

(2017) 10 BOM CK 0144
In the Bombay High Court
Case No : 01833 of 2013

Ansari Shahana Tabassum

APPELLANT

Vs

The Chairman / President & Ors

RESPONDENT

Date of Decision : 06-10-2017

Acts Referred:

[Maharashtra Employees of Private Schools \(Conditions of Service\) Regulation Act, 1977](#), [Section 2\(20\)](#), [Section 2\(11\)](#) - Definitions - Definitions
[Maharashtra Employees of Private](#)

Citation : (2017) 10 BOM CK 0144

Hon'ble Judges : R.M. Borde, Vibha Kankanwadi

Bench : DIVISION BENCH

Advocate : P.V. Barde, A.G. Magare, S.B. Yawalkar, S.S. Tope, R.J. Godbole

Final Decision : Allowed

Judgement

1. Heard.

2. The petitioner is objecting to the decision of the Grievance Committee for Entertaining Complaints of Shikshan Sevak, Mumbai, Camp at Aurangabad, dated 01.03.2012, whereunder the Grievance Committee has directed quashment of appointment of the petitioner as a Shikshan Sevak and has further issued direction to the Zilla Parishad to appoint respondent no.04 herein as a Shikshan Sevak.

3. The petitioner participated in the process of selection for appointment to the post of Shikshan Sevak in the schools operated by the Zilla Parishad, Jalna. The petitioner belongs to open category and having secured highest numbers of marks at B.Ed. examination as well as in the interview, has been selected to the post of Shikshan Sevak from amongst open category.

4. Initially under the advertisement issued by the Zilla Parishad, two posts were earmarked for Scheduled Tribe category and six posts were provided for Other

Backward Class category. Since there was no response to the advertisement for filling up vacancies from amongst Scheduled Tribe category, the Zilla Parishad proceeded to issue a corrigendum on 18.01.2010 to the advertisement declaring thereunder that in the event of unavailability of the candidates belonging to Scheduled Tribe category, the posts would be filled in from amongst open category.

5. Since the petitioner has been selected from amongst open category for the post of Shikshan Sevak, aggrieved thereby, the respondent no.04, who belongs to Other Backward Class category, approached the Grievance Committee with a contention that the selection of the petitioner is bad in law and the post ought to have been allotted to the candidate belonging to O.B.C. category. The respondents placed reliance on the provisions of Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 [For short, "MEPS Rules"] to contend that in the event of failure of the employer to fill in the vacancy by appointing a candidate belonging to Scheduled Tribe category, same ought to have been allotted to O.B.C. category. The Grievance Committee accepted the contention of the respondents and directed quashment of appointment of the petitioner and further issued directions to the Zilla Parishad to appoint respondent no.04 as Shikshan Sevak.

6. The petitioner in the instant petition has questioned the authority of the Grievance Committee to direct quashment of appointment of the petitioner relying upon judgment of the Supreme Court in the case of The Secretary, Sh.A.P.D. Jain Pathshala & others Vs. Shivaji Bhagwat More & others [2011(5) ALL MR 460 (S.C.)]. It is the contention of the petitioner, that the orders issued by the Grievance Committee are not of binding character and such decisions are merely advisory in nature and it is for the State Government to consider the recommendations of the Grievance Committee and take appropriate decision. It is also further laid down by the Apex Court that the Grievance Committee cannot direct quashment of appointment of an employee. It is held that the constitution of a Grievance Committee under an executive order for performing adjudicatory function and rendering binding decisions on the parties to the disputes is impermissible. The decisions of the Grievance Committee are not binding on the parties since those are not quasi judicial forum and that the decisions of the Grievance Committee are merely in the nature of its opinion expressed by the Committee and are not of binding character. The Apex Court in paragraphs 19, 20 and 21 of the judgment has observed thus :- "19. Therefore, we hold that constitution of a Grievance Committee as a public adjudicatory forum, whose decisions are binding on the parties to the disputes, by an executive order of the Government is impermissible. Secondly, the High Court cannot in exercise of judicial power interfere with the jurisdiction of the civil courts vested under Code of Civil Procedure. Any such Grievance Committee created by an executive order, either on the direction of the High Court or otherwise, can only be fact finding bodies or recommending bodies which can look into the grievances and make appropriate recommendations to the government or its authorities, for taking

necessary actions or appropriate reports to enable judicial Tribunals to render decisions. The Grievance Committee cannot be public quasi-judicial forum nor can its decisions be made final and binding on parties, in disputes relating to Shikshan Sevak. Therefore, it has to be held that any order or opinion of the Grievance Committee on a complaint or grievance submitted by a Shikshan Sevak were only recommendations to the State Government (Education Department) for taking further action and nothing more.

20. Even assuming that the committees constituted under the Shikshan Sevak scheme were quasi judicial tribunals, they cannot direct reinstatement nor direct that the employees are deemed to continue in service by declaring the termination to be bad. It is well settled that courts would not direct reinstatement of service nor grant a declaration that a contract of personnel service subsists and that the employee even after removal is deemed to be in service. [See : S.B. Dutt vs. University of Delhi AIR 1958 SC 1050]. The three recognized exceptions to the said rule are : (i) where a public servant having the protection of Article 311 of the Constitution is dismissed from service in contravention of the provision; (ii) where a dismissed workman seeks reinstatement before Industrial Tribunals / Labour Courts under the industrial law; and (iii) where a statutory body acts in breach or violation of the mandatory obligation imposed by Statute. [See : Executive Committee of Vaish Degree College, Shamli vs. Lakshmi Narain 1976(2) SCR 1006]. The direction of the High Court in its order dated 5.8.2008 that when the grievance committee holds that the termination is bad, the Shikshan Sevak is deemed to continue on the rolls of the management is therefore erroneous and liable to be set aside.

21. If a Grievance Committee opines that the termination or cancellation of appointment of a Shikshan Sevak was bad, the State Government may consider such opinion / recommendation and if it decides to accept it, take appropriate action by directing the school to take back the Shikshan Sevak, and if the school fails to comply, take such action as is permissible including stoppage of the grant. An opinion by the Grievance Committee that the termination of the services of a Shikshan Sevak is illegal cannot however have the effect of either reinstating the employee into service, nor deemed to be a declaration that the Shikshan Sevak continues to be an employee of school. Even if a Shikshan Sevak is wrongly removed, the department could only direct the school to take him back into service and if it does not comply, take action permissible in law for disobedience of its directions. "

7. In view of the judgment rendered by the Apex Court, cited supra, the directions issued by the Grievance Committee in the instant matter, quashing appointment of the petitioner and directing appointment of respondent no.04 as a Shikshan Sevak, is bad in law and deserves to be quashed.

8. The second contention raised by the petitioner, that the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [For short, "MEPS Act"] cannot be made applicable, so far as the schools

operated by Zilla Parishad / local authority, is concerned, deserves acceptance. The schools run by the private management do come within the purview of the MEPS Act. "Private School" as defined in SubSection 20 of Section 2 of the MEPS Act, means a recognised school established or administered by a Management, other than the Government or a local authority. "Local authority" is defined in SubSection 11 of Section 2, as a Zilla Parishad or Municipal Corporation or a Municipal Council, as the case may be.

9. In the instant matter, it is not matter of dispute, that the school is operated by Zilla Parishad, which is a local authority within the meaning of SubSection 11 of Section 2 of the MEPS Act and as such, since the MEPS Act has applicability only in relation to private schools and the school operated by the local authority that is, Zilla Parishad, cannot be construed to be private school. Therefore, the MEPS Act has no applicability in the present matter.

10. For the foregoing reasons, the writ petition deserves to be allowed and the same is accordingly allowed. (a) The impugned order dated 01.03.2012, passed by the President of Grievance Committee for Entertaining Complaints of Shikshan Sevak, Mumbai, Camp at Aurangabad, in Appeal No. 40 of 2010, is quashed and set aside.

(b) Rule made absolute in the above terms. In the circumstances, there shall be no order as to costs.