



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3786 OF 2022

Matoshree Sevabhavi Sanstha .. Petitioner

versus

Rajendra Bhausahab Burke & others ..Respondents

Mr. S. S. Deshmukh, Advocate for the Petitioner.
Mr. B. A. Shinde, AGP for the State.
Mr. G. G. Kadam, Advocate for Respondent No. 1.

WITH
WRIT PETITION NO. 4038 OF 2022

Matoshree Sevabhavi Sanstha .. Petitioner

versus

Bhagwat Yada Kapse & others ..Respondents

Mr. S. S. Deshmukh, Advocate for the Petitioner.
Mr. B. A. Shinde, AGP for the State.
Mr. S. S. Gangakhedkar, Advocate for Respondent No. 1.

WITH
WRIT PETITION NO. 4039 OF 2022

Matoshree Sevabhavi Sanstha .. Petitioner

versus

Parmeshar Bhagwat Pawar & others ..Respondents

Mr. S. S. Deshmukh, Advocate for the Petitioner.
Mr. B. A. Shinde, AGP for the State.
Mr. S. S. Gangakhedkar, Advocate for Respondent No. 1.

WITH
WRIT PETITION NO. 4040 OF 2022

Matoshree Sevabhavi Sanstha .. Petitioner

versus

Lahu Dattatraya Kanherkar & others ..Respondents

Mr. S. S. Deshmukh, Advocate for the Petitioner.
Mr. B. A. Shinde, AGP for the State.
Mr. S. S. Gangakhedkar, Advocate for Respondent No. 1.

WITH
WRIT PETITION NO. 4041 OF 2022

Matoshree Sevabhavi Sanstha .. Petitioner

versus

Rajendra Mahatardev Mahajan & others ..Respondents

Mr. S. S. Deshmukh, Advocate for the Petitioner.
Mr. B. A. Shinde, AGP for the State.
Mr. S. S. Gangakhedkar, Advocate for Respondent No. 1.

WITH
WRIT PETITION NO. 4042 OF 2022

Matoshree Sevabhavi Sanstha .. Petitioner

versus

Sandip Pandharinath Aamte & others ..Respondents

Mr. S. S. Deshmukh, Advocate for the Petitioner.
Mr. B. A. Shinde, AGP for the State.
Mr. S. S. Gangakhedkar, Advocate for Respondent No. 1.

WITH
WRIT PETITION NO. 4043 OF 2022

Matoshree Sevabhavi Sanstha

.. Petitioner

versus

Sandip Ramdas Mahadik & others

..Respondents

Mr. S. S. Deshmukh, Advocate for the Petitioner.

Mr. B. A. Shinde, AGP for the State.

Mr. S. S. Gangakhedkar, Advocate for Respondent No. 1.

CORAM : R. M. JOSHI, J.

RESERVED ON : 17th MARCH, 2025.

PRONOUNCED ON : 28th MARCH, 2025.

PER COURT :

1. These petitions involve similar questions of fact and law and hence, by consent of both sides, all the petitions are taken up for final hearing at the stage of admission and decided by common judgment.

2. Petitioner is a society registered under Maharashtra Public Trust Act. Contesting Respondents have raised issue about their termination before the authorities prescribed by Government Resolution dated 03.10.2017. Details in each petition are recorded as under :-

Petition No.	Name of Respondent	Date of Dismissal of appeal by Regional Deputy Commissioner	Date of Dismissal of appeal by Principal Secretary, Other Backward Classes and Bahujan Kalyan	Date of order passed by the Minister allowing revision
Writ Petition No. 3786/2022	Rajendra Bhausaheb Burke & others	07.12.2020	10.08.2021	23.02.2022
Writ Petition No. 4039/2022	Parmeshwar Bhagwat Pawar & others	07.12.2020	10.08.2021	23.02.2022
Writ Petition No. 4938/2022	Bhagat Yada Kapse & others	07.12.2020	10.08.2021	23.02.2022
Writ Petition No. 4040/2022	Lahu Dattatraya Kanherkar & others	07.12.2020	10.08.2021	23.02.2022
Writ Petition No. 4041/2022	Rajendra Mahatardev Mahajan & others	07.12.2020	10.08.2021	23.02.2022
Writ Petition No. 4042/2022	Sandip Pandharinath Aamte & others	07.12.2020	10.08.2021	23.02.2022
Writ Petition No. 4043/2022	Sandip Ramdas Mahadik & others	07.12.2020	10.08.2021	23.02.2022

Thus, the revisions filed by the contesting Respondents came to be allowed directing regularisation of their services.

3. These petitions take exception to the orders passed by the Minister essentially on the ground that adjudicatory forum creates the Government Resolution dated 03.10.2017 i.e. execute order is unconstitutional. It is the case of the Petitioner that in view of the law settled by the Hon'ble Supreme Court in case of Secretary A.P.D. Jain Pathshala Vs. Shivaji Bhagwat More, **(2011) 13 SCC 99**, the adjudicating authorities cannot be created by executive order and it can be created only by Statute. Reference is also made to the judgment of Division Bench of this Court in case of Swati Shivaji Lawhare vs. State of Maharashtra & others in **Writ Petition No. 940/2018** wherein the Division Bench has held that remedy of appeal in view of Government Resolution dated 03.10.2017 is not available to the teaching or non-teaching staff. Apart from this, it is the grievance of the petitioner that the Minister, without hearing the Petitioner, has passed the impugned orders and that the said orders have been passed on sympathetic ground and in contradiction to the settled provisions of law by the High Court and Supreme Court from time to time in respect of regularisation of service of the employees.

4. Learned counsel appearing on behalf of the Petitioner has raised initial objection to the maintainability of the appeal so

also revision before the Ministry on the basis of Government Resolution dated 03.10.2017. He drew attention of the Court to the judgment of Hon'ble Supreme Court in case of Secretary A.P.D. Jain Pathshala (supra). Attention of the Court is also drawn to the observations made by the Hon'ble Supreme Court in paragraph Nos. 10, 15, 16 and 22 of the judgment. According to him, law is fairly settled to say that the Government cannot create quasi judicial forum through executive order, as such, Government Resolution dated 03.10.2017 has no force in the law. Similarly, he has drawn attention of the Court to the observations made by Division Bench of this Court in paragraph Nos. 21 to 21 in judgment in case of Swati Lawhare (supra). By relying upon judgment of the Coordinate Bench of this Court in case of Bhaskar Sonerao Deshmukh vs. Ahilyabai Holkar Shikshan Prasarak Mandal, Karepur and another, **AIROnline 2023 BOB 1998**, it is his submission that after coming into force of Right to Education Act, now even primary Ashram school teachers are covered as per Rule 20(2) and has remedy available of preferring appeal under Section 9 before the School Tribunal under MEPS Act and not before Divisional Social Welfare Officer. He has also placed reliance on following judgments :-

- (i) Indian National Congress (I) vs. Institute of Social Welfare & others, (2002) 5 Supreme Court Cases 685.
- (ii) Principal, Micky School vs. State of Maharashtra & others 2005(4) Mh.L.J. 1153
- (iii) Subhas Anna Kool vs. Daund Tal, Sahakari Dudh Utpadak Sangh, 2006(4) Mh.L.J. 611
- (iv) Shri Agrasen Shikshan Sanstha, Gondia and others vs. State of Maharashtra & others, in Writ Petition No. 8322/2023.

5. Learned counsel for Respondents supported the impugned order by contending that in Writ Petition No. 3786/2022 contesting Respondent Rajendra Bhausaheb Burke had preferred Writ Petition before this Court bearing No. 6451/2018 wherein it was observed by this Court that the petitioner has a remedy of second appeal before the Director of Social Welfare and liberty was granted to the petitioner to file appeal as per Government Resolution dated 03.10.2017. It is therefore his submission that the order passed by the Minister invoking powers entrusted on him under Government Resolution dated 03.10.2017 does not call for any interference.

6. Learned counsel Mr. S. S. Gangakhedkar, appearing on behalf of contesting Respondent in other petitions has sought to distinguish judgment of the Hon'ble Supreme Court in case of

Secretary A.P.D. Jain Pathshala (supra). On merit, it is the submission of contesting Respondents that the Respondents were not granted regularisation which is contrary to the provisions of the law and as such, the order passed by the Minister of granting regularisation does not deserve any interference. He has drawn attention of the Court to the judgment of the Full Bench of this Court in case of Suryakant Panchal (supra) wherein it is observed that the secondary or higher secondary Ashram school only satisfy the definition of term 'Private School' within meaning of Section 2(20) of MEPS Act and therefore, any employee of such school has remedy of appeal under Section 9 of the said Act. However, that remedy is not available to an employee working in a basic Ashram school or Ashram school upto primary level. It is thus contended that there is no remedy of appeal available under MEPS Act and as such no fault can be found in exercise of powers under Government Resolution dated 03.10.2017. He has placed reliance on following judgments :-

- (i) Girjesh Shrivastava & others vs. State of Madhya Pradesh and others, (2010) 10 Supreme Court Cases 707
- (ii) Burdwan Central Cooperative Bank Limited & another vs. Asim Chatterjee & others, (2012) 2 Supreme Court Cases 641
- (iii) Securities & Exchange Board of India vs. Akshya Infrastructure Private Limited, (2014) 11 Supreme Court Cases 112
- (iv) Suryakant Sheshrao Panchal vs. Vasantrao Naik Vimukta Jati,

Bhatakya Jamati Aadarsh Prasarak Mandal & others,
2002(3) Mh.L.J. 659

- (v) Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra &
others, (2013) 4 Supreme Court Cases 465

7. At the outset, this Court finds it appropriate to take into consideration the judgment of Hon'ble Supreme Court in case of Secretary, A.P.D. Jain Pathshala (supra) wherein the Supreme Court has decided the issue with regard to permissibility of constituting quasi judicial tribunal by administrative orders. In this regard, it is relevant to take note of the observations of Hon'ble Supreme Court in paragraph Nos. 10, 15, 16 and 22 of the judgment which read thus :-

“10. Under the Shikshan Sevak Scheme, as originally formulated by the State Government by Government Resolution dated 27-4-2000, the Grievance Redressal Committee was merely a mechanism to hear the grievances of Shikshan Sevaks and give its recommendation to the Education Department, so that the Department could take appropriate action. The Grievance Committee was not intended to be a quasi-judicial forum as was evident from the following :

(a) The Committee was constituted only to consider the grievance of the Shikshan Sevaks by giving them an opportunity of putting forth their grievance.

(b) The Scheme did not contemplate issue of notice to the employer, nor hearing both parties, nor rendering any adjudicatory decision.

(c) The Committee was a departmental committee with only the officers concerned as members.

15. The term “employee” was initially defined as any member of the teaching and non-teaching staff of a recognised school. Section 8 provided for constitution of School Tribunals consisting of single member who is an officer of the rank of Civil Judge (Senior Division). Section 9 have a right of appeal to the employees of private schools to the Tribunal. The Tribunal was given the power to give appropriate reliefs and directions to the management including reinstatement, awarding of lesser punishment, restoration of rank, payment of arrears of emoluments, etc. and also the power to levy penalty.

16. When the Shikshan Sevak Scheme was introduced in the year 2000, it was assumed that the Shikshan Sevaks were not “employees” of private schools and therefore will not be entitled to approach the School Tribunals for relief. Therefore, the Scheme provided a grievance redressal mechanism. When the validity of the Scheme was challenged, the High Court was also of the view that the Act would not apply to Shikshan Sevaks as they were not “employees” as defined under the Act. The High Court however was of the view that Shikshan

Sevaks should have recourse to remedies similar to the regular employees of private schools and therefore directed reconstitution of the Grievance Committees on the lines of the School Tribunal. The Act was amended by Amendment Act 14 of 2007 whereby the definition of “employee” was expanded to include Shikshan Sevaks. Ever since the amendments to the Act, by Act 14 of 2007, came into force, Shikshan Sevaks have the remedy of approaching the statutory School Tribunals constituted under the Act for redressal of their grievances and the Grievance Committees became redundant. Thus what falls for consideration in this case is the position that existed prior to the 2007 Amendment to the Act.

22. *In Union of India v. Madras Bar Assn. A Constitution Bench of this Court held : (SCC pp. 31-32, para 38)*

38. *The term ‘courts’ refers to places where justice is administered or refers to Judges who exercise judicial functions. Courts are established by the State for administration of justice that is for exercise of the judicial power of the State to maintain and uphold the rights, to punish wrongs and to adjudicate upon disputes. Tribunals on the other hand are special alternative institutional mechanisms, usually brought into existence by or under a statute to decide disputes arising with reference to that particular statute, or to determine controversies arising out of any administrative law.*

Courts refer to civil courts, criminal courts and the High Courts. Tribunals can be either private tribunals (Arbitral Tribunals), or tribunals constituted under the Constitution [Speaker or the Chairman acting under Para 6(1) of the Tenth Schedule] or tribunals authorised by the Constitution (Administrative Tribunals under Article 323-A and tribunals for other matters under Article 323-B) or statutory tribunals which are created under a statute (Motor Accidents Claims Tribunal, Debt Recovery Tribunals and Consumer Fora)."

8. The Hon'ble Supreme Court in no uncertain terms has held that the quasi judicial tribunal shall be created only by Statute or rules framed under the authority granted by the Statute. A note of caution is made by observing that if powers to constitute and create judicial tribunal are recognised by executive orders, there is every likelihood of tribunal being created without appropriate provisions in regard to their constitution, functions, powers, appeals, revisions etc. It is also observed that there is also real danger to citizen's right being adversely affected by adhoc authorities exercising judicial functions who are not independent or competent to adjudicate and render binding decisions.

9. Division Bench of this Court in case of Swati (supra), has observed in paragraph nos. 18 and 21 thus :-

“18. This resolution states that if any Teaching or Non-Teaching Staff is aggrieved by the action of school management, such an employee shall prefer appeal to competent authority of the District (Assistant Commissioner / Assistant Director VJNT / District Social Welfare Officer) and these authorities shall decide the applications within thirty days. Clause-2 of the resolution states that if these authorities fail to decide the appeal of such an employee, appeal can be preferred to the Regional Deputy Director or Deputy Commissioner. Clause-3 states if these authorities (mentioned in clause-2) fail to decide the appeal of such an employee, the employee can prefer second appeal to Director, VJNT, Pune.

21. It is well settled that appellate authorities can be created by statute and not by executive power. Tribunals with adjudicatory powers can be created only by statutes and not by executive power or by passing Government Resolution. In the case of Secretary, A.P.D. Jain Pathshala cited (supra) almost similar issue had come up before the Hon'ble Apex Court. Facts in this case were the appellant in this decision of the Hon'ble Apex Court was appointed as Shikshan Sevak on 29th July, 2000. Services of the

appellant were orally terminated on 11th June, 2001. His termination was challenged by the respondent-Shikshan Sevak before the School Tribunal. This appeal was withdrawn and appeal was made to grievance committee in the year 2004. Grievance committee quashed the termination of the respondent-employee and directed the appellants to reinstate the first respondent-Shikshan Sevak. Appeal was preferred to High Court. The High Court recommended various modifications to the scheme of grievance committee and issued specific directions making significant changes in the constitution and functioning of the committee. Because of the directions the administrative grievance redressal mechanism was covered into a quasi judicial administrative tribunal. The Hon'ble Apex Court made following observations :

"23. Apart from constitutional provisions, tribunals with adjudicatory powers can be created only by Statutes. Such Tribunals are normally vested with the power to summon witnesses, administer oath, and compel attendance of witnesses and examine them on oath, and receive evidence. Their powers are derived from the statute that created them and they have to function within the limits imposed by such statute. It is possible to achieve the independence associated with a judicial authority only if it is created in terms of the Constitution or a law made by the legislature.

24. *Creation, continuance or existence of a judicial authority in a democracy must not depend on the discretion of the executive but should be governed and regulated by appropriate law enacted by a legislature. In this context, it is worthwhile to refer to the following observations of the European Commission of Human Rights in Zand vs. Austria.*

“The judicial organization in a democratic society must not depend on the discretion of the executive, but should be regulated by law emanating from the Parliament”.

25. *Article 162 of the Constitution, no doubt, provides that subject to the provisions of the constitution, the executive power of a State shall extend to the matters upon which the legislature of the State has competence to legislate and are not confined to matters over which legislation has been already passed. It is also well settled that 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 power under Article 162 cannot be circumscribed; and if there is no enactment covering a particular aspect, the Government could carry on the administration by issuing administrative directions or instructions, until the legislature makes a law in that behalf. (See RamJawaya Kapur vs. State of Punjab and Bishamber Dayal Chandr Mohan vs. State of U.P.).*

26. *But the powers of the State of exercise executive powers on par with the legislative powers of the legislature, is “subject to the provisions of the Constitution”. The provisions of the Constitution, namely Article 233, 234 and 247 for constituting subordinate courts, and Article 323-A and 323-B for constituting tribunals by law made by the legislature, make it clear that judicial Tribunals shall be created only by statutes or rules framed under authority granted by the Constitution.*

27. *If the power to constitute and create judicial Tribunals by executive orders is recognized, there is every likelihood of Tribunals being created without appropriate provisions in regard to their constitution, functions, powers, appeals, revisions and enforceability of their orders, leading to chaos and confusion. There is also very real danger to citizen’s rights being adversely affected by ad hoc authorities exercising judicial functions, who are not independent or competent to adjudicate disputes and render binding decisions. Therefore, the executive power of the State cannot be extended to creating judicial Tribunals or authorities exercising judicial powers and rendering judicial decisions.”*

Finally, in paragraph No. 24, it is observed that it cannot be said that the remedy of appeal was available to the Petitioner therein and the constitution of these appellate authority is not by any Statute to execute order by passing resolution which is impermissible in view of judgment of Supreme Court in case of Secretary A.P.D. Jain Pathshala cited (supra). This judgment is delivered by Division Bench on 07.05.2021. In spite of such judgment being delivered, the Minister has proceeded to hear revisions under Government Resolution dated 03.10.2017 and pass order dated 23.02.2022. The order passed by the Minister, therefore, is contrary to the judgment of Division Bench of this Court.

10. The issue, therefore, is no more res integra in view of above judgment that Government cannot create quasi judicial tribunal with adjudicating power by administrative/executive order. In such circumstances, by invoking Government Resolution dated 03.10.2017, Authorities created therein cannot assume adjudicatory powers and as a result of which the authorities lack jurisdiction to adjudicate upon the issue of termination/regularisation of the employees of petitioner.

11. In so far as order dated 13.01.2020 passed by Division Bench of this Court, there was no issue raised with regard to the validity of the forum so created by the executive order. In any case, since this order is without taking into consideration judgment of Supreme Court in case of A.P.D. Jain Pathshala (supra), the same would not help Respondents in any manner. The said order, therefore, cannot be construed as validation of the forums created under Government Resolution dated 03.10.2017.

12. Even otherwise, the orders impugned are passed without hearing Petitioner, so also the relief granted by the Minister to Respondents is in ignorance of the position of law on the subject. The orders are passed only on sympathetic ground, which is wholly impermissible in law. Hence, on this count also the orders cannot sustain. This however, is not a case to relegate the matters back for decision afresh by giving opportunity of hearing to the Petitioner. The reason therefor is obvious that the authorities under Government Resolution dated 03.10.2017 do not have jurisdiction to adjudicate upon any dispute.

13. In view of above discussion, the petitioner has made out a case for causing interference in the orders impugned. Hence, orders impugned stand set aside. Consequently, the orders passed and action taken pursuant to the said orders, do not survive and are hereby set aside. Since inspite of the judgment of Division Bench of this Court in case of Swati (supra), the authorities undertake entertainment of adjudication of disputes in view of Government Resolution dated 03.10.2017 and hence it is necessary to direct the authorities created therein not to undertake adjudication of any dispute in respect of employees as covered by it. This order be circulated to the authorities created by Government Resolution dated 03.01.2017 for its compliance.

14. Though it is sought to be argued on behalf of the contesting Respondents that in view of judgment of Full Bench of this Court no appeal is provided under the provisions of Section 9 of the MEPS Act in respect of teaching or non-teaching employees of primary Ashram school, Coordinate Bench of this Court in case of Bhaskar Deshmukh (supra), after considering Full Bench judgment, has held that even the employees of primary Ashram school can invoke provisions of Section 9 of MEPS Act. I am in respectful

agreement of the view taken by the Coordinate Bench. In view of this, this Court finds no substance in the contention of learned counsel for the contesting Respondents.

15. In view of this judgment which has held that the Respondents have right to prefer proceeding before the school tribunal, since the Respondents were pursuing a wrong remedy, if a proceeding/appeal is filed before the school tribunal within a period of four weeks from today, the issue of limitation shall not be raised nor entertained.

16. Pending civil application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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