



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 66 OF 2023

Shikshan Vikas Samooh

A registered Society / Trust

Having office at Maratha High School,

Shivram Amritvar Marg, Worli,

Mumbai 400013.

... Petitioner.

Versus

1. Mrs. Roshani B. Rane

Residing at 149/8, Amrutlabh Bldg.,

2nd Floor, 6th Lane, Hindu Colony, Dadar,

Mumbai 400 014.

2. The Deputy Director of Education,

Mumbai Region, Jawahar Bal Bhavan,

Netaji Subhash Road, Charni Road,

Mumbai 400 004.

3. The Education Inspector,

Mumbai South Zone,

E-Vita, Impress Bldg., G. D.

Ambekar Road, Parel Village, Parel,

Mumbai 400 012.

4. Mrs. Leena Manoj

Head Teacher at

Shikshan Vikas Samooaha's, SVS English-

School, Worli, Mumbai 400 013.

... Respondents.

Mr. A.S. Peerzada, Advocate for the Petitioner.

Mr. C. R. Sadasivan, Advocate for Respondent No.1.

Ms. Kavita N. Solunke, Addl. Govt. Pleader for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.
Reserved on : July 03, 2026
Pronounced on : July 28, 2026

JUDGMENT :

- 1. Rule.** Rule made returnable forthwith with consent and taken up for final hearing.
- 2.** The present Petition filed under Article 227 of the Constitution of India, impugns the judgment dated 9th January, 2020 passed by the School Tribunal in Appeal No.05 of 2019 directing the reinstatement of Respondent No.1 to her post as “Head” in Secondary Section of the Petitioner-School with continuity in service with full back wages and consequential benefits.
- 3.** The Petition pleads that the Petitioner is running a non-aided english medium school, which school is recognised as private school under the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, the “**MEPS Act**”), and the service conditions of the staff and the teaching faculty is governed by the provisions made under the MEPS Act and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, the “**MEPS Rules**”). It

is pleaded that the Respondent No.1 is the Assistant Teacher employed by the Petitioner in its SVS English School situated at Worli, Mumbai. As per the terms and conditions of the permission granted for starting the english medium school, the appointment of the Headmaster is subject to the approval of the concerned Inspector/Education Officer. It is pleaded that the Respondent No. 1 while seeking employment with the Petitioner misrepresented about her experience as Assistant Teacher without submitting any documentary evidence and based on such false representation of total experience of 11 years, she was appointed as a Head Teacher and issued the letter of appointment to that effect on 31st July, 2014.

4. It is pleaded that the Respondent No.2 i.e. Deputy Director of Education refused to grant approval on the ground that the Respondent No.1 is not confirmed Assistant Teacher having completed five years of teaching experience and therefore the Petitioner was constrained to issue a letter of appointment dated 31st July, 2014 appointing the Respondent No.1 as Assistant Teacher with effect from 1st August, 2014, for which approval was granted by the Education Inspector, which appointment was accepted by Respondent No.1 by signing the appointment letter. It

is pleaded that in view of Rule 3 of MEPS Rules, the Respondent No.1's appointment as Head Teacher was not approved due to lack of qualification, as she failed to establish that she has experience of 11 years, when she had completed service of 4 years only with the Petitioner's school as Assistant Teacher. The Respondent No.3 had granted signing authority to Respondent No.1 from time to time till filling of post of Head Master.

5. The Respondent No.1 had graduated in arts stream with economics subject in 1997 and thereafter obtained graduation in history subject in the year 2013 and for B.Ed. her subjects were English and History. She was therefore not qualified to be appointed to the post of Headmistress in the year 2015. The Respondent No.3 approved the appointment of the Respondent No.1 on the post of Assistant Teacher vide letter dated 22nd October, 2015 with effect from 1st August, 2014.

6. It is pleaded that on 3rd October, 2018, as the Respondent No.1 was not qualified to be appointed as Head Teacher under the statutory rules, a communication dated 3rd October, 2018 was issued informing her that her appointment as Head Teacher is discontinued and that she has been appointed as Assistant Teacher with effect from 5th September, 2018. Respondent No.1 instead of

obeying the order went on unauthorised leave from 4th October, 2019 and failed to report for her duty despite the Petitioner communicating with her on 29th December, 2018 and 31st January, 2019.

7. The Respondent No.1 has filed an affidavit-in-reply submitting that by virtue of qualification of B.A.B.Ed., she was fully qualified for appointment to the post of “Head” of the school. On 23rd April, 2013, the Petitioner-Management had published an advertisement in the newspaper inviting applications for several posts and the first post which was advertised was of Principal for secondary school, in response to which, the Respondent No.1 applied, was interviewed and duly selected by the selection committee and came to be appointed vide appointment order dated 17th July, 2014. The copies of the advertisement and the letter dated 17th July, 2014 is annexed to the affidavit-in-reply. It is stated that the first letter of appointment as Principal is not annexed to the petition. It was intimated by the first appointment order that detailed appointment letter will be given after joining the post.

8. It is contended that the Petitioner submitted the proposal for approval of the Respondent No.3 as Principal but since the

appointment was by direct recruitment, the Education Inspector called upon the Petitioner to first obtain approval of Assistant Teacher and thereafter submit approval as Headmistress and to obtain no objection certificate from the other teachers in the school which was done by the Petitioner by circular dated 8th June, 2015. By letter dated 27th October, 2015, the Education Inspector granted approval to the Respondent No.1 as Assistant Teacher and instead of submitting the proposal for approval as Principal, the Petitioner sent proposals for signing authority from 2016 till 2018. It is submitted that the communication of 3rd October, 2018 vaguely records that in view of the directions issued by the Education Inspector, the Respondent No.1 cannot continue as Head Teacher and discontinued the services as Head Teacher, which was challenged before the School Tribunal.

9. Mr. Peerzada, learned counsel appearing for the Petitioner would point out the letter of appointment of 31st July, 2014 appointing the Respondent No.1 as Head Teacher and the order of appointment of the same date of 31st July, 2014 appointing the Respondent No.1 as Assistant Teacher. He would further point out the endorsement of the Respondent No.1 accepting her appointment as Assistant Teacher. He would further point out to

the communication dated 1st February, 2018 by the Education Inspector permitting the Respondent No.1 to sign certain documents till appointment of Principal and would point out that the said communication describes the Respondent No.1 as Assistant Teacher.

10. He would further submit that before the School Tribunal, the Education Inspector had filed his reply stating that the Respondent No.1 was granted approval as Assistant Teacher on 1st August, 2014 and as there was no teacher available fulfilling the qualification for the post of Principal, the Respondent No.1 was granted the authority to sign the documents for period of six months at a stretch. He would further point out that the affidavit states that as there was no teacher available fulfilling the qualification as well as the experience for being appointed as a Principal, no approval was given by the education department. He submits that the Tribunal has erroneously recorded that there is no affidavit-in-reply filed by the Education Inspector.

11. He would further submit that there was no consent given by the education department for appointment of the Respondent No.1 as Principal and the confirmation was given to the post of Assistant Teacher by pointing out the document of 27th October,

2015. He would further submit that School Tribunal has granted her continuity of service with full back wages without any evidence on part of the Respondent No.1 that she was not gainfully employed. He submits that as Respondent No.1 was never appointed as Principal, there is no question of her termination as Principal and reduction of her rank to Assistant Teacher.

12. *Per contra*, Mr. Sadasivan, learned counsel appearing for the Respondent No.1 would point out the advertisement as well as the communication of 17th July, 2014 appointing the Respondent No.1 as Principal of the school. He would submit that, having been validly appointed, the approval of the Education Department will not vitiate the appointment drawing support from the Full Bench decision of this Court in the case of ***St. Ulai High School, through its Principal and Anr. vs. Shri Devendraprasad Jagannath Singh and Anr.***¹ He submits that the Respondent No.1 was duly qualified as she had obtained graduation in B.A. in Economics in the year 1997 and thereafter, B.A. with subject History in the year 2013 and in B.Ed. with subjects English and History.

13. Rival contentions now fall for determination:

14. By the impugned judgment, the Tribunal has recorded that

¹ 2007 (109) BOM. L.R. 60

the appeal was heard *ex parte* against the Respondent No.3, who was the newly appointed as Head Teacher and Respondent No 5 Deputy Director of Education.

15. This Court is informed that Respondent No 3 has left the services and would therefore would not be affected by the outcome of the present proceedings.

16. The Tribunal records that the Respondent No.5-Deputy Director of Education was duly served with the notice of the Appeal but he did not appear before the Tribunal to answer the appeal. This observation is assailed by Mr. Peerzada as erroneous by contending that Education Inspector had filed his reply affidavit. Before the Tribunal, the Deputy Director of Education was arrayed as Respondent No 4 and the Education Inspector was arrayed as Respondent No 5. The reply Affidavit was filed by Education Inspector.

17. The observation that the Respondent No.5 Deputy Director of Education has not appeared before the Tribunal to answer the Appeal is an typographical error in mentioning the respondent number. Paragraph 6 of the impugned judgment records that the Education Department did not prefer to appear to argue the appeal and the Tribunal has referred to the reply affidavit of Education

Inspector in the judgment.

18. The appeal was therefore heard *ex parte* only against the Respondent No.3 and the Deputy Director of Education and not against the Education Inspector.

19. The issue before the Tribunal was the termination of Respondent No.1's services as Principal and reduction of her rank as Assistant Teacher. The Tribunal noted the statutory provisions and decision in case of ***Anna Manikrao Pethe vs. Presiding Officer, School Tribunal***² which had held that the issues which arise in a challenge to an act of termination is whether the appointment of the concerned teacher was made as per Section 5 of the MEPS Act and Rules thereunder and whether such an appointment has been approved by the Education Officer. The Tribunal further noted the decision of the Hon'ble Full Bench of this Court in the case of ***St. Ulai High School, through its Principal and Anr. vs. Shri Devendraprasad Jagannath Singh and Anr.*** (supra), which has held that neither the MEPS Act nor the Rules framed thereunder mandate the grant of approval by the Education Officer as a condition precedent to a valid order of appointment and the requirement of approval relates to disbursal of grant-in-aid which is

² 1997 (3) MhLJ 697

a matter between the management and the State and want of approval will not invalidate an order of appointment and in fact holds that the observations of the Hon'ble Division Bench in the case of ***Anna Manikrao Pethe vs. Presiding Officer, School Tribunal*** (supra), that the appeal is not maintainable before the Tribunal at the behest of an employee whose appointment has not been approved, do not reflect the correct position in law and are overruled.

20. The Tribunal framed the necessary issue as regards the qualification and appointment of the Respondent No.1 and the act of termination whether valid. In so far as appointment of Respondent No.1 is concerned, the Tribunal noted the advertisement dated 23rd April, 2014, letter of appointment of Respondent No.1 as Principal dated 17th July, 2014 and another appointment order appointing Respondent No.1 as Head Teacher. On the basis of documents on record, the Tribunal held that the Respondent No.1 was appointed as Principal in accordance with the procedure. In so far as the qualification of Respondent No.1 is concerned, it held that Respondent No.1 was duly qualified being B.A B.Ed. On the aspect of required experience, the Tribunal held that the Petitioner has itself recorded about 11 years experience of

the Respondent No.1. It further observed that the Department appears to have considered her appointment by relaxing the teaching experience.

21. The decision of Hon'ble Full Bench of this Court in ***Ulai High School, through its Principal and Anr. vs. Shri Devendraprasad Jagannath Singh and Anr.*** (supra), settles the legal position that approval of the education department is no longer the *sine qua non* for valid appointment. The condition of obtaining prior approval of the Education Inspector to the appointment of Head master set out in the permission granted for starting the english medium cannot override the position of law settled by the Hon'ble Full Bench of this Court.

22. Much dispute has been created by the Petitioner as to the post to which the Respondent No.1 was appointed. The Petitioner has not approached the Court with clean hands and has suppressed various documents. The Petitioner did not produce the copy of advertisement, the copy of first appointment order of 17th July, 2014, the circular of 8th June, 2015 calling for no objection of other teachers. The documents on record will indicate the shifting stand adopted by the Petitioner as regards the post of Respondent No.1. The first post advertised in the advertisement published by the

Petitioner is for Principal for secondary section, the appointment letter of 17th July, 2014 issued to the Respondent No.1 mentions the interview held on 15th July, 2014 and appointment as Principal of secondary section and direction to join the duties from 1st August, 2014. On 8th June, 2015, the Petitioner school issues a circular mentioning about the 11 years experience of Respondent No.1 as Assistant Teacher and her appointment as Principal on 1st August, 2014 and seeks No objection from the other teachers, which was duly given. The communication of 3rd October, 2018, which was subject matter of challenge states about discontinuation of Respondent No.1 as Head Teacher and her appointment as Assistant Teacher w.e.f 5th September, 2018.

23. The documents would disclose that the Petitioner had appointed the Respondent No.1 as Principal w.e.f 1st August, 2014 and the discontinuation as Principal was by the communication of 3rd October, 2018. Though the said communication speaks of Respondent No.1 's appointment as Assistant Teacher w.e.f. 5th September, 2018, the case put up by the Petitioner is that the Respondent No.1 was never appointed as Principal as she was not duly qualified and her appointment was as Assistant Teacher by relying on the appointment letter of 31st July, 2014. On record are

two appointment orders of 31st July, 2014 one for post of Head Teacher and the other for appointment to the post of Assistant Teacher. The pleading in the Petition is that as no approval was granted by Respondent No 2 to the appointment as Principal, the Respondent No.1 was appointed as Assistant Teacher. The said communication of Respondent No 2 is not on record and no particulars are given. It is difficult to accept that the appointment letter for Head Teacher was issued on 31st July, 2014 and immediately on the same date, the appointment letter as Assistant Teacher was issued. The reliance placed on the order of 31st July, 2014 appointing the Respondent No.1 as Assistant Teacher cannot be accepted for the reason that the said order of appointment makes a reference to the application of 15th July, 2015, whereas the order was issued on 31st July, 2014. It is also not possible to accept the Respondent No.1's endorsement at the bottom of the appointment order as acceptance of her appointment as Assistant Teacher, as there are several blanks in the document as regards the date of application, the designation, the salary as well as the term and the date which is not typed and is filled in hand. It appears that the signature of the Respondent No.1 was obtained and thereafter the blanks were filled to show her appointment as Assistant

Teacher.

24. The Respondent No.1 has stated that the Petitioner was called upon to first seek approval as Assistant Teacher and thereafter to submit approval for Headmistress and the document appears to have been created for the said purpose. Considering the settled position in law, the approval of Education Inspector is immaterial for valid appointment. The Respondent No.1's appointment was on the post of Principal evidenced from her appointment order of 17th July, 2014. It appears that in accordance with directions of Education Inspector, Respondent No.1's appointment was shown as Assistant Teacher and the Petitioner is now seeking to take advantage of the said fact to contend that Respondent No.1's appointment was since inception as Assistant Teacher.

25. In the event, the Respondent No.1 was appointed as Assistant Teacher on 31st July, 2014, there was no requirement of obtaining NOC of other teachers on 8th June, 2015 and no necessity of mentioning about the appointment of Respondent No.1 as Assistant Teacher w.e.f 5th September, 2018 in the communication of 3rd October, 2018.

26. The documents on record were rightly considered by the

Tribunal to hold that the Respondent No.1 was appointed to the post of Principal. Coming next to the qualification of the Respondent No.1, Section 5 of the MEPS Act imposes an obligation on the management of private school to fill in every permanent vacancy by the appointment of a person duly qualified to fill such vacancy. Rule 3 of the MEPS Rules sets out the qualification and appointment and Head and reads as under:

"3. Qualifications and appointment of Head.

- (1) A person to be appointed as the Head;
 - (a) of a school having Standards I to VIII as per the norms and the standards provided in the Schedule under the heading 'Norms and Standards for a School' appended to the Right to Children to Free and Compulsory Education Act, 2009 (35 of 2009):

Provided that, the senior most teacher who has not put less than five years of service, shall be appointed as the head of the primary school.

- (b) of a secondary school including night school or a Junior College of Education shall be a graduate possessing Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by Government as equivalent thereto and possessing not less than five years' total full-time teaching experience after graduation in a secondary school or a Junior College of Education out of which at least two years' experience shall be after acquiring Bachelor's degree in teaching or education:

Provided that, in the case of a person to be appointed as the Head of a night secondary school;

- (i) he shall not be the one who is holding the post of the Head or Assistant Head of a day school, and
 - (ii) the experience laid down in clause (b) of sub-rule (1) may be as a part-time teacher.
- (2) In the case of appointment to the post of Head of a secondary

school including night school or a Junior College of Education if there is no person with the teaching experience mentioned in clause (b) of sub-rule (1) available on the staff of the school or if the qualified persons, though available and eligible, relinquish their claims for the post of Head and if a Management desires to appoint a person, from the teaching staff of the school who does not possess the requisite teaching experience mentioned in clause (b) of sub-rule (1), it shall apply to the Deputy Director for relaxing the requirement. The Deputy Director may, after recording reasons in writing, grant or refuse such relaxation. In such cases, the appointment shall not be made without obtaining the previous approval of the Deputy Director.

Note: In the case of a graduate teacher already in service in a secondary school or Junior College of Education for more than fifteen years on the 1st June 1963, the Deputy Director shall relax the requisite qualifications for appointment of such teacher as a Head.

- (3)
- (4)
- (5)
- (6)

27. The qualification which is prescribed in Rule 3 in respect of secondary school is of the candidate being a graduate possessing bachelors degree in teaching or education of statutory University and possessing the experience of not less than 5 year total full time teaching experience after graduation in a secondary school. In the present case, the Respondent No.1's academic qualification is B.A. B.Ed. which satisfies the criteria under Rule 3 of MEPS Rules. Insofar as the experience is concerned, Rule 3 requires not less than 5 years total full time teaching experience after graduation. The pleading in the petition is that Respondent No.1 by seeking

employment in the Petitioner-school misrepresented about her experience as Assistant Teacher of 11 years.

28. The Respondent No.1 's bio-data is placed on record which sets out the experience of Respondent No.1 which is more than 5 years. The Petitioner had issued the appointment order of 17th July, 2014 appointing the Respondent No.1 as Head Teacher/Principal. Once the appointment order is issued, it is implied that the Petitioner appointed the Respondent No.1 as she fulfilled the requisite criteria. The pleading in the Petition is that approval was not granted as Respondent No.1 is not confirmed Assistant Teacher having completed 5 years of teaching experience. The said communication is not placed on record. The communication of 3rd October, 2018 does not mention about the Respondent No.1 not possessing the requisite experience of 5 years or having misrepresented about her experience, which contention is missing from pre-litigation correspondence.

29. The Petitioner itself by the circular of 8th June, 2015 acknowledges the advertisement issued for the post of the Principal and the selection of the Respondent No.1 on 1st August, 2014 to the post of Principal. It further acknowledges the experience of 11 years of the Respondent No.1 as Assistant Teacher and seeks no objection of the other teachers which was

given. Considering that the Petitioner-Management was aware of the qualifying criteria for appointment of Principal and had accordingly followed the due procedure by issuing the advertisement and selecting the Respondent No.1 after the interview, it is too late in the day to thereafter turn back to plead that the Respondent No.1 did not have the experience for Principal as required under Rule 3 of the MEPS Rules.

30. After having appointed the Respondent No.1 as the Principal of the school, there was no need for the Petitioner management to submit a proposal for approval of the Respondent No.1 on 19th October, 2015 as Assistant Teacher. There is no explanation as to why the Petitioner-management did not send the proposal of the Respondent No.1 for approval as Principal after obtaining the no objection on 8th June, 2015. In any event, even if there is no approval which has been granted, as the appointment of the Respondent No.1 was after following due procedure, by publishing advertisement, inviting applications and after selection through a selection committee, the non grant of the approval by the Education Inspector will not vitiate the appointment.

31. The approval claimed to already having been granted by the Education Officer to Respondent No.1's appointment as Assistant Teacher runs contrary to the contents of the communication of 3rd

October, 2018 whereby the Petitioner decided to appoint the Respondent No.1 as Assistant Teacher and discontinue her services as Head Teacher. The communication of 3rd October, 2018 would in fact indicate that the Respondent no.1 continued as Principal of the school till that date. Though the letter of appointment and the order of 3rd October, 2018 describes the Respondent No.1 as Head Teacher, there is no post as Head Teacher and the advertisement was issued for post of Principal and the Respondent No.1 was appointed as such.

32. The order of 3rd October, 2018 constitutes termination of the services of the Respondent No.1 as Principal which was rightly assailed before the Tribunal. The Tribunal has considered the decision in the case of ***St. Ulai High School, through its Principal and Anr. vs. Shri Devendraprasad Jagannath Singh and Anr.*** (surpa) that the services cannot be terminated for want of approval. The order of 3rd October, 2018 terminates the services in view of the directions issued by the Education Inspector which directions are not placed on record. The Tribunal has rightly noted that the impugned order reveals the confused stand of the Petitioner-management. The Petitioner management has no clarity and has been constantly shifting stands. The Tribunal has therefore rightly held that the consequence of reducing the Respondent No.1

from the rank of Head to the Assistant Teacher amounts to reduction in rank which constitutes a major penalty under Rule 31 of the MEPS Rules and there is no procedure followed for inquiry.

33. The Trial Court has therefore rightly passed the impugned order. Though it is sought to be contended by Mr. Peerzada that there is nothing on record to show that the Respondent No.1 was not gainfully employed, it is own case of the Petitioner that there was never any appointment as Head Teacher/Principal and consequently no termination as Head Teacher and that the Respondent No.1 was always appointed as an Assistant Teacher.

34. In event, there is any unauthorised absence by the Respondent No.1, the Petitioner can consider the unauthorised absence in accordance with the governing service rules, however, there can be no fault found in the impugned order setting aside the the order of 3rd October, 2018 and directing reinstatement with continuity of service with full back wages.

35. In light of the above, there is no need for interference with the impugned order under Article 227 of Constitution of India. Resultantly, petition fails and stands dismissed. Rule stands discharged.

[Sharmila U. Deshmukh, J.]