



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

967 WRIT PETITION NO. 5623 OF 2024

THE HEADMINISTRESS AHMEDNAGAR BOYS HIGH SCHOOL ANITA VIJAY
SURYAWANSHI

VERSUS

SHUBHANGI RAMESH LOKHANDE AND OTHERS

Mr. S. S. Jadhavar, Advocate for the Petitioner
Mr. S. B. Parnere, Advocate for Respondent No.1
Mr. P. G. Tambade, Advocate for Respondent No.2

CORAM : R. M. JOSHI, J.

DATE : 9th SEPTEMBER, 2025

P.C. :-

1. This Petition takes exception to the judgment and order dated 25/03/2022 passed by School Tribunal Solapur in Appeal No. 28/2019 filed by the contesting Respondent under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (for short 'MEPS Act')

2. The facts which led to the filing of this Petition can be narrated in brief as under:-

(i) It is the case of the Petitioner that the Petitioner is a recognize school receiving 100% grant-in-aid. It is claimed that all sanction posts in the Petitioner-school were duly filled in by regular appointment of the Employees and the said appointments have been approved from time to time by the Education Department since year 2009 till date. Petitioners

specifically claimed that Respondent No.1 was never appointed in the Petitioner-school and has never worked therein. Respondent No.1 filed Appeal before the School Tribunal, Solapur being Appeal No. 28/2019 contending that she was appointed in the Petitioner's school by order dated 01/06/2009 and since then she was working in the school till she was otherwise terminated on 28/03/2019. She therefore, sought setting aside of the said oral termination with direction for reinstatement with full back wages and continuity of service.

(ii) It is further case of the Petitioner that in around November, 2010, there was an appointment of Administrator on the Petitioner's school and that since then the Management had no role to play in the administration thereof. It is claimed that the Administrator ought to have been made as a party but in spite of filing of the reply by the In-charge Headmaster, neither the Respondent No.1 has taken steps to join Administrator as a party nor the Tribunal has called upon Respondent No.1 to do so. The In-charge Headmaster filed his say before the Tribunal denying the appointment of the Respondent No.1 in the school and she having discharge any duties for the school. It is also contended therein that since 2009, Respondent No.1 has never signed on the muster roll and copies of the muster roll as well as record in respect of the approval of the staff for the entire relevant period was placed before the Tribunal. Specific objection was raised with regard to

the non joinder of necessary party i.e. Administrator to the said Appeal.

(iii) It is claimed by the Petitioner that the Tribunal has allowed the Appeal by ignoring the reply filed by the In-charge Headmaster so also the documentary evidence on record indicating that Respondent No.1 has never worked on the establishment of school though claims so. Since the Tribunal allowed the Appeal by impugned judgment and order, this Petition.

3. Learned Counsel for the Petitioner submits that in view of the judgment of ***Anna Manikrao Pethe V/s School Tribunal, Amravati and Aurangabad Division, Amravati and others***¹, the Tribunal is required to frame the issue with regard to the recognition of the school so also appointment of the concerned teacher in accordance with Section 5 of the Act and Rules thereunder. He drew attention of the Court to the impugned judgment in which these two issues are neither framed nor dealt with. It is his submission that the Tribunal has committed error in accepting the case of Respondent No.1 to be undisputed facts then there was specific reply filed by the In-charge Headmaster denying the allegations and contentions of Respondent No.1/Appellant. It is his submission that the initial burden is upon Respondent No.1 to prove that her appointment is in accordance with the Section 5 of the Act and the Rules from thereunder. He drew attention of the Court to the memo

¹ 1997(4) L.L.N.443

of appeal wherein there is no specific plea as to the advertisement pursuant to which she was interviewed and appointed, has been taken. It is further argued that when Respondent No.1 claims to have worked for more than 10 years, she does not claim to have signed muster roll and that no explanation is put forthwith for her signature being not appearing therein. It is also contended that without joining the Administrator as a party Respondent, the Appeal ought not to have been decided. On these amongst other submissions interference is sought in the impugned order.

4. Learned Counsel for Respondent No.1 attempted his best to support the impugned order. It is his contention that there is averment in the appeal memo with regard to the appointment of Respondent No.1 pursuant to the advertisement and interview is conducted. He made reference to the order of appointment issued by the Management in favour of Respondent No.1. He further places reliance on the photographs which according to him indicate that Respondent No.1 was working as a teacher in the school. It is his submission that even if approval has not been granted to the appointment of Respondent No.1, she could not have been terminated from service without following due procedure of law. Thus, it is his submission that the order impugned does not deserve any interference.

5. Perusal of the record indicates that the In-charge

Headmaster was made as party Respondent to the Appeal. He filed written statement specifically denying the appointment of Respondent No.1 as a teacher in the school. He has also given particular with regard to the number of vacant post and the vacancies fill in. Documentary evidence is placed on record to substantiate the said contention. Similarly, it is specifically averred that the muster roll does not indicate the appointment of Respondent No.1 as a teacher. Though there is specific written statement filed by the In-charge Headmaster, the Tribunal in paragraph No.12 of the judgment has held that the contention of the Appellant are undisputed facts. In order to become any fact to be treated as undisputed fact, there ought to have been admission on the part of the Respondent in respect of such fact or at least non rebuttal thereof. In the instance case since the reply has been filed by the In-charge Headmaster taking specific exception the contention of Respondent No.1, the finding recorded by the Tribunal that the contention of the Appellant are undisputed facts is perverse.

6. The Tribunal in paragraph No.14 of the said judgment has taken note of the fact that undisputedly Administrator was appointed on Maratha Mission Mumbai in November, 2019 and though specific objection was raised with regard to the non joinder as a parties, the Tribunal has proceeded to allow the Appeal. Pertinently the said Appeal has been allowed essentially on the ground that none has caused

appearance on behalf of the Management in the Appeal. Once it was within the knowledge of the Tribunal that there was Administrator appointed in November, 2010, the Tribunal ought to have directed the Appellant to join the Administrator as a party Respondent to the said proceedings. Now the question arises as to whether this is a fit case for remand of the proceedings/ Appeal to the Tribunal by directing the Administrator to be made as party Respondent. There cannot be any order of remand without justification as no order of remand can be passed in routine manner. In case the facts on record are sufficient to decide the lis, there remains no propriety in remanding the matter back to the Tribunal.

7. At this stage, it would be relevant to take note of the Judgments of Division Bench of this Court in the cases of Anna Manikrao Pethe and Priyadarshni Education Trust (supra). In the case of Anna Pethe, it is held as under:

"15. While disposing of this petition, we deem it appropriate to observe that when such applications under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 are filed before the School Tribunals by the teachers challenging any act of termination on the part of the management, it will be necessary for the Tribunal to frame and decide three preliminary issues, viz., whether the school was a recognized school as defined under the MEPS Act; whether the appointment of the concerned teacher was made as per Section 5 of the MEPS Act and the Rules thereunder; and whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the Act as well as the rules framed

thereunder including the Government resolutions issued from time to time regarding reservations, etc. These preliminary points are required to be framed and decided before the appeal proceeds on merits and even if such points are not raised by any of the parties to the appeal, it would be proper on the part of the Tribunal to frame such issues suo motu before examining the merits of the case. In case the findings to any of the preliminary issues are in the negative, the appeal must fail then and there itself, so far as the relief of reinstatement/continuation in service is concerned."

8. No doubt Full Bench of this Court in case of ***St. Ulai High School and Another V/s Devendraprasad Jagannath Singh and another***² has not confirmed the requirement of approval of Education Officer as pre-condition. However, in view of specific finding of Divisional Bench on first two aspects that in case the findings to any preliminary issues are in negative, appeal must fail, so far as relief of reinstatement is concerned.

9. In view of above position of law, before granting any relief of reinstatement, it must be shown that School is recognized and that appointment of the teacher has been made in accordance with Rules. The teacher, therefore, needs to show at first instance that the appointment has been made by following due procedure laid down therein. Needless to say that initial burden would be on the teacher to prove the said case.

² (2007)1 Mah.L.J.597 (FB)

10. Thus, the initial burden is upon Respondent No.1 to substantiate that she was appointed in accordance with Section 5 of the Act and Rules thereunder. Perusal of the memo of appeal does not indicate specific plea of any particular the advertisement pursuant to which she was interviewed and appointment was granted to her. Once no such specific plea has been raised question of such plea being substantiated before the Tribunal does not arise. The case of Respondent No.1 solely rests upon the document of letter of appointment issued by the Management. This document however does not get corroboration from any other material nor is sufficient to hold that there is appointment of Respondent No.1 in the School by following due procedure of prescribed under the Act and the Rules made thereunder. This becomes more relevant in view of the denial of Headmaster in his reply about appointment of Respondent No.1 as teacher at any time.

11. The contention of Respondent No.1 is that she was temporary employee and on 28/03/2019 she was orally terminated. A specific query is made by this Court to the learned Counsel for Respondent No.1 as to show as to the manner in which Respondent No.1 used to mark her attendance in the school or was paid her salary/wages for a substantial period of ten years. Learned Counsel for Respondent No.1 was unable to satisfy the said query. On the contrary, the documentary evidence before the Tribunal indicates that there were

9 sanction posts of teachers and all 9 sanction posts were duly filled in with approval of Education Officer. The muster roll from year 2009 to 2019 also establishes that at no point of time the Respondent No.1 has signed the said muster roll to mark her attendance. It is not surprising that Respondent No.1 does not specifically claim in her appeal memo as to the manner in which she used to mark her presence while attending the duties or salary received by her. It is practically impossible that for a period of over 10 years she never signed muster roll or attendance record nor paid any salary. The only inference which can be drawn from this fact is that Respondent No.1 was never appointed in the school and that on the basis of some purported order she claimed herself to be employed in the school. The case of Respondent No.1 rests upon the photographs filed on record. Needless to say that the photographs would not prove appointment as teacher, much less appointment by following due procedure of law.

12. It is pertinent to note that the brother of Respondent No.1 is working as a clerk in the said school. In this backdrop the photographs sought to be relied upon by the Respondent No.1 to substantiate her claim of being appointed as a teacher needs to be rejected as threshold. Resultantly, there is no evidence to hold that she was appointed as teacher and worked ever in the school.

13. In the afore stated facts, since the Respondent No.1 has

failed to establish that she was appointed by following the procedure under the Act and Rules framed thereunder and more so the case of Respondent No.1 of being employed is not supported by any other material, this is a fit case to cause interference in the impugned order. Hence, the Petition stands allowed. Impugned order therefore stands set aside. Appeal bearing No. 28/2019 filed before the School Tribunal is dismissed.

(R. M. JOSHI, J.)

ssp