



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 WRIT PETITION NO. 13170 OF 2019

SANGITA MURLIDHAR PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. S. R. Sapkal, Advocate for the Petitioner
Mr. Shrikant Patil, Advocate for Respondent Nos.2 and 5.

CORAM : R. M. JOSHI, J.

DATE : 29th SEPTEMBER, 2025

P.C. :-

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition takes exception to the impugned order dated 23/07/2019 passed by the School Tribunal in Appeal No. 50/2015, whereby the Appeal filed by the Petitioner-Assistant Teacher came to be dismissed.
3. The facts which led to the filing of this Petition can be narrated in brief as under:-
 - (i) The Petitioner was appointed as Assistant Teacher on 16/11/2005 in non grant basis division of Respondent-School for teaching Mathematics subject. She claims to have been permanent employee in the said school. She was terminated by order dated 11/08/2015 on the ground that there is no admission for two academic

year in the school. The termination came to be challenged on various ground including non compliance of Rule 26(1)(2) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short 'MEPS Rules').

(ii) The Appeal came to be resisted by the Respondent School. Learned Tribunal by passing impugned order dismissed the Appeal, hence this Petition.

4. Learned Counsel for the Petitioner has drawn attention of the Court to the memo of Appeal filed before the Tribunal wherein, specific plea was raised with regard to non compliance of Rule 26(1)(2) of MEPS Rules. It is argued by relying upon the following judgments that non compliance of the Rule i.e. failure on the part of the Management to give three months notice renders the retrenchment illegal. He place reliance on the judgments in case of *Bharat Education Societys Junior of Commerce and Economics and Ors. Versus Balaraman Vembhulu*¹, *Khalapur Taluka Shikshan Prasarak Mandal Versus State of Maharashtra*² and *Nagpur Shikshan Mandal and Anr. Versus Varsha Vinod Sayam and Anr.*³

5. This contention is opposed by the learned Counsel for the Respondent by submitting that though in the memo of appeal plea was

1 2000(4) Mh.L.J. 849

2 2024 DGLS (Bom.) 3133

3 2014(3) Bom.C.R. 713

raised with regard to the non compliance of Rule 26(1)(2) of MEPS Rules, in fact the before the School Tribunal the said issue was not raised/agitated and therefore there was no occasion for the Respondent to raises the same. It is his submission that in any case the appeal was agitated before the Tribunal only on the ground that the Petitioner was required to be absorbed in another aided school belonging to the Respondent Management and therefore the ground now sought to be raised needs to be treated as waived He placed reliance on the judgment in case of *Pujya Sane Guruji Vidya Prasarak Mandal & Ors. Vs. Prakash M. Patil & anr.*⁴

6. *Prima facie* perusal of the record indicates that in appeal memo specific plea was raised with regard to the non compliance of Rule 26(1)(2) of MEPS Rules and the order of termination came to be challenged on the said ground. Though such plea is raised, even perusal of the arguments recorded by the Tribunal indicates that this issue was not agitated before the Tribunal. Consequently, the Respondent had no opportunity to address the said issue and resist the same. Moreover, the Tribunal was also not called upon to record any findings thereon.

7. In any case whether the notice of three months was issued before the retrenchment/termination of the service of the Petitioner is a fact and any findings in that regard are required to be recorded by the

⁴ 2002(1) All MR 766

Tribunal and not by this Court for the first time in exercise of writ jurisdiction.

8. Thus, when the Tribunal was not asked to take into consideration the specific issue raised with regard to the non compliance of Rule 26 (1)(2) of MEPS Rules, it would be in the fitness of justice that the order impugned is set aside and the appeal is relegated back to the Tribunal for decision afresh.

8. It would be open for the rival parties to substantiate their respective side as pleaded in the memo of appeal and response file thereto.

9. In view of the above, impugned order is set aside. The Appeal No. 50/2015 is relegated back to the School Tribunal for decision afresh. Since the Appeal is of year 2015, the Tribunal to decide the same within a period of six months from today.

(R. M. JOSHI, J.)

ssp