992. According to respondent No.1, her appointment was against a clear vacancy and permanent post. There is no denial to the said pleading. The petitioners have allegedly

entrusted upon the respondent No.1 the administrative and financial powers of Head. According to respondent No.1, she did not work as per the dictates of petitioner No.1 and hence her salary was withheld. She suffered ailments and accordingly she communicated to the petitioner No.1 vide letter dated 15.12.2011 that she will not be in a position to discharge the duties of incharge head mistress. The petitioners then allegedly ill-treated her and, therefore, she decided to quit the service and accordingly tendered application for voluntary retirement on 25.11.2013. The petitioners however refused to accept the voluntary retirement, which was to take effect from 28.02.2014. The petitioners communicated to the respondent No.1 of non acceptance of her request.

5. Thereafter, the statement of allegations was served on the respondent No.1 by the petitioners. She then filed writ petition being Writ Petition No.6140/2014 challenging the action of management refusing to accept her request for voluntary retirement. Later on, she expressed her wish to not prosecute the writ petition and showed willingness to face inquiry. Accordingly the said writ petition was disposed of.

6. The charge-sheet was then served on petitioner. She faced departmental inquiry. In all five charges were levelled. The foundation of the charges was that she failed to maintain and submit accounts regularly of the expenses made by the school from time to time and for not spending the grants within time.

7. As stated earlier, the School Tribunal held that the inquiry was vitiated for non compliance of Rules 36 and 37 of the MEPS Rules. Amongst various breaches, following are the one which the petitioners failed to justify.

(a) Mr. Narayan Dongre, was appointed as Chief Executive Officer (CEO) of the Management, who served statement of allegations to respondent No.1. The Management, however, failed to place on record the documents in support. Similarly, the management failed to place on record any document to show that the CEO was authorized to serve the statement of allegations upon the respondent, which has resulted in breach of Rule 36(1) of the MEPS Rules

As such, Mr. Dharmadhikari, counsel has argued that the statement of allegations has been signed by the CEO. However, he failed to show any document as regards

his appointment as CEO and further his authorisation by the management to serve upon respondent No.1 the statement of allegations as envisaged under Rule 36(1) of the MEPS Rules.

(b) As per Rule 36 (2), the CEO or the President, as the case may be, has to appoint one member from the panel of teachers on whom the State/National award has been conferred. In the present case, the State awardee Teacher was selected by the management and not by the President or the CEO. This resulted in breach of Rule 36 (2) (ii) of the MEPS Rules.

(c) As per Rule 37(1) of the MEPS Rules, it is mandatory for the management to prepare charge-sheet within seven days of the constitution of the Inquiry Committee. Respondent No.1 submitted name of her nominee on 24.04.2015 and, therefore, in terms of Rule 36(4), the inquiry committee was deemed to have been constituted on that day i.e. on 24.04.2015. The charge-sheet, therefore, ought to have been communicated on or before 01.05.2015 but it was communicated on 09.03.2015. It has resulted in breach of Rule 36(1) of the MEPS Rules.

(d) The State Awardee Teacher prevented respondent No.1 to cross-examine first witness of the management from the points written by her on paper which she brought along with her. Respondent No.1 was thus prevented from defending her case. In other words, reasonable opportunity to defend her case in terms of Rule 37 (2) (d) (ii) of the MEPS Rules was not afforded to the respondent, which resulted in breach of the said rule.

(e) The inquiry was continued during summer vacation, for which permission of employee is mandatory under Rule 36(6) of the MEPS Rules. The respondent No.1 had not granted such permission and had taken specific objection vide order dated 21.05.2015. The management ignored the objection and continued the inquiry during summer vacation. This resulted in breach of Rule 36(6) of the MEPS Rules.

Mr. Dharmadhikari, counsel for petitioners, submits that this Court, in earlier writ petition, vide order dated 31.03.2015, had issued directions to complete inquiry within three months and accordingly the same was completed.

This argument is unsustainable inasmuch as the

Court's directions cannot be taken aid of to violate rules of inquiry. The petitioners could have well approached the High Court seeking extension of time to complete the inquiry. Thus, there is no justification to conduct inquiry during summer vacation without consent of the respondent – employee. It resulted in breach of Rule 36(6) of the MEPS Rules.

(f) The inquiry committee was under obligation to endorse the final decision rendered, to the Education Officer in terms of Rule 37 (6) of the MEPS Rules, which has been not done in the present case. This is yet another breach.

8. The petitioners failed to show that the aforesaid finding recorded by the School Tribunal is either contrary to the record or the evidence or the MEPS Rules.

9. The counsel for the petitioners, however, submits that the School Tribunal failed to frame preliminary issue as to whether appointment of respondent No.1 was made as per Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service Regulation) Act, 1977 (hereinafter referred to as the, "MEPS Act") read with Rule 9 of the MEPS Rules in terms of the law laid down

by Division Bench of this Court in the case of **Anna Manikrao Pethe .Vs. Presiding Officer, School Tribunal, Amravati and Ors. [1997 SCC OnLine Bom 392].**

10. This argument has been rightly countered by Mr.Mohogaonkar, learned counsel for respondent No.1, by inviting my attention to yet another judgment of the Division Bench of this Court in the case of **Sadhana Janardhan Jadhav .Vs. Pratibha Patil Mahila Mahamandal and Ors. [2012 SCC Online Bom 1777],** wherein the Division Bench, taking stock of the provisions and the judgments of the Supreme Court, held thus:

*“19. We do not find any reason why the same tenet of law enunciated by the Supreme Court in case of labour disputes majority of which are 'service matters' should also not apply in relation to ' service-matters' of all employees of private schools who institute appeals before the specially created 'School Tribunal' under MEPS Act, 1977.*

*We, therefore, hold in the light of the law laid down by the Apex Court that the preliminary issue as to whether the appointment of the appellant is made in accordance with section 5 of the MEPS Act and the Rules thereunder, should not be framed mechanically in the first place and*

*should be framed only if it arises and is properly substantiated in the pleadings of the parties to the appeal and further at that the School Tribunal should decide all the issues at the same time without trying any or some of them as preliminary issues.”*

11. The Division Bench has then clarified that the preliminary issue as regards appointment in accordance with Section 5 of the MEPS Act should be framed only if it arises and is properly substantiated in the pleadings of the parties to this appeal.

12. In the present case, respondent No.1 made categorical statement that her appointment was against sanctioned post. The petitioners have/had not denied the said averment nor have they raised any plea of appointment of respondent No.1 in breach of Section 5 of the MEPS Act. Having not done so, in my view, and as rightly argued by respondent No.1's counsel, the issue did not arise at all and, therefore, there was no necessity to frame aforesaid issue.

13. At this stage, Mr. Dharmadhikari, learned counsel for the petitioners, has invited my attention to yet another judgment

of the Division Bench of this Court in the case of *Priyadarshani Education Trust and ors. .Vs. Ratis (Rafia) Bano, [MANU/MH0577/2007]*, wherein the importance of appointment of teachers and staff in terms of Section 5 of the MESP Act, and the MEPS Rules thereon has been highlighted in the following terms.

*“11. ....Thus, although Sub-rule (3) of rule (9) does not specifically speak of requirement of publication of vacancies by an advertisement and inviting applications from candidates eligible and desirous of seeking appointment, as Sub-rule (8) speaks for the purpose of filling up the vacancies reserved under Sub-rule (7), requirement of such an advertisement must be read within the provisions for the reasons discussed hereinabove and which may be summarized, at the cost of repetition as follows.*

*(i) Statute is enacted for the purpose of regulating the recruitment in private schools in the State.*

*(ii) Interpretation that Sub-rule 3 of rule 9 does not prescribe publication of advertisement, when read in the light of Sub-rule 8, would be discriminatory and capable of promoting arbitrariness and nepotism.*

*(iii) Such an interpretation would be against the spirit of Articles 14 and 16 of the Constitution, and therefore, interpretation which would make rule 9*

*unconstitutional will have to be rejected.*

*(iv) When Sub-section 2 of Section 5 compels the Management to appoint eligible, duly selected candidate only on probation, the backdoor entry of a person who alone knows about existence of vacancy cannot be accepted as palatable interpretation either of Rule 9 or Section 5 read with Rule 9."*

12. ....In view of the provisions as contained in Section 5 of the MEPS Act and Rule 9 of MEPS Rules read with Articles 14 and 16 of the Constitution and the observations of the Hon'ble Apex Court in the reported judgment which guide us, we draw following conclusions;

*(i). "duly appointed, in the manner prescribed" would be an appointment of a person who is eligible (qualified for the post) for appointment, who is selected by due process of selection i.e. by competition amongst all eligible and desirous candidates, and who is appointed on a permanent vacant post. In other words, inviting applications, as also holding of screening tests, enabling all eligible and desirous candidates to compete for selection and appointment, is a must.*

*(ii). Once an eligible candidate (duly qualified as required) is selected by selection process as above, for filling in a permanent vacancy, there is no option for the management and it is obligatory on it to appoint such person on probation for a period of two years. It is neither open for the management to appoint him for one academic year or any period shorter than two years*

*probation period, nor it is open for Education Officer to grant approval for such shorter period in fact, in view of requirement as in Clause (1) above, the process of grant of approval by Education Officer should begin examination of selection process and its validity.)*

*(iii). The candidate thus selected with due process and appointed on probation shall enjoy status of deemed permanency on completion of two years, unless extension of probation is informed, or termination is ordered.*

*(iv). The appointment of a person not belonging to reserved category, in a post reserved for a particular category, because the candidate of that category is not available, shall be absolutely temporary and on an year to year basis, governed by Sub-rule (9) of Rule (9), although in a permanent vacancy.”*

14. Relying upon aforesaid finding, Mr. Dharmadhikari submits that in order to claim any benefit, the teacher must be duly selected and appointed in terms of Section 5 of the MEPS Act read with Rule 9 of the MEPS Rules and, therefore, the School Tribunal should, in every case, ought to frame preliminary issue as directed by the Division Bench of this Court in *Anna Pethe's* case.

15. I do not find any substance in the aforesaid argument. It is one thing to argue that appointment of teacher/staff must be in accordance with the provisions of the MEPS Act and the Rules

made thereunder and it is another to frame preliminary issue as regards appointment of teacher/staff. In the present case, the petitioners had not even whispered about respondent No.1's appointment being illegal nor is there any material which indicates that the said issue arises in this case.

16. The law laid down in *Anna Pethe's* case, if read in terms of judgment in *Sadhana Jadhav's* case, the preliminary issue will arise only when there is some material on record to indicate that the appointment of the teacher/staff is not in accordance with Section 5 of the MEPS Act. In the present case, respondent No.1 has come up with a case of her appointment against the sanctioned and vacant post. The plea is not disputed by the management.

17. In the circumstances, the School Tribunal is fully justified in proceeding with the appeal without framing preliminary issue. Even the Education Officer has not raised any plea on her appointment.

18. Put all together, the petitioners have, while conducting inquiry against respondent No.1, committed multiple breaches of

Rules 36 and 37 of the MEPS Rules. The inquiry is, therefore, vitiated for non compliance of the Rules. The School Tribunal has rightly appreciated the evidence and correctly applied the law to the facts of the case. Respondent No.1 has retired on superannuation and, therefore, inquiry cannot be remanded back. No interference is, therefore, called in the writ jurisdiction. The writ petition is accordingly dismissed. Rule is discharged. No order as to costs.

**(Anil L. Pansare, J.)**

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