IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4726 OF 2023

1. Smt. Megha w/o Nandkumar Deshmukh,
Aged about 59 years, Occupation :
Retired Head mistress, Smt. Ashatai Borde
Secondary School, Borgaon Manju,
Resident of Borgaon Manju, Tahasil and
District Akola

... PETITIONER

...VERSUS...

1. State of Maharashtra,
Department of School Education and
Sports, through its Principal Secretary,
Mantralaya Mumbai 32

2. Director of Education (Secondary and Higher
Secondary) Directorate of Maharashtra State
Secondary and Higher Secondary Education,
Central Building, Dr. Anne Bezant Road, Pune-411001.

3. Deputy Director of Education
Amravati Division, Amravati

4. Education Officer, (Secondary) Zilla
Parishad, Akola

5. Indra Shikshan Prasarak Mandal, a
Society registered under the provisions
of Bombay Public Trust Act, bearing
Registration No.Mah./1751 represented
through its Secretary, having its Office
at Borgaon Manju, Tahsil and District Akola

6. Smt. Ashatai Borde Secondary School,
Borgaon Manju, Tahasil and District
Akola through its Head Master

7. Accountant General (A&E)-II,
Maharashtra, Nagpur, Civil Lines,
Nagpur

...RESPONDENTS

Dr. S. Y. Deopujari, Advocate for petitioner
Mrs. D. I Charlewar, AGP for respondent(s)/State
Mr. A. B. Patil, Advocate for respondent nos. 5 and 6.

CORAM : SMT. M.S. JAWALKAR AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 04th MARCH, 2026.
PRONOUNCED ON : 02nd APRIL, 2026.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

1. **Rule**. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner has filed the present writ petition challenging the order dated 25.06.2021 and the order dated 14.02.2022 passed by Respondent No. 5/Management, permanently cancelling the increments due and payable to the petitioner from July 2016 to

June 2020 and directing the petitioner to deposit the difference in salary allegedly received in excess into the Government Exchequer.

3. The facts giving rise to the present writ petition, in brief, are as under:

(i) The petitioner was appointed on a clear vacant post of Assistant Teacher on probation for two years by order dated 05.07.1993 and was thereafter made permanent, which appointment was duly approved by the Education Officer (Respondent No. 4).

(ii) The petitioner was initially appointed as an Assistant Teacher in Respondent No. 6 — a Government-recognised, grant-in-aid secondary school at Borgaon Manju, Akola, run by Respondent No. 5, vide order dated 30.07.1990, confirmed on a clear vacant post on 05.07.1993, and promoted as Headmistress by order dated 01.10.1995 with the approval of the Education Officer. Pursuant to the Government Resolution dated 22.02.2019 implementing the 7th Pay Commission recommendations with effect from 01.01.2016, the

petitioner submitted a proposal dated 28.02.2019 for fixation of her revised pay to Respondent No. 4 — the Education Officer, which was duly endorsed by the Secretary of Respondent No. 5 and the Accounts Officer, Education Department, Akola, and was thereafter approved by Respondent No. 4. Accordingly, the petitioner received her salary in the revised pay scale with increments from July 2016 to July 2020.

(iii) Respondent No. 5 issued a show cause notice dated 18.05.2021 alleging misconduct against the petitioner on two counts — (1) issuance of a letter dated 20.08.2020 in the matter of the caste claim of Mr. S.D. Bais, and (2) submission of salary proposals of 13 employees to the Education Department without the prior sanction of the Management — both of which were in fact statutory duties of the petitioner as Headmistress under Schedule I, Item 3(f), (g), and (h) of the M.E.P.S. Rules, 1981. Despite a detailed reply dated 02.06.2021, Respondent No. 5, by resolution dated 15.06.2021 and the impugned order dated 25.06.2021, permanently cancelled all increments payable to the petitioner with effect from 01.07.2021 and directed the recovery of the difference

in salary from July 2016 to June 2021 into the Government Exchequer. The petitioner preferred an appeal before Respondent No. 3 — Deputy Director of Education, Amravati Division, on 15.07.2021; however, no decision has been communicated till date.

(iv) Without issuing any fresh show-cause notice or affording any opportunity of hearing, Respondent No. 5, again by resolution dated 25.01.2022 and the impugned order dated 14.02.2022, permanently cancelled all increments of the petitioner from July 2016 to July 2020 and further directed the deposit of the alleged excess salary into the Government Exchequer. The petitioner filed an appeal under Rule 28(5)(a) of the M.E.P.S. Act, 1977, before Respondent No. 2 — Director of Education, on 05.04.2022, which remains unattended. Upon retirement on 30.09.2022, the pension and gratuity of the petitioner were calculated at a reduced pay scale, ignoring increments for the period from July 2016 to June 2022, and a recovery of Rs. 7,96,717/- has been proposed from her retirement benefits, all as a direct consequence of the impugned orders passed by Respondent No. 5 without any authority under the M.E.P.S. (Conditions of Service) Act, 1977, and the Rules of

1981.All these actions / orders are challenged in the present petition.

4. We have heard Shri S.Y. Deopujari, learned counsel for the Petitioner, learned Assitant Government Pleader Mrs. D.I. Chanewar for Respondent Nos. 1 to 4 and 7, and Shri A.B. Patil, learned counsel for Respondent Nos. 5 and 6.

5. Shri S.Y. Deopujari, learned counsel for the petitioner, submits that the actions attributed to the petitioner do not constitute "misconduct" under Rule 28(5)(a) of the M.E.P.S. Rules, 1981, as the submission of salary bills, increment proposals, and issuance of the letter dated 20.08.2020 were strictly in discharge of her statutory duties as Headmistress under Schedule I, Item 3(f), (g), and (h) of the M.E.P.S. Rules, 1981, and therefore the impugned orders are liable to be quashed and set aside.

6. He further submits that Rule 29(2) of the M.E.P.S. Rules, 1981, empowers the Management to withhold an increment for a period not exceeding one year only, and there is no provision under the M.E.P.S. Act, 1977, or the Rules of 1981 to permanently cancel

increments retrospectively for five consecutive years. Respondent No. 5 has therefore acted wholly beyond its statutory powers.

7. He further urged that the direction to recover the difference in salary and deposit the same into the Government Exchequer is equally unsustainable, as Rule 29(3) of the M.E.P.S. Rules, 1981, permits recovery only for pecuniary loss caused to the institution. In the present case, no such loss was ever alleged or demonstrated by Respondent No. 5, the increments having been duly sanctioned and paid by the Education Department itself.

8. Learned counsel further contends that both the impugned orders are passed in flagrant breach of the principles of natural justice, as no opportunity of personal hearing was afforded to the petitioner before passing either order, and the order dated 14.02.2022 was passed without even issuing a fresh show cause notice, in clear violation of the principle of *audi alteram partem* and Article 14 of the Constitution of India.

9. It is also contended that the proposal for revised pay fixation was submitted with the knowledge, endorsement, and certification of the Secretary of Respondent No. 5 and was duly approved by Respondent No. 4 — the Education Officer; neither Respondent No. 3, Respondent No. 4, nor the Accounts Officer raised any objection at any point, and the unilateral retrospective cancellation of increments lawfully sanctioned under the Government Resolution dated 22.02.2019 is therefore wholly without authority.

10. He further points out that the disciplinary proceedings were initiated and concluded without obtaining the concurrence of Respondent Nos. 2, 3, or 4, who are the statutory supervisory authorities over the aided school, and had there been any illegality on the part of the petitioner, these authorities, being the sanctioning authority for salaries, would have themselves initiated recovery; their inaction fortifies the illegality of the impugned orders.

11. It is submitted that, as a direct consequence of the illegal orders of Respondent No. 5, the pension and gratuity of the petitioner, upon her retirement on 30.09.2022, have been

calculated at a reduced pay scale, ignoring increments from July 2016 to June 2022. Furthermore, a recovery of Rs. 7,96,717/- is being sought from her retirement benefits, which is manifestly arbitrary and in violation of Articles 14 and 21 of the Constitution of India.

12. The learned AGP appearing on behalf of Respondent No. 7 — Office of the Accountant General (A&E)-II, Maharashtra, Nagpur, submits that the role of the answering Respondent is limited to scrutiny of pension proposals received from the Pension Sanctioning Authority and the authorization of pensionary benefits if found admissible; the office acts not on its own volition but solely on the basis of proposals forwarded in the prescribed format by the concerned Pension Sanctioning Authority.

13. He further submits that the pension proposal was received from Respondent No. 4-Education Officer (Secondary), Zilla Parishad, Akola, vide letter dated 22.06.2022; during scrutiny, it was noticed that increments of the petitioner from 01.07.2016 until retirement stood cancelled as per entries in the service book,

resulting in a proposed recovery of Rs. 7,96,717/- from pensionary benefits, to which the petitioner herself had furnished a duly signed consent. It is further submitted that the reliefs sought by the petitioner are purely administrative in nature, falling entirely within the purview of Respondent No. 4 — Pension Sanctioning Authority, and any further action can only be taken upon receipt of communication from the said authority in accordance with the M.C.S. (Pension) Rules, 1982; no action is presently pending on the part of the answering Respondent.

14. *Per contra*, the learned counsel for Respondent No. 5 submits that the present writ petition is liable to be dismissed both on maintainability as well as on merits. He submits that the petitioner has an alternate and efficacious remedy under the M.E.P.S. Act, 1977, and the Rules of 1981, and has in fact already availed one such remedy by preferring an appeal before the Deputy Director of Education, Amravati, which is still pending; the petition is therefore liable to be rejected on this sole preliminary ground.

15. He further submits that the petitioner's service record is far from unblemished pursuant to a direction of the Divisional Secretary, Maharashtra State Secondary and Higher Secondary Education Board, dated 24.05.2004, when one increment of the petitioner was withheld for one year on account of proven misconduct; that, in yet another instance, the petitioner unilaterally issued an order dated 20.08.2020 placing Mr. S.D. Bais on a supernumerary post without any authority or approval of the Management, despite the issue of his caste validity certificate being sub-judice before the Caste Scrutiny Committee; and that, further, without the knowledge or consent of the Management, the petitioner unilaterally applied increments to 13 employees, including herself, in contravention of standard procedure, compelling Respondent No. 5 to issue a show cause notice dated 18.05.2021, to which the replies of the petitioner dated 02.06.2021 and 22.09.2021 were found wholly unsatisfactory.

16. It is also contended that the audit report for the period 2012-2013 to 2019-2020, prepared by the Accounts Officer, Education Department, Akola, independently found that the mandatory

procedure for grant of increments to the Head of the institution was not followed, and the increments applied by the petitioner were liable to be recovered. It is submitted that the petitioner has failed to produce any document evidencing prior approval or consent of the Management before applying increments to herself, and the increment certificates signed and submitted by the petitioner under her own signature conclusively establish intentional violation of the mandatory procedure; therefore, no interference in writ jurisdiction is warranted.

17. We have considered the contentions canvassed by the learned counsel for the respective parties, and with their assistance also gone through the record.

18. The preliminary objection, as far as the maintainability of the petition is concerned, has to be decided first. The learned counsel for respondent No. 5, in support of the preliminary objection, has placed on record the Judgment of this Court in Writ Petition No. 5607 of 2010, decided by this Court on 13.06.2012. By drawing support from the said judgment, the learned counsel for respondent

Nos. 5 and 6 submits that in an identical set of facts, this Court has held that an appeal is provided to the Deputy Director in terms of the MEPS Rules. This was a case where there was a withholding of two increments and permanent denial of the next time-bound promotion. He therefore submits that such an alternate remedy is in fact available to the petitioner, to which she can be relegated.

19. Responding to the above, the learned counsel for the petitioner places reliance on the judgment of the Hon'ble Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai,*** reported in ***(1998) 8 SCC 1.*** By placing reliance on paragraph 13 of the said judgment, the learned counsel for the petitioner submits that the existence of an alternate remedy is a rule of self-restraint and that it would not deter this Court from exercising jurisdiction under Article 226 of the Constitution of India. Paragraph 13 of the said judgment reads as under :

> *"13. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain*

restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

20. He also places reliance on the judgment of ***Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mohatsav Smarak Trust v. V. R. Rudani, & Ors.***, reported in (1989) 2 SCC 691, to canvass the ambit and scope of Article 226 of the Constitution of India.

21. We have gone through the said judgment. In view of the authoritative pronouncement of the Hon'ble Apex Court in ***Whirlpool Corporation (supra)*** we are of the considered opinion

that the existence of an alternate remedy, being a rule of self-restraint, would not operate as a bar in respect of three contingencies, namely, (i) the enforcement of any of the Fundamental Rights; (ii) a violation of the principles of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction. If the impugned orders are viewed on the touchstone of these authoritative pronouncements of the Hon'ble Apex Court, we are of the considered opinion that there was no power vested in the management to stop the increments, which is the subject matter of challenge. The action of the management, being an excess of power, renders it wholly without jurisdiction. We, therefore, proceed to entertain the present petition on merits.

22. As can be seen from the impugned order, the same provides for the stoppage of increments, and the only reason, as spelt out in the order, is that the petitioner, without obtaining any resolution of the Managing Committee, sent a proposal for increments to the concerned Education Officer. Therefore, the action was taken in accordance with Rule 28(5) of the Maharashtra Employees of

Private Schools (Conditions of Service) Act, 1977 and the Rules of 1981.

23. The scheme of the MEPS Act and Rules has fallen for consideration of this Court time and again. In the judgments of this Court in Writ Petition No. 5067/2010, relied upon by the learned counsel for the respondent, this Court had an occasion to consider the entire scheme of the MEPS Act and Rules. After considering the said scheme, this Court stated that the Act and Rules constitute a complete code in the matter of discipline and conduct. The management, therefore, cannot go beyond the procedure prescribed thereunder. Rule 29 and Rule 31, if read conjointly, make it explicit that the language thereof is very specific, employing the singular number, i.e., the word used is “increment” and not “increments.” The use of the prefix “an” or the verb “is” in conjunction with it also emphasizes this fact. Punishment of withholding only one increment is therefore envisaged by these Rules. Against such a minor penalty, an appeal lies before the Deputy Director; for a major penalty, an appeal lies before the School Tribunal.

24. Thus, in disciplinary matters, the 1977 Act and 1981 Rules contain a self-sufficient and complete code. Hence, that "completeness" cannot be allowed to be defeated by permitting the management to impose some other adverse measure as punishment or to invent/use it as such. Thus, it is explicitly clear that what is contemplated as a penalty under Rule 31 (Sub-Rule 4) is withholding an increment for a period not exceeding one year only, and not more than that. Furthermore, Schedule I, framed under Sub-Rule 22(1) of the said Rule, specifies the duties of the Head. As per Sub-Rule 3, and more particularly Sub-Clause (f) thereof, drawing annual increments of the employees on due dates, if otherwise not withheld for a valid reason, is within the duties of the Head. Thus, it is explicitly clear that what was done by the petitioner was within the scope of her duties as Head of the institution.

25. A further glaring fact is with regard to the pension. A deeper look at the proposal for the revised pay of the petitioner submitted to the Education Department reveals that the said proposals, apart from bearing the signature of the petitioner, also bear the signature

of the Secretary of the respondent management and have been approved by the Accounts Officer of the Education Department. Three such proposals are placed on record by the petitioner. It is noteworthy that these have not been denied by the respondent management in any of its affidavits-in-reply. It is therefore clear that the petitioner was performing her duties as enjoined under the statute and the rules framed thereunder. Thus, no fault can be found with the action of the petitioner. As a necessary follow-up, the impugned order cannot withstand the scrutiny of law. We, therefore, pass the following order :-

ORDER

i) Writ petition is allowed.

ii) It is hereby declared that the resolution dated 15.06.2021, passed by the Executive Committee of the respondent No. 5, and the order dated 25.06.2021, passed pursuant to the said resolution, as also the further resolution dated 25.01.2022 and the order dated 14.02.2022, are illegal and, therefore, are quashed and set aside.

iii) The respondents are therefore directed to restore all the increments cancelled by respondent No. 5, as also the pay scale of the petitioner from July 2016 till her retirement, and to grant her all consequential benefits arising therefrom.

iv) It is further directed that the respondents should revise the pension and gratuity payable to the petitioner after her retirement on the basis of the restored pay scale, after taking into consideration the increments due and payable to the petitioner from July 2016 till the date of her retirement, and pay the difference between the present pension and the pension payable to the petitioner after such recalculation within a period of two months from the date of passing of this order.

v) The respondents are further directed to refund an amount of Rs. 7,96,717/- deducted towards the recovery of excess salary paid to her from her gratuity.

26. The Writ Petition is disposed of. Rule is made absolute in the above terms.

(NANDESH S. DESHPANDE, J.) (SMT. M.S. JAWALKAR, J.)

Shubham