



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 112 OF 2025

Smt. Manthana Ramdas Thakur & Anr.

... Petitioners

Vs

The State of Maharashtra, through the Secretary,
School Education Dept. & Anr.

... Respondents

Mr. Vinayak R. Kumbhar, Mr. Rajendra B. Khaire i/b. Ashwini N. Bandiwadekar
for the petitioners.

Ms. Pooja M.J. Deshpande, AGP for the State.

CORAM : G. S. KULKARNI &
DR. NEELA GOKHALE, JJ.

RESERVED ON: 1 OCTOBER 2026

PRONOUNCED ON : 21 OCTOBER 2026

JUDGMENT (Per G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs:

“a) Rule Nisi be issued and records and proceedings be called for.

b) By a suitable writ, order or direction, this Hon’ble Court may be
pleased to quash and set aside the impugned order dated 22.8.2024, along
with the impugned order dated 23.8.2023, passed by respondent no. 2 and
accordingly the respondent no. 2 may be directed to grant approval to the
appointment of the petitioner no. 1 as a Full Time Shikshan Sevak in the
aided Higher Secondary School of petitioner no.2 Management from
17.6.2017 to 16.6.2020, and to release the grant-in-aid for payment of
monthly honorarium to the petitioner no. 1 for the said period of 3 years.

c) By a suitable writ, order or direction, this Hon’ble Court may be
pleased to direct the respondent no. 2 to grant permission to include the
name of petitioner no. 1 in Shalartha Pranali and to allot her the Shalartha
I.D. as a Full Tie Shikshan Sevak in the aided Higher Secondary School of the
petitioner no. 2 Management w.e.f. 17.6.2017, with all consequential benefits.

d) By a suitable writ, order or direction, this Hon’ble Court may be
pleased to direct respondent no. 2 to grant further approval to the petitioner
no. 1 as a Full Time Assistant Teacher at the aided Higher Secondary School

of the petitioner no.2 Management w.e.f. 17.6.2020, and to release the grant-in-aid for payment of monthly salary to the petitioner no. 1 in pay scale, together with arrears from 17.6.2020 onwards.”

2. Thus, as seen from the prayers, the proposal as forwarded by petitioner no. 2 – P.P. Khar-Patil Education Society in which petitioner no. 1 is appointed has been rejected by respondent no. 2- the Deputy Director of Education on the ground that the appointment of petitioner no. 1 to the aided school was made without compliance of the several statutory mandates as prescribed under the MEPS Act and MEPS Rules.

3. The facts lie in a narrow compass: The petitioner contends that although the petitioner belongs to the OBC category, she was possessing the necessary qualifications for appointment to the post of Shikshan Sevak. She has applied as an open category candidate for appointment as a Shikshan Sevak in pursuance of an advertisement which was issued by petitioner no. 2 in the local newspaper dated 29 May, 2017. It is the petitioner’s case that the said advertisement was issued as mandated by law, however, copy of only one newspaper cutting of the advertisement issued in “Daily Om Samachar” is annexed. Whether the said newspaper was a newspaper of wide circulation, cannot be ascertained in the said petition, except for a fact that the petitioner to that effect obtained a certificate from the owners of the said newspaper that the said newspaper has wide circulation. This itself reflects something quite unusual.

4. Be that as it may, it appears that there was a transfer of the school in question in favour of petitioner no. 2-Management sometime in May 2017 from

the previous management, namely, one Konkan Education Society, Alibag, Taluka Alibag, District Raigad. The name of petitioner no. 2-School hence underwent a change as Kalusheth Dhaku Khar-Patil Higher Secondary School at Chirner, Taluka Uran, District Raigad. Accordingly, it is stated that the petitioner no. 2 starting running the said school from May, 2017. It is the only school run by petitioner no. 2. It is the petitioner's case that at the time of transfer, a sanctioned post of Shikshan Sevak was lying vacant and for such reason, the said advertisement was issued on 29 May, 2017 inviting applications from the eligible candidates. It is the petitioner's case that the petitioner had participated in an interview, which was held by the Interview Committee of three members and accordingly, the petitioner was selected as a successful candidate to be appointed as Shikshan Sevak. In the interview which was held on 14 June, 2017, it is stated that four candidates participated. Accordingly, on 16 June, 2017, the petitioner was issued an appointment order appointing the petitioner as a Shikshan Sevak for a period of three years from 17 June, 2017 to 16 June, 2020. It is stated that the petitioner accordingly joined the post on 17 June, 2017.

5. It is quite astonishing to note that the proposal in question, on which the impugned order has been passed rejecting the said proposal, was submitted on 4 July, 2022 by petitioner no. 2, which is almost after a period of five years from the petitioner's appointment as Shikshan Sevak. There is no acceptable explanation as to why petitioner no. 2 made a belated proposal and that too after five years. Although, the learned counsel for the petitioner submitted that earlier proposal was not accepted, however, there is no written rejection of any proposal or any

evidence that such proposal was earlier made/submitted. The facts would indicate that the reasons for this are not too far to be seen.

6. On 17 August, 2022, respondent no. 2 issued a letter to the Principal of petitioner no. 2-school to submit the proposal as per the Government Resolution dated 10 June, 2022, which was to be submitted by 24 August, 2022. The said Government Resolution set out the norms for approval to the appointments made by the non-minority Educational Institutions, prior to 23 June, 2017. On 23 August, 2022, the Principal of petitioner no. 2 submitted the proposal to respondent no. 2. On 20 September, 2022, respondent no. 2 rejected the proposal on the ground of deficiencies in the proposal. According to the petitioners, by letter dated 20 September, 2022, the Principal submitted information and documents to cure the deficiencies. The modified proposal was considered by respondent no. 2 and by an order dated 2 December, 2022, the same was rejected on the ground of deficiencies, which were not cured.

7. Being aggrieved by such rejection, the petitioners filed a complaint before the Grievance Redressal Committee at Mumbai, which called the parties for hearing by issuing notice dated 13 April, 2023, which was held on 19 April, 2023. The Grievance Redressal Committee rendered its decision whereby respondent no. 2 was directed to take steps for granting approval, after verifying that the selection process is followed, since the appointment was prior to the introduction of Pavitra Portal. On such backdrop, respondent no. 2 reconsidered the proposal and by the impugned order dated 23 August, 2023, respondent no.

2 rejected the proposal *inter alia* on the ground that there was breach of Rule 9(8) of the MEPS Act, as prior approval/NOC was not taken before issuance of advertisement. The other reason as set out was to the effect that the roster as certified by the Backward Class cell, prior to the appointment was not submitted and the explanation offered was not appropriate. The other reason which was given was that there was inordinate delay in submitting the proposal. It was also observed that the appointment was not made when there was ban on recruitment as per Government Resolution dated 2 May, 2012.

8. On such premise, the present petition has been filed praying for the reliefs as noted by us hereinabove.

9. Reply affidavit is filed on behalf of respondent no. 2 by Mr. Rajesh Kankal, Deputy Director of Education, which *inter alia* reiterates the reasons which are set out in the impugned order, to contend that it is clear from a bare perusal of the advertisement that petitioner no. 2-Management did not obtain permission/NOC from the Education Department. It is stated that it is also clear that the post was to be filled from the open category, however, petitioner no. 2-management did not verify the status of backlog reservations from the Commissioner of Backward Class Cell. Therefore, it was not clear that whether the appointment was made as per backlog or not. It is next contended that petitioner no. 2-management had appointed petitioner no. 1 as Shikshan Sevak vide appointment order dated 16 June, 2017 for a period of three years. However, as per Section 5 of MEPS Act, 1977, petitioner no. 2 should have ascertained from the Educational Inspector,

Greater Bombay or the Education Officer, Zilla Parishad or as the case may be, whether there was any suitable candidate available, in the event of such candidate being available, the Management could have appointed such candidate, in such vacancy, and whether the mandatory compliance of Section 5 of MEPS Act, was breached. Also a grievance is made that as per Rule 8 of MEPS Rules, 1981, after the appointment to the teaching and non-teaching posts were made, the names and particulars of qualifications and experience of the persons so appointed shall be forwarded within a fortnight from the date of each such appointment to the Education Officer and in the case of Junior College of Education to the Deputy Director. However, in the present case, the petitioner no. 2-Management had failed to follow the provisions of Rule 8 of MEPS Rules, 1981. Also, petitioner no. 1 never tried to get her appointment approved from the Education Department and also did not make any complaint regarding not forwarding proposal for approval to her appointment to the Education Department, which has been stated to be a serious lapse.

10. The petitioner's case as set out in paragraph 7 of the petition has been categorically opposed wherein the petitioner has contended that the proposal of the petitioner for approval to the appointment on earlier occasion was not accepted. However, there is no material placed on record, when denying the said contentions of the petitioner. In paragraph 7 of the reply affidavit, it is stated that serious deficiencies in the proposal of the petitioner were noticed. It is contended that in pursuance of the order dated 23 August, 2023 passed by this Court in Writ Petition No. 16508 of 2023, fresh hearing was granted to the petitioner and

after the petitioner was being heard, and thereafter, the proposal was rejected on the findings which are set out in paragraph 10 of the reply affidavit. The relevant extract of the affidavit in reply is required to be noted, which reads thus:

“10. After hearing all concerned parties and perusal of record the answering respondent has come to the findings.

(1) As per clause (A) 3 of GR dated 6/02/2012 to take permission for advertisement is mandatory however, the permission did not obtained therefore, there is violation of clause (A) 3 of GR dated 6/02/2012.

(ii) P.P Kahrpatil Education Society, Chirner, Tq. Uran, Dist. Raigad has transferred from Kokan Education Society vide order dated 2/05/2017. Thereafter, the PP Kharpatil Education Society has published advertisement for filling up vacant post of Geography subject in daily Om Samachar on 29/05/2017. However, as per clause (A) 3 of GR dated 6/02/2012 the advertisement was not published in two circulated newspapers.

(iii) The updated roster before appointment has not submitted. However, the copy of roster dated 23/01/2019 has submitted. As per roster dated 23/01/2019, 21 posts are filled out of 24 posts. 4 posts are vacant. There is 1 post for NTA and ST-B-1. Total two posts of backlog is there. The appointment of petitioner was made from open category however, the said roster has verified after appointment of petitioner no.1

(iv) During course of hearing it asked to the petitioner no. 1 that, why approval did not obtained since 2017, why proposal for approval not submitted, there is no evidence regarding communication in respect of remain present for interview. The petitioner no. I has accepted the fact that, all documents are prepared after rejecting proposal by the office of answering respondent.

(v) The Pavitra Portal has introduced as per GR dated 23/06/2017 regarding appointment of teachers therefore. the appointment of teachers of 1 to 12th standard in State. Should be made through Pavitra Portal. To avoid said provision/rule

(vi) It has been shown that, the appointment was made before the Government Resolution and it has approved post operatively.

(vii) Vide GR dated 2/05/2012 the ban imposed on appointment. The appointment of petitioner no. I was made during period of ban. Also, as per GR dated 24/08/2018 the relaxation was given only to the appointment of English. Maths and Science teachers. However, the appointment of petitioner no. I was made for Geography subject.

(viii) As per clause (A) 1 of GR dated 6/02/2012 before appointment the management should ascertain from the office of Deputy Director of Education whether any surplus teacher available or not. If there is any surplus teacher available then, the management should appoint surplus teacher on vacant post. However, the management did not ascertain the information regarding surplus teachers from the office of Deputy Director of Education (ix) As per clause 3 of GR dated

10/06/2022 after prescribed period the proposal for approval cannot be submitted. Also, it is not permissible to take action on the proposal received after prescribed period.

The answering respondent has maintained its order dated 23/08/2023 and rejected proposal of the petitioner.

In view of the above stated facts the orders dated 22/08/2024 and correct, proper, legal and liable to be order dated 23/08/2023 are maintained.

11. There is a rejoinder affidavit filed on behalf of the petitioner, denying the contentions as urged in the reply affidavit justifying the procedure which was adopted by petitioner no. 2-Institution. However, it is noteworthy that petitioner no. 2 has not filed any rejoinder denying the case of respondent no. 2 as set out in the reply affidavit.

12. It is on the aforesaid premise that we have heard learned counsel for the parties.

13. Learned counsel for the petitioner has limited submissions. It is his case that the petitioner was appointed, by following due procedure in law, as an Assistant Teacher against a relevant vacancy. It is also the case of the petitioner that her appointment was prior to the introduction of the Pavitra Portal. It is also his submission that the advertisement in question was issued in accordance with the law and that after following the proper procedure, the petitioner was appointed against a clear vacancy. It is petitioner's submission that, in the facts of the case, there ought not to be any deficiency attributed to petitioner no. 2 in complying with the rules and regulations, as sought to be alleged in the reply affidavit. It is also his submission that petitioner no. 2 has rightly considered the

petitioner's case and that the same ought to have been accepted by respondent no. 2 and the proposal ought not to have been rejected.

14. On the other hand, learned AGP has opposed this petition. She has placed reliance on the reply affidavit. She submitted that it is clear case where the mandate of Section 5 of the MEPS Act, as also the mandate of Rules 8 and 9 of the MEPS Rules, has not been followed by the petitioner and, in this view of the matter, once the provisions of law themselves have been breached, the petitioner would not become entitled to any relief, that too in respect of an aided post. It is her submission that the law in this regard is well-settled. In support of her submissions, she has placed reliance on the decision in **Siddheshwar Shikshan Sanstha & Anr. vs. The State of Maharashtra & Ors.**¹, **Prakash Daulat Patil vs. The State of Maharashtra, through the Secretary & Ors.**², **Pooja Yogesh Singh & Anr. vs. The State of Maharashtra, through the Secretary & Ors.**³, **Gayatri Pandurang Bhamre vs. Gram Vikas Mandal & Ors.**⁴ and **Bajrang Shankarrao Parsure & Anr. vs. The State of Maharashtra, through the Secretary, Education Department & Ors.**⁵

15. We have heard learned counsel for the parties. We have also perused the record as also the decision relied upon on behalf of the respondent by learned AGP. Having given our anxious consideration to the facts of the case, we are not persuaded to accept any of the contentions as urged on behalf of the petitioner.

1 Writ Petition No. 4470 of 2015 with companion petitions decided on 2 May, 2016

2 2024 SCC OnLine Bom 2447

3 2024 SCC OnLine Bom 3677

4 2025 SCC OnLine Bom 371

5 Writ Petition No. 5201 of 2021 dated 24.12.2025

We find that, in making any appointment, the mandate of Section 5 was required to be followed by petitioner No.2 and prior NOC/approval was required to be obtained from the designated authority, as contemplated under Section 5. The same was not obtained. This appears to be an undisputed position. The mandate of Rule 9(2-A) of MEPS Act would also be attracted in the present case. Section 5 of the MEPS Act, which has been breached in its entirety, as also Rule 9 of MEPS Rules, are required to be noted, which reads thus:

“5. Certain obligations of Management of private schools.

(1) The Management shall, as soon as possible fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy:

Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the event of such person being available, the Management shall appoint that person in such vacancy.

(2) Every person appointed to fill a permanent vacancy except Assistant Teacher (Probationary) shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

Provided that, every person appointed as Assistant Teacher (Probationary) shall be on probation for a period of three years.

(2A) Subject to the provisions of sub-sections (3) and (4), Assistant Teacher (Probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

(3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month's notice or salary or honorarium of one month in lieu of notice.

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by absorption as provided under

the proviso to sub-section (1).

(5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill such vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person.”

MEPS Rule 9

Rule - 9. Appointment of staff.

(1) The teaching staff of the school shall be adequate having regard to the number of classes in the school and the curriculum including alternative courses provided and the optional subjects taught therein.

(2) Appointments of teaching staff (other than the Head and Assistant Head) and those of non-teaching staff in a school shall be made by the School Committee:

Provided that, appointments in leave vacancies of a short duration not exceeding three months, may be made by the Head, if so authorized by the School Committee.

(2-A) The management of the private school shall advertise the vacancies for the post of teacher in details of subjects, with Bindunamavali on the online software programme developed by the Government or an agency authorized by the Government in at least one local news paper having wide circulation in the region, and also notify the vacancies to the Employment Exchange Centre of the District and District Social Welfare Officer.

(2-B) The advertisement shall be kept open for at least fifteen days before filling of the concerned post. The candidate may apply for vacant post in response to the said advertisement through online process or by making an application in writing giving details regarding name, address, date of birth, educational and professional qualifications, experience with the marks secured in the Aptitude Test.

(2-C) After completion of the period mentioned in the advertisement, the Education Officer or Deputy Director, as the case may be, shall communicate the names of the candidates, who have passed the Aptitude Test, to the Management through online process in proportion 1:10 for one vacant post. The selection of the candidate shall be made by the school committee on the basis of interview. If the school committee does not select candidate having higher marks in the Aptitude Test, the Management shall record the reasons for the same :

Provided that, the Management may also select the candidates who have passed the Aptitude Test directly from the online merit list maintained by the Education Director, without taking interview.

(2-D) The Management shall publish the names of the selected candidates within five working days on Pavitra web portal and shall also communicate the names of the selected candidates to the concerned Education Officer or Deputy Director, as the case may be.”

16. In such context, we may observe that the learned Single Judge of this

Court in **Siddeshwar Shikshan Sanstha & Anr.** (supra) has categorically held that prior permission of the Education officer, before issuance of an advertisement for making recruitment to any post, either for open category or the reserved category, was mandatory. More particularly, as reiterated and mandated by Government Resolution dated 6 February, 2012, an appointment cannot be held to be in conformity with the provisions of Section 5(1) of MEPS Act in the absence of a prior permission, as the requirement of obtaining such permission is not a empty formality. The relevant observations made by the Court is required to be noted, which reads thus:

“111. In my view, prior permission of the Education Officer before issuing an advertisement for making recruitment to any post either for open category or reserved category is mandatory and not directory. Such prior permission of the Education Officer before issuance of an advertisement is also required to be strictly followed in view of the Government Resolution dated 6 February, 2012 which is in conformity with the provisions of Section 5(1) of MEPS Act. In my view obtaining prior permission of Education Officer before issuance of an advertisement made under Section 5(1) of the MEPS Act is not an empty formality. Admittedly, respondent nos. 11 and 12 had not acquired any prior permission from the Education officer before issuing any advertisement in respect of various posts on which the respondent nos. 4 to 8 were appointed. In my view, the said appointments being in violation of Section 5(1) of the MEPS Act are thus illegal. The Education Officer could not have granted any approval to the appointments of the respondents nos. 4 to 8 made by respondent nos. 11 and 12 by overlooking the breach of the mandatory condition of obtaining prior permission from the Education Officer before issuance of any advertisement.

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139. Insofar as submission of the learned senior counsel for respondent nos. 4 to 8 that judgment of Full Bench in case of **Tanaji Madhukar Barbade** (supra) cannot be relief upon on the ground that the observations made by the Full Bench in the said judgment that the prior permission of the Education Officer under section 5 was necessary before issuance of any advertisement is not a ratio but at most had to be construed as a obiter dicta is concerned in my view there is no substance in this submission of the learned senior counsel. The said view taken by the Full Bench of this Court was based on the issue involved in the said matter and thus has to be construed as ratio *decidendi* and not as an obiter dicta. The view taken by the Full Bench in the said judgment squarely applies to the facts of this case. I am respectfully bound by the said judgment.”

17. In **Prakash Daulat Patil** (supra), the decision pertains to a case where the proposal made by the Management was contrary to the mandate of Rule 9(2A) of MEPS Rules, as noted by us hereinabove. In the said case, there was a delay in submission of the proposal seeking approval to the appointment of the petitioner, as prescribed under the Rules/Government Resolution. The petitioner therein was appointed on 1 June, 2018, whereas the proposal submitted by the management of the school, seeking approval to his appointment by the Education Officer was sent on 3 August, 2023, clearly after a lapse of more than five years. In such context, the Court observed that it could not be understood as to how a person appointed as an Assistant Teacher would continue teaching without salary for five years and would not take any action in respect of obtaining approval to his appointment, as required under the Rules, which was a circumstance that could not be overlooked. In such context, the observations made by the Court are required to be noted, which reads thus:

“6. As per the case put up by the petitioner himself, he was appointed on 1st June 2018 and the proposal by the management of the school seeking approval to his appointment by the Education Officer was sent on 3rd August 2023, which is clearly after a lapse of period of more than five years. It is true that if any lapse has occurred on the part of the school management to send the proposal for appointment of the petitioner with such delay, the petitioner cannot be held responsible for the same. However, it is equally not understandable that a person having been appointed as assistant teacher, will keep on teaching without salary for five years and will not take any action in respect of approval to his appointment as per the requirement of the Rules.

7. Recruitment and appointment of the assistant teachers in private schools are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 (hereinafter referred to as "the Rules of 1981") which have been framed under Section 16(1) and (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the Act of 1977"). Rule 9 of the Rules of 1981 provides

for 'appointment of the staff'. According to Rule 9(2A), the management of the private school has to advertise the vacancies for the post of teacher in details of subjects, with Bindunamavali on the online software programme developed by the Government or an agency authorized by the Government in at least one local newspaper having wide circulation in the region, and also notify the vacancies to the Employment Exchange Centre of the District and District Social Welfare Officer.

... ..

10. In respect of the said advertisement published in weekly newspaper "Pakshapramukh", we may observe that once the requirement under Rule 9(2A) of the Rules of 1981 is publication of advertisement in at least one local newspaper having wide circulation, in our opinion, the said requirement cannot be said to have been fulfilled by publishing the advertisement in a weekly newspaper. From a bare perusal of Exhibit-B appended to the Writ Petition, the circulation of the said weekly newspaper appears to be doubtful. As per the requirement under Rule 9(2A) of the Rules of 1981, the newspaper should have wide circulation. Accordingly, such advertisement, in our opinion, is not as per the mandatory requirement of Rule 9(2A) of the Rules of 1981.

18. In **Pooja Yogesh Singh & Anr.** (supra), the Division Bench of this Court was concerned with a challenge to the order dated 25 November, 2022 passed by respondent no.3, refusing to grant approval to the appointment of petitioner no.1 as Shikshan Sevak in the aided school of petitioner no. 2. In that context, a similar issue had arisen for consideration of the Court, where, having regard to the provisions of Section 9(2-A) of the MEPS Rules and the mandatory requirement to obtain prior permission before issuance of an advertisement not having been complied with, the Court made the following observations:

"24. We find that despite Rule 9(2-A) of the MEPS Rules mandating advertisement of vacancy for the post of teachers to be published in local newspapers having wide circulation in the region, the Petitioner No. 2 has not complied with the said requirement. Publication of the advertisement in the fortnightly newspaper i.e. "Bharatiya Nagrik" at Exh.C, would not be in compliance with the said mandate of Rule 9(2-A) of the MEPS Rules, 1981. For the said reasons, we find that the advertisement published by the Petitioner No. 2 in the present case in the fortnightly (Pakshik) newspaper "Bharatiya Nagrik" does not meet the requirements of the law and thus would be an eye wash.

25. This Court in the case of Prakash Daulat Patil v/s. The State of

Maharashtra & Ors. (Writ Petition No. 12826 of 2023) after referring to a similar situation wherein the advertisement published by the Petitioner therein being found to be defective, in the context of the said advertisement being published in the weekly newspaper, concluded that the said advertisement did not meet with the mandatory requirement of Rule 9(2-A) of the MEPS Rules, 1981.

26. The Division Bench of this Court in the case of Pravin Bhodhu Kasbe v/s. State of Maharashtra & Ors. (WP No. 3142 of 2020), of which one of us was a member (Ravindra V. Ghuge, J) after having found that the advertisement for filling the post not being published in newspaper that would be required in the terms of law, thus defective, held the entire recruitment to be suspicious and an eye wash. In the said judgment delivered on 03/08/2021, this Court in paragraph-10, issued the following directions to the Principal Secretary, Department of School Education, State of Maharashtra :

“10. In view of the above, this petition is dismissed. However, we find it appropriate to issue certain directions to the Principal Secretary, Department of School Education, State of Maharashtra as under :

(i) The Government Resolution dated 23.06.2017 shall be scrupulously followed without any exception.

(ii) Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981, by which amendment has been introduced pursuant to the judgment in P.I.L. dated 24.06.2015, mandating the publication of advertisement, besides the Pavitra Portal, in two widely circulated newspapers, out of which, one should be a local newspaper having wide circulation in the region, should be strictly implemented.

(iii) All Education Officers in the State of Maharashtra and all concerned authorities shall be directed by the department of School Education that they shall scrupulously follow the Government Resolution dated 23.06.2017 and Rule 9 (2A) and (2B) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and no appointment in violation of any of these provisions shall be approved.

(iv) The State Government should also intimate the authorities that any person guilty of such violation would be subjected to strict disciplinary action. So also, action be initiated against such Managements, who flout these rules and the Government Resolution.

(v) The Chief Executive Officer, Zilla Parishad, Nanded is directed to initiate an inquiry by appointing a Senior Officer from the Education Department, to trace out as to who was the person who has signed on the three applications filed by the Management purportedly with the Education Officer's Office (Primary), Zilla Parishad, Nanded on 03.07.2017, 01.08.2017 and 01.09.2017 and initiate appropriate disciplinary action, if the person who has

signed in acknowledgment turns out to be an employee of the Zilla Parishad.”

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30. With reference to the submissions/contention of Mr. Narendra V. Bandiwadekar, learned Senior Counsel for the Petitioners with respect to the other grounds in the impugned order, relied by the Respondent No. 3 to reject the proposal dated 20/08/2022 of the Petitioner No. 2, we are of the opinion that the defect in the issuance of the advertisement as pointed out herein above goes to the root of the selection process. We find that, for want of mandatory compliance of Rule 9(2-A) of the MEPS Rules, the purpose i.e. to provide equal opportunity to all eligible candidates to participate for appointment in public employment, stood defeated. Thus, vacancy against which the Petitioner No. 1 is said to have been appointed not being widely advertised, that itself would be violative of Article 16 of the Constitution of India, which a fundamental right. The advertisement issued by the Petitioner No.2 is nothing but an eye wash. Once it is found that the issuance of the advertisement is not as per the mandatory requirement of Rule 9(2-A) of MEPS Rules, the other contentions as raised by the Petitioners would pale into insignificance.”

19. In **Gayatri Pandurang Bhamre** (supra), the Division Bench of this Court was concerned with the rejection by the Education Officer of the proposal for appointment of the petitioner. The Management had not followed the requisite procedure, and there were flaws, including in the advertisement, as set out in paragraph 12 of the order. Considering such non-compliance with the required procedure prior to notifying the post of Assistant Teacher to be filled up, and in the absence of any justification, the mandate of Rule 9(2-A) was held to have been totally breached and, accordingly, the said petition came to be rejected. The relevant observations are required to be noted, which read thus:

“12. In addition, to the above we find following flaws in the appointment of the Petitioner :

(a) Petitioner has not produced the entire newspaper or the page containing the advertisement published in the newspaper dated 4.04.2021. What has been produced is the contents of the advertisement. Memo of Petition does not contain any averment with regards to the name of the newspaper or the nature of circulation of the said newspaper. During the course of argument, Mr. Patil on instructions states that the advertisement was published in the newspaper known as “Rajrang Times”. Mr. Badgujar is right in submitting that the said newspaper is unknown and at any rate does not

appear to be a widely circulated newspaper. No material has been placed before us by the Petitioner with regard to the nature of circulation of the said newspaper. We therefore, find that publication of the advertisement in the newspaper "Rajrang Times" dated 04.03.2021 is not in compliance with Rule 9(2-A) of the MEPS Rules 1981, which mandates that the advertisement should be published in one local newspaper having wide circulation in the region.

(b) Rule 9(2-B) of the MEPS Rules, 1981 provides that the advertisement shall be kept open for at least 15 days before filling of the concerned post. In the instant case, the advertisement is dated 04.03.2021 and the interview scheduled was on 15.03.2021.

(c) One of the eligibility criteria for the post of Assistant Teacher as advertised vide Advertisement dated 04.03.2021 was that the candidate should possess TET-passed certificate. The Petition neither contains any averment nor any document indicating, of the Petitioner having passed TET-Examination as on 15.03.2021.

13. Above facts would indicate non-compliance of the required procedure by the Respondent No. 1 prior to notifying the post of Assistant Teacher. There is neither any justification nor any reason offered or urged before us, for not adopting the selection process in terms of Pavitra Portal. Advertisement dated 04.03.2021 is not in compliance with the requirement of Rule 9(2-A) of the MEPS Rules, 1981. This Court in the case of Pooja Yogesh Singh & Anr. v/s. The State of Maharashtra (W.P. No. 16128 of 2024) has considered the need of complying with Rule 9(2-A) of the MEPS Rules, 1981 and in the said case having found the advertisement being defective refused to grant approval to the appointment of a teacher in the said case."

20. Similarly, in **Bajrang Shankarrao Parsure & Anr.** (supra), the challenge in the said proceedings was to an order passed by the Education officer (Primary), Zilla Parishad, Nanded, by which the proposal seeking approval to the appointment of the petitioners had been turned down on account of similar non-compliance as in the present case. The Court, referring to the facts of the case as also the provisions of Section 5 of the MEPS Act, which lays down a mandatory condition of obtaining prior approval from the Education Officer, as set out in the proviso thereto, observed that the Management had failed to take steps to comply with the mandate of the said provisions. Accordingly, by making the following

observations and also referring to the earlier decisions in **Pravin Bodhu Kasbe vs. State of Maharashtra & Ors.**⁶ as also **Prakash Daulat Patil vs. State of Maharashtra**⁷, the Court rejected the petition. The relevant observations made by the Court are required to be noted, which read thus:

“14. Once having observed that there is no endorsement on the application dated 28.10.2014 seeking prior permission from the office of respondent No.2 before issuing advertisement, shows that the respondent No.3 has issued the so called advertisement unilaterally without obtaining prior permission from the office of respondent No.2 –Education Officer, therefore, the entire subsequent selection process claimed to have been carried out pursuant to the said advertisement is contrary to proviso to Section 5(1) of the Act of 1977 is reproduced as under :

“5. Certain obligations of Management of private schools (1) The Management shall, as soon as possible fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy;

[Provided that unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, [the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education,] whether there is any suitable person available on the event of such person being available, the Management shall appoint that person in such vacancy.]”

15. The proviso to Section 5(1) of the Act of 1977 makes it clear that before undertaking the process for recruitment of the teachers as contemplated under Section 5(2) of the Act of 1977, the Management has to scrupulously follow the same by taking prior permission from the office of respondent No.2. We find that the documents annexed with the writ petition by the petitioners themselves as well as the documents annexed by the respondent No.3 along with its affidavit-in-reply clearly goes to show that the appointments of the petitioners are without following the proviso appended to Section 5 (1) of the Act of 1977. This Court also finds that though the petitioners claim to have been appointed on 19.10.2015, admittedly, they were not possessing the TET certificates which are mandatory so far as the primary school is concerned, acquiring the said qualification in the year 2020 after almost five years from the alleged appointments would be of no consequence.

16. So far as judgment relied upon by learned counsel for the petitioners in the case of Baliram Pandurang Salunke (supra) is concerned, in the said case the authenticity of the application seeking prior permission for issuance of advertisement by the Management was not disputed nor the legality and validity

6 2022(2) Mh. L.J. 241

7 2024 (6) Bom. C.R. 186

of the advertisement was ever disputed and, therefore, this Court has held in the said judgment that, failure to decide the application seeking prior permission for issuance of advertisement, for a considerable period, entitled the Management to issue an advertisement and it was in that context the said judgment was delivered. The facts in the said case and the case in hand are different. In the present case, we have carefully gone through the documents annexed with the writ petition and the affidavit-in-reply filed by the respondent No.3 and we find that the documents annexed with the writ petition are only an eyewash in order to overcome with the findings arrived at by the respondent No.2 – Education Officer as can be seen that the respondent No.2 – Education Officer has filed an affidavit-in-reply on 10.03.2022 by pointing out all these illegalities and in order to overcome with this the respondent No.3 – Management filed its affidavit-in-reply after almost a period of two years i.e. on 08.07.2024 by placing on record the documents which we have referred to above. This Court finds that the appointments of the petitioners are contrary to the provisions of law and this Court cannot endorse the said illegality. This Court finds that directing the respondent No.2 to grant approval to the appointments of the petitioners and more so when the respondent No.3 – Management is receiving grant in aid, that will certainly burden the payment of their salaries from the public exchequer. In that view of the matter, we are not inclined to consider the submissions of the petitioners that they have been appointed by following due procedure of law.

17. This Court had an occasion to consider almost similar issue in the case of *Pravin Bodhu Kasbe Vs. State of Maharashtra and Ors.*; 2022(2) Mh.L.J. 241, wherein, this Court has observed thus :

“7. We have undertaken the above exercise in view of the strenuous submissions of the learned advocate representing respondent No. 2 that these three letters were never received by the office of the Education Officer and there is no entry of the said letters in the inward register. With this submission, it is further contended that the Management may have created a record to create an eye-wash that they had made three applications to the Education Officer and that the Education Officer did not respond to these applications and hence the Management, unilaterally proceeded to publish an advertisement in daily newspaper 'Bahurangi Varta'. The learned advocate for the Education Officer submits that the department may not even have heard about such newspaper by name 'Bahurangi Varta' in which the advertisement for filling up the posts was purportedly published on 10-9-2017.

8. After considering the submissions of the learned advocate for the respective sides before us, we have noticed the following glaring factors:

(a) There is no evidence of the Management having entered applications in the inward section of respondent No. 2 for seeking permission to resort to a recruitment process.

(b) It cannot be ruled out that the stamp and some signature of an unknown person may have been obtained on the three applications placed before us to create a picture that the Management had been pursuing the Education Officer for permission and that the Education Officer had sat over the three applications.

(c) The learned advocate for the petitioner alleges that one Mrs. Garje from the inward department of the Education Officer has signed on these three applications.

(d) The alleged advertisement has been published in an unknown daily newspaper 'Bahurangi Varta.

(e) An advertisement does not appear to have been published in two widely circulated vernacular newspaper even in district Nanded, as required by law.

(f) Pursuant to the directions of this Court at its Nagpur Bench in Public Interest Litigation No. 8 of 2015 on 24-6-2015, the Pavitra Portal was introduced by the School Education and Sports Department, State of Maharashtra through its Government Resolution dated 23-6-2017. The Pavitra Portal is to ensure a portal to be visible for all the candidates interested in the process of teachers' recruitment.

(g) Pursuant to the Government Resolution dated 23-6-2017, all such educational institutions including respondent No. 4 herein were legally mandated to upload the recruitment process on the SARAL Portal and there could not have been a private recruitment process.

(h) "SARAL" (Systematic Administrative Reforms for Achievement in Learning by Students) was also introduced by the Government vide Government Resolution dated 23-6-2017 and the vacant positions of teachers as well as the number of surplus teachers was to be uploaded on SARAL website, as per Clause 3.1 of the Government Resolution.

(i) The surplus teachers were to be absorbed whenever and wherever vacancies arose.

(j) The teachers' recruitment was permitted only through the Pavitra Portal, as per Clause 3.2 of the said Government Resolution.

(k) The said Government Resolution also prescribes at Clause 3.4 that besides the Pavitra Portal, the Management has to publish the advertisement in two (2) newspapers having maximum circulation in the region and out of the two, one has to be a Marathi Newspaper. So also, such recruitment process has to be intimated to the District Social Welfare Department and the Employment Exchange Department.

(l) Vide Clause 3.5, interested candidates had to apply pursuant to the advertisement along with the chart of their score acquired under T.E.T. (Teachers Eligibility Test).

(m) There are several other conditions introduced in the said Government Resolution which have mandatory effect and this has been done by the State Government pursuant to the order dated 24-6-2015 passed in the Public Interest Litigation.

(n) Even a single glance at the advertisement at issue, indicates that it had the nature of a walk in interview. Candidates were called upon to attend the interview between 10.00 to 4.00 p.m., on 18-9-2017. Besides this one statement, there are no other conditions set out in the advertisement, which is as vague as it could be.

(o) No record of the selection of the Petitioners (minutes of the selection committee), were placed before the Education Officer.

9. Considering the above, we find the entire recruitment exercise to be highly suspicious and an eye wash. It appears that the Management has instrumentalised the inward stamps of the Education Department on its three applications and by publishing an advertisement in a practically unknown newspaper, going against the mandate of the Government Resolution dated 23-6-2017, has appointed the petitioner on 19-9-2017 for a period of only three (3) years. He was appointed on a consolidated package of 7,000/- per month as a 'Shikshan Sevak for a period of three (3) years. Moreover, the view taken by the Education Officer in the impugned order dated 6-8-2018 refusing to accord approval to the appointment of the petitioner for a period of three (3) years as a "Shikshan Sevak' in the light of the advertisement being suspicious and no details of the selection process having been placed before the Education Officer, cannot be faulted."

18...

19. We thus find that once we have already concluded that the appointments of the petitioners are not in accordance with law rather suspicious, the other submission regarding applicability of Government Resolutions dated 23.06.2017 and 24.08.2018 need not be gone into and, therefore, we do not propose to delve on the said aspect, suffice it to say that the writ petition sans merit and the same deserves to be dismissed."

21. Thus, the position in law is very clear which in the petitioner's case could not have been compromised. The Management was required to adhere to the mandate of Section 5 of the MEPS Act and the Rules (supra), of obtaining prior approval before issuance of an advertisement and making recruitment to fill up vacancies to the post of a teacher. In the present case, we find that there is no justification as to why such mandate was not adhered. The provisions of Section 5 of the MEPS Act read with Rule 9 of the MEPS Rules stand breached by the Management in totality. There is also no explanation whatsoever as to why there

was a gross delay of almost more than five years in submitting the proposal. This was also the ground considered by the Division Bench in **Prakash Daulat Patil** (supra), wherein the action on the part of the Education authorities in accepting such belated proposal, contrary to the mandate of law, was not accepted.

22. In the aforesaid circumstances, respondent no. 2, has strictly adhered to the provisions of law. If the petitioner's case is to be accepted, it would amount to the Court condoning the requirement of law as set out hereinabove. Accordingly, we find no merit in the petition. It is hence rejected. No costs.

(DR. NEELA GOKHALE, J.)

(G. S. KULKARNI, J.)