
(2003) 10 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No's. 3158 of 1991 and 2326 of 1994

Bhalchandra Bhagwan Kalwade

APPELLANT

Vs

Education Officer, Z.P. and Others

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 3(4)

Citation : (2004) 1 ALLMR 231 : (2004) 5 BomCR 429 : (2004) 2 MhLj 945 : (2003) 4 MhLj 1002

Hon'ble Judges : N.V. Dabholkar, J;B.B. Vagyani, J;A.S. Bagga, J

Bench : Full Bench

Advocate : S.D. Kulkarni, in Writ Petition No. 3158 of 1991 and S.P. Deshmukh, Holding for C.S. Deshmukh, in Writ Petition No. 2326 of 1994, for the Appellant; U.K. Patil, A.G.P. for Respondent Nos. 1, 2 and 5, S.G. Chapalgaonkar, holding for S.C. Bora for Respondent No 3 and S.P. Deshmukh, Holding for C.S. Deshmukh for Respondent No. 4 in Writ Petition No. 3158 of 1991 and U.K. Patil, A.G.P. for Respondent Nos. 1 to 3, S.G. Chapalgaonkar, holding for S.C. Bora for Respondent No. 4 and S.D. Kulkarni, in Writ Petition No. 2326 of 1994, for the Respondent

Judgement

B.B. Vagyani, J. (A.S. Bagga, J.)

1. Heard.

2. Shri Bhalchandra Bhagwan Kalwade, petitioner in Writ Petition No. 3158 of 1991 was appointed as an Assistant Teacher in Kanya Vidya Mandir High School, Ahmednagar conducted by Nav Vidya Prasarak Mandal. The petitioner was promoted as a Supervisor in June 1979 and his promotion was approved by the Education Officer on 16th October, 1980. By resolution of the Management dated 15-3-1991, the petitioner was further promoted as an Assistant Head Master w.e.f. 30-4-1991 and the petitioner resumed the charge of the said post w.e.f. 1st May, 1991. The proposal for approval to the appointment of the petitioner as an Assistant Head Master was sent to the Director of Education, Maharashtra

State, Pune who by letter dated 3rd September 1991, rejected the approval. The approval was rejected on the ground that Kanya Vidya Mandir High School was a girls' high school and that being so, only a lady teacher should be appointed as an Assistant Head Mistress. The said refusal was based upon rule 3 read with rule 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules of 1981 (for the purpose of brevity, MEPS Rules).

3. Rules 3 and 5 of the MEPS Rules, 1981 were interpreted by Division Bench of this Court in the case of Shobha d/o Nathuji Chahande v. Education Officer, Zilla Parishad, Chandrapur and Ors. 1990 M.L.J. 1122. It was held therein that under the MEPS Rules, the requirement of appointment of a lady teacher as a Head Mistress was applicable only for appointment of Head and so far as Assistant Head is concerned, male teacher could be appointed as an Assistant Head. The Division Bench relied upon an earlier judgment of another Division Bench in the case of Vasant Ambadas Hanchate v. State of Maharashtra and Ors. 1985 M.L.J. 699.

4. The view expressed by the Bench about interpretation of Rules 3 and 5 of the MEPS Rules was acted upon by the State Government and thereafter approval was granted for appointment of the petitioner w.e.f. 1-11-1995. In the meantime, the petitioner had challenged the letter of rejection of approval in Writ Petition No. 3158 of 1991.

5. Mrs. Sudha Pandurang Joshi is the petitioner in Writ Petition No. 2326 of 1994. She being the seniormost lady teacher, was appointed as Assistant Head Mistress in girls' high school known as Kanya Vidya Mandir High School. The appointment of the petitioner was approved by the Education Officer (Secondary), Zilla Parishad, Ahmednagar. The appointment of the petitioner was challenged by Bhalchandra Bhagwan Kalwade in Writ Petition No. 3158 of 1991. Nav Vidya Prasarak Mandal, Ahmednagar reverted the petitioner to her original post and Bhalchandra Bhagwan Kalwade was appointed to the post of Assistant Head Master. Feeling aggrieved by the said order, Mrs. Sudha Joshi filed Writ Petition No, 2326 of 1994.

6. Writ Petition No. 3158 of 1991 and Writ Petition No. 2326 of 1994 were placed before Division Bench consisting of Shri B. H. Marlapalle, J and Shri D. G. Karnik, J. After having considered the judgment of Division Bench in case of Vasant Ambadas Hanchate (cited supra), the Division Bench expressed its inability to agree with the said view which was followed in subsequent judgment in the case of Shobha Chahande (cited supra). The Division Bench took into consideration the phraseology of Rule 5(2) coupled with Section 2(9) of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for brevity, MEPS Act). It is specifically stated in sub-rule (2) of Rule 5 of the MEPS Rules that Rule 3 relating to the qualifications and appointment of Head shall *mutatis mutandis* apply to the post of Assistant Head and Supervisor.

7. Sub-section (9) of Section 2 of the MEPS Act defines the Head of a school. It is

inclusive definition. Head of a school or Head includes Principal, Vice Principal, Head Master, Head Mistress, Assistant Head Master, Assistant Head Mistress or Superintendent thereof. By fiction of law, Assistant Head Master and Assistant Head Mistress are regarded as Head of the school. The Division Bench, after making reference to the judgment of the Apex Court in the case of AIR 1977 1336 (SC) , has observed that the fiction created by law must be carried to its logical conclusion.

8. Having regard to the provisions of Rule 3(4) and Rule 5(2) of the MEPS Rules coupled with Section 2(9) of the MEPS Act, the Division Bench failed to persuade themselves to approve the view taken by the earlier Division Bench in the case of Shobha Chahande (cited supra). Therefore, the issue regarding appointment to the post of Assistant Head Mistress in the girls' high school was thought fit to be reconsidered by a Larger Bench. In response to the directions of the Division Bench, the matter was placed before the Hon'ble The Chief Justice for appropriate orders under Rule 7 of Chapter I of the Bombay High Court Appellate Side Rules, 1960. The Hon'ble the Chief Justice thereafter constituted the Full Bench.

9. The issue for consideration under reference to the Full Bench is precisely as under:

"Whether the Exception carved out by Rule 3(4) of the MEPS Rules is also made applicable to the post of Assistant Head on the basis of fiction of law created by Section 2(9) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977?

10. The learned counsel Shri S. P. Deshmukh for the lady teacher, after making reference to Rules 3 and 5 of the MEPS Rules and Section 2(9) of the MEPS Act, vehemently submitted that the exception carved out in sub-rule (4) of Rule 3 of the MEPS Rules is also applicable to the post of Assistant Head. Because the qualifications for the post of Head in girls' school and the qualifications for appointment of Assistant Head in girls' school are one and the same. He gives more stress on the phraseology "Mutatis Mutandis" used in sub-rule (2) of rule 5 of MEPS Rules. According to him, the conjoint reading of sub-rule (2) of Rule 5 of MEPS Rules and the inclusive definition given u/s 2(9) of the MEPS Act, would clearly go to show that the exception carved out by sub-rule (4) of rule 3 of the MEPS Rules is equally applicable to the post of Assistant Head. According to him, the view expressed in the case of Vasant Hanchate (cited supra) with regard to the post of Assistant Head is obiter and, therefore, not binding. In order to highlight his point, he referred some of the judgments of the Apex Court with regard to interpretation of statute.

11. The learned counsel Shri S. D. Kulkarni for the male teacher argued that by MEPS Rules, same qualifications are prescribed for the post of Head and Assistant Head. The qualifications being similar, the phraseology Mutatis Mutandis is used in Rule 5(2) of the MEPS Rules. The application of rule of

Mutatis Mutandis with certain variations is always contemplated and this being the position, the explanation carved out by sub-rule (4) of rule 3 of MEPS Rules cannot be extended to the post of Assistant Head merely on the basis of inclusive definition given u/s 2(9) of the MEPS Act. He pointed out that the appointment of a head is obligatory. However, appointment of an assistant head is not obligatory if classes are less than 20 in number. If classes are more than 20, then only the question of appointment of Assistant Head arises.

12. The learned counsel Shri S. D. Kulkarni submits that whatever observations are made in the case of Vasant Hanchate (cited supra) were relevant for disposal of issue involved in the said matter and, therefore, the observations cannot be treated as obiter. The view expressed in the case of Vasant Hanchate (cited supra) is reiterated in the subsequent judgment in the case of Shobha Chahande. He pointed out that the earlier notification issued by the Director of Education dated 19-12-1986 has been cancelled by subsequent notification dated 21st June 1993 and it is now consistently held that the exception carved out in sub-rule (4) of rule 3 is not applicable to the post of Assistant Head and this being the position, male teacher can legitimately be appointed as an Assistant Head.

13. Shri Chapalgaonkar, learned counsel holding for Shri S. C. Bora, learned counsel for the management argued that rule 61(c) of Secondary School Code was with regard to appointment of Assistant Head and the exception which was made earlier under the Secondary School Code, was also extended to the post of Assistant Head by virtue of specific clause. According to Shri Chapalgaonkar, the exception made applicable to the post of Assistant Head under the Secondary School Code, is not borrowed in the MEPS Rules. The omission of exception, according to Shri Chapalgaonkar, indicates the intention of the Legislation.

14. The learned AGP Shri Umakant Patil for the State submitted that the earlier circular dated 19-12-1986 issued by the Director of Education has been cancelled by subsequent circular dated 21st June 1993 and the confusion is set right once for all.

15. We gave anxious consideration to the rival submissions advanced at the Bar. The reproduction of relevant MEPS rules is very much necessary for the purpose of digestion of rival submissions.

"Rule 3. Qualifications and appointment of Head-- (1) A person to be appointed as the Head :

(a) (i) xx

(ii) xx

(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 recognized 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,

(i)xx

(ii) xx

(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.

(3) The Management of a school including a night school shall fill up the post of the Head by appointing the seniormost member of the teaching staff (in accordance with the guidelines laid down in Schedule "F" from amongst those employed in a school (if it is the only school run by the Management) or schools [if there are more than one school (excluding night school) conducted by it] who fulfils the conditions laid down in sub-rule (1) and who has a satisfactory record of service.

Explanation -- xx

Provided that....

(4) In the case of girls" secondary school or Junior College of Education for women, the seniormost lady teacher fulfilling the conditions laid down in clause (b) of sub-rule (1) and having satisfactory record of service, shall be appointed as the Head of that school irrespective of her seniority vis-a-vis the male teachers.

(5)(a) xx

(b)xx

(6) xxx

Explanation: xx

Rule 5 : Qualifications and Appointment of Assistant Head and Supervisor:

(1) Management of secondary school with more than twenty classes shall appoint an Assistant Head to assist the Head in his organizational, administrative and

supervisory duties. Provided that.....

(2) Subject to the provisions of sub-rule (5) the provisions of rule 3 relating to qualifications and appointment of Head shall mutatis mutandis apply to the post of an Assistant Head and Supervisor.

(3) xx

(4) xx

(5) The posts of supervisors shall be filled in only from amongst the permanent staff strictly on the basis of seniority cum merit. Seniority shall be determined on the basis of guidelines given in Schedule "F". Merit shall be determined in accordance with the record of service within the meaning of that expression in the explanation below sub-rule (6) of rule 3."

16. Section 2(9) of the MEPS Act is as under:

"(9) "Head of a school" or "Head" means the person, by whatever name called, incharge of the academic and administrative duties and functions of a school conducted by any Management and recognised or deemed to be recognised under this Act, and includes a principal, vice-principal, headmaster, headmistress, assistant headmaster, assistant head mistress or superintendent thereof."

17. In case of Vasant Hanchate (cited supra), challenge was given to the validity of rule 3(4) of the MEPS Rules. It was challenged on the ground of discrimination in view of Articles 15 and 16 of the Constitution of India. The Division Bench conclusively held that the exception carved out in rule 3(4) of the MEPS Rules is valid. It is held that the discrimination incorporated in sub-rule (4) of rule 3 of the MEPS Rules is not based only on the ground of sex but it is also based on other considerations. The suppression of women was highlighted and, therefore, it was held that such discrimination is permissible under Articles 14, 15 and 16 of the Constitution of India. The Division Bench observed that the exception carved out in sub-rule (4) of rule 3 of the MEPS Rules only apply to the appointment to the post of Head Mistress and not to the post of Assistant Head Master or Supervisor. The issue under reconsideration was not directly raised in the case of Vasant Hanchate,

18. In case of Shobha Chahande (cited supra) the question with regard to applicability of exception clause contained in rule 3(4) of the Rules of 1981 to the post of Assistant Head in girls' secondary school was, however, directly raised. The Division Bench, after considering the relevant rules i.e. rule 3(4) and rule 5(2) of the Rules of 1981 came to the conclusion that the exception carved out in rule 3(4) has no applicability in the matter of appointment of Assistant Head in girls' secondary school. It is further observed that the appointment of senior male as an Assistant Head is, therefore, not open to the challenge by junior lady teacher. It is also observed that in the matter of appointment of Assistant Head in a girls' secondary school, a female teacher cannot get an advantage of the

exception carved out by sub-rule (4) of rule 3 of the MEPS Rules. Therefore, the junior female teacher is not entitled to claim appointment of Assistant Head over the senior male teacher in such case.

19. Similar kind of arguments were advanced before the Division Bench. The Division Bench has clarified the rule of applicability of Mutatis Mutandis. It is held that what is made applicable "Mutatis Mutandis" to the post of Assistant Head or Supervisor, are the qualifications laid down in rule 3. It is observed that sub-rule (4) of rule 3 does not lay down any qualification or requirement. It creates only an exception which enables the waiver of a requirement of seniority. The Division Bench also took into consideration the relevant law with regard to interpretation of statute. It is said that when the Court is called upon to interpret the section, it has to interpret it only as an exception to the general rule. It is further observed that the rule of interpretation does not permit extending the exception to other categories unless the Legislation itself creates an exception.

20. At this juncture, it is very much necessary to know the earlier position under the Secondary School Code.

61.1 (a).....

61.2.....

(a).....

Exception - In the case of a Girls School, i.e. a school run exclusively for girls, the senior most teacher, fulfilling the conditions laid down in Rule 61.1 (a) above and having satisfactory record of service shall be appointed as Head Mistress of that school irrespective of her seniority vis-a-vis the male teachers.

(b).....

(c) Management of a school with more than 20 classes may appoint an Assistant Head to assist the Head in his administrative and supervisory duties. Provisions of clause (a) above (together with the exception thereunder) and of clause (b) above shall apply also to the appointment of the Assistant Head".

21. Under the old scheme, the exception was carved out in case of girls" school and in the girls" school run exclusively for girls, the seniormost lady teacher fulfilling the prescribed conditions under the old rules and having satisfactory record of service was to be appointed as the Head Mistress of that school irrespective of her seniority vis-a-vis the male teacher. Clause 61.2(c) would go to show that the exception for the post of Head Mistress in girls" school was also extended to the post of Assistant head in the girls" school having more than 20 classes. Under clause 62.2 (c) it was specifically made clear that the provisions of sub-clause (a) of clause 61.2 together with exception thereunder and of sub-clause (b) should apply to the appointment of Assistant Head. Under the old scheme, therefore, both the posts of Head and Assistant Head in girls" schools were necessarily from amongst seniormost lady teachers.

22. Under the new scheme i.e. under the MEPS Rules, a similar kind of exception to clause 61.2 of the Secondary School Code is incorporated in rule 3(4) of the MEPS Rules. Under the Secondary School Code, the title of clause 61.1 and 61.2 was "Appointment and duties of Heads of the schools". In clause 61.1(a), the qualifications for the post of Head of the school were given together with teaching experience and in case such a qualified person was not available, the management was required to approach the Deputy Director of region for relaxation of the conditions. If suitable teacher was not available to fill up the post of Head of the school, the management was permitted to advertise the post and select and appoint a suitable person fulfilling all required qualifications. It is material to note that similar kind of provision was also made applicable to the post of Assistant Head in case the classes are more than 20.

23. Now the title of rule 3 of MEPS Rules begins with qualifications for the post of Head and all the required qualifications i.e. seniority, experience etc. are provided. The exception with regard to girls' school is retained in the MEPS Rules. In order to become head of the girls' school, one is required to fulfil the conditions laid down in clause (b) of sub-rule (1) of rule 3 of the MEPS Rules together with satisfactory record of service. However, one change is very much prominent. Clause 61.2(c) is not retained in the MEPS Rules. The exception specifically made applicable even to Assistant Head, as contemplated in clause 61.2(c) under the Secondary School Code is completely omitted. This omission speaks volumes and abundantly makes it clear that the exception carved out in rule 3(4) of the MEPS Rules, is not extended to the post of Assistant Head. If the intention was otherwise, the provision similar to clause 61.2(c) of the Secondary School Code would have also been incorporated in MEPS Rules. The omission appears to be intentional.

24. Let us advert to rule 5 of the MEPS Rules. Under the MEPS Rules, clause title of rule 5 is "Qualifications and appointment of Assistant Head and Supervisor". Under rule 5, the posts of Assistant Head and Supervisor are clubbed together. In the Secondary School Code, the position was different. Clause 63.1 was in respect of appointment of Supervisor. Under the Secondary School Code, the qualifications of Head, Assistant Head and Supervisor were one and the same. Under the MEPS Rules, similar kind of qualifications are prescribed to the post of Head, Assistant Head and Supervisor. Therefore, in order to make the position clear, it is stated in rule 5(2) that the provisions of rule 3 relating to qualifications and appointment of Head shall *mutatis mutandis* apply to the post of Assistant Head and supervisor. The Expression *Mutatis Mutandis* is to be construed as applicable to the provisions with regard to qualifications and not to the exception clause. Because it was not at all difficult to incorporate in rule 5(2) of the MEPS Rules the explanatory note "Together with exception thereunder", which was present in clause 61.2(c) of the Secondary School Code. All other conditions with regard to qualifications and number of classes contained in Secondary School Code are also incorporated in the MEPS Rules. However, the exception clause, which was made applicable to the post of Assistant Head and which was

specifically incorporated in clause 61.2(c), is deliberately omitted in rule 5(2) of the MEPS Rules. Therefore, the word *Mutatis Mutandis* has a limited meaning. It is only applicable to the provisions relating to qualifications.

25. In the case of *Ashok Service center and Others Vs. State of Orissa*, , the Supreme Court has explained the words "*Mutatis Mutandis*". The relevant observations are as under:

"Earl Jowitt's The Dictionary of English Law (1959) defines "*Mutatis Mutandis*" as "with the necessary changes in points of detail". Black's Law Dictionary (Revised 4th Edn. 1968) defines "*mutatis mutandis*" as "with the necessary changes in points of details, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like....." Extension of an earlier Act *mutatis mutandis* to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provision made in the later Act."

Therefore, it is clear that the words "*Mutatis Mutandis*" merely permit application of a particular Act or Rule with necessary changes without altering the essential nature of the thing.

26. In the case of *The University of Cochin Vs. Dr. N. Raman Nair and Others*, , the Supreme Court has explained in what manner the principle of *Mutatis Mutandis* is to be applied. It is held that the power to apply rule of *Mutatis Mutandis* does not include the power of amending the substantial provisions in the rules. By application of rule of *Mutatis Mutandis*, we cannot amend the substantial provision of law. The exception under rule 3(4) of the MEPS Rules is only meant for the post of Head of a school. This is a substantial provision in the MEPS Rules. By application of rule of *Mutatis Mutandis*, there is no power in the Court to amend this substantial provision and carve out an exception contemplated under rule 3(4) of the MEPS Rules, to the post of Assistant Head.

27. Clause 61.1 of the Secondary School Code spoke as regards the qualifications of Head of a school as well as his responsibilities. The qualification, teaching experience and the responsibilities of Head of the school were clubbed under one head. However, in MEPS Rules, different heads are given. Rule 3(1) of the MEPS Rules speaks about the qualifications of the post of Head and the manner of appointment. The exception is introduced in sub-rule (4) of rule 3 of the MEPS Rules. Nothing is said about the responsibilities of the Head under rule 3. Rule 4 speaks about the responsibilities of Head. The responsibilities are divided into two parts. One part deals with responsibility of Head as an academic head of the school. The head of the school is also administrative head of the school and under the administrative head, he is supposed to maintain accounts, management of school library, laboratory, hostel for students, correspondence relating to administration of school, observations of the provisions of rules, regulations, the Secondary School Code and other orders issued by the

Government or Director and instructions issued by the management in respect of administration of the school. Under the administrative head, the Head of the school is also expected to look after administration of the school, as may be assigned to him by the department, Director or the management.

28. Besides the responsibilities which are incorporated in rule 4 of the MEPS Rules, the duties of Head of the school are given in Schedule I(i). Three kinds of duties are required to be carried out by the head of the school. They are :

- (1) duties in relation to the educational matters
- (2) duties with regard to general administrative matters and
- (3) duties with regard to financial matters.

The duties of Assistant Head are given in Schedule I(ii) and in Schedule I(iii), the duties of Supervisor are given. The Assistant Head is supposed to assist the Head.

Financial matters are exclusively kept with Head of a school. Assistant Head has no role to play in financial matters. Grant of Leaving Certificates to the pupils and grant of casual leave to the employees of school is exclusive prerogative of Head of a school. Head of a school is responsible for the maintenance of service books and confidential reports of all the employees including Assistant Head. Head of a school is responsible for communication of adverse remarks to the employees including Assistant Head. Head of a school is required to pay personal attention in the matter of preparation and submission of pension papers of the employees to concerned authorities.

29. The Maharashtra Civil Services (Revision of Pay 1998) Rules are given under Appendix 94 of the Rules of 1981. The pay scales of the Head Master, Assistant Head Master and Supervisor of secondary school are as under :

Existing Revised

Head Master of Secondary School (Enrolment above 500 candidates)

2000-3500 2000-3500

Assistant Head Master of secondary school (having more than 20 classes)

2000-3200 7500-10500

Supervisor 1400-2600 (plus special pay of Rs. 80/-) 5500-9000 (plus special of Rs. 160/-)

30. Under the MEPS Rules, different responsibilities and duties are assigned to Head of the school, Assistant Head and Supervisor. They act under a different sphere. Their pay scales are different. They do not draw equal pay. If the hierarchy is seen, head of the school is at the top and to assist him, there is assistant head and a supervisor is to assist the head and assistant head. In the event of less than 10 classes, no post of Supervisor is prescribed. If the classes

are more than 10 and less than 30, one post of Supervisor is prescribed and the school having more than 30 classes but less than 40 classes, two posts of Supervisors are prescribed and above 40 classes, three posts of Supervisors are prescribed. If the entire scheme is examined carefully, all these posts are distinct together with distinct duties. Under the circumstance, they cannot be treated on par. In one school, because of number of classes, there may be more than one Supervisor but there cannot be more than one Head. There is no Head more than one. Such is not the position with regard to Supervisor. Because his post depends upon number of classes. If the classes are less than 20, no post of Assistant head is prescribed. But in all situations, the Head is always there in the school.

31. The MEPS Rules do not indicate that the Assistant Head and Supervisor are liable to be appointed from amongst female staff by virtue of expression "Mutatis Mutandis" and inclusive definition. No doubt, the definition of Head u/s 2(9) of the MEPS Act is inclusive but the purpose is altogether different. Even the Superintendent from the category of non-teaching post is included in the definition of Head of a school by virtue of Section 2(9) of the MEPS Act. Schedule "B" of MEPS Rules prescribes qualifications of teaching and non-teaching staff of a school, (iv) of Schedule B of the Rules prescribes qualification for non-teaching posts in the school. At the lowest ladder there is Junior Clerk, above him there is Senior Clerk. Above the Senior Clerk, there is Head Clerk and above the Head Clerk, there is Superintendent, who will be promoted from amongst the persons holding the post of Head Clerk on the basis of seniority cum merit. Therefore, it is clear that even a non-teaching staff i.e. Superintendent can be kept in-charge of academic and administrative duties and functions of the school. The post of Superintendent is a distinct and the duties of Superintendent are also different.

32. However, Head of the School is required to discharge duties of general administrative nature, duties in relation to educational matters and also duties with regard to financial matters. The duties of Head involve onerous responsibilities. As per definition in Section 2(9) of the MEPS Act, it is beyond doubt made clear that the head of school is required to do additional duties which are of administrative nature. u/s 2(9) of MEPS Act the head of a school means a person by whatever name called and who is in charge of academic and administrative duties and functions of a school, and could be one amongst Principal, Vice Principal, Head Master, Head Mistress, Assistant Head Master, Assistant Head Mistress or Superintendent. No other person other than included in Section 2(9) of the MEPS Act can be appointed as Head of a school. The management is empowered to appoint anybody amongst the persons enumerated in Section 2(9) of the MEPS Act as head of a school. Even a principal of a school or Vice Principal of a school does not ipso-facto, by virtue of definition, becomes Head of the school. He is required to be invested with certain powers, functions and duties of administrative and academic nature. The expression "Head of a school" u/s 2(9) of the Act takes in its sweep Principal, Vice Principal, Head Master, Head Mistress, Assistant Head Master, Assistant Head Mistress and Superintendent and no other employee, by whatever nomenclature

called, can be treated as Head. In this behalf, a reference with profit can be made to the case of *St. Theresa's High School v. State of Maharashtra* 1997(2) M,LJ. 713, particularly observations made on page Nos. 725, 726 and 727.

33. It is tried to be argued that because of inclusive definition coupled with the expression "Mutatis Mutandis" used in rule 5(2) of the MEPS Rules, the exception carved out. in sub-rule (4) of rule 3 of the MEPS Rules is also applicable to the post of Assistant Head. In short, Assistant Head in girls' school shall be necessarily a lady teacher and on the same analogy, even Supervisor is also from lady teachers. Supervisor is not included in Section 2(9) of the MEPS Act. This argument cannot be accepted. There is no power in the Court to give wider or narrower meaning than the literal one. This rule has been enunciated in case of *London Rubber Co. Ltd. Vs. Durex Products*, .

34. No doubt, "Inclusive" is a term of extension. But it is to be remembered that the expression "Means and Includes" in a definition clause indicates exhaustive nature of the definition. In case of *M/s. Mahalakshmi Oil Mills Vs. State of Andhra Pradesh*, , the Supreme Court observed that a definition which consists of two separate parts which specify what the expression means and also what it includes is obviously meant to be exhaustive. For the purpose of correct interpretation, the purpose of adding is required to be taken into consideration. If the purpose of adding is only to enlarge the scope, then it is naturally inclusive definition. However, if the context is altogether different, then such an interpretation is not possible.

35. In the case of *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh and Others*, , the Supreme Court, while dealing with the expression "Means and Includes", has observed that when a statute says that a word or phrase shall "Mean" - not merely that it shall "include" - certain things or acts, "the definition is a hard and fast definition and no other meaning can be assigned to the expression than is put down in definition". A definition is an explicit statement of the full connotation of a term.

36. In the case of *The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another*, , while interpreting the expression "includes", the Supreme Court observed that there could not be any inflexible rule that the word "include" should be read always as a word of extension without reference to the context. It is further observed that the use of word "include" in the restrictive sense, is not unknown.

37. In the case of *Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others*, , the Supreme Court observed that the Legislature resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or (3) to bring under one

nomenclature all transactions possessing certain similar features but going under different names. It is further said that depending upon the context, in the process of enlarging, the definition may even become exhaustive.

38. The first part of definition of Section 2(9) gives an idea with regard to a person in charge of academic and administrative duties and functions of a school which would be necessarily Head. The latter part of definition is inclusive. The first part conveys a person having charge of academic and administrative duties and functions of a school is the Head of the school. The latter part of definition suggests who could be the said person. The said person could be from amongst Principal, Vice Principal, Head Master, Head Mistress, Assistant Head Master, Assistant Head Mistress or Superintendent and none else. Therefore, the inclusive definition has got context to the Head of a school, who is kept in charge of academic and administrative duties and functions of a school. Under the circumstance, it cannot be said that the exception carved out in sub-rule (4) of rule 3 of the MEPS Rules is also applicable to the post of Assistant Head.

39. Under the Secondary School Code, by virtue of exception to clause 61.2, the seniormost lady teacher in girls' school fulfilling all conditions and having satisfactory record of service, was to be appointed as a Head Mistress of that school irrespective of her seniority vis-a-vis a male teacher. Rule 18 of the Secondary School Code defines Head of a school. Head of a school means a person who is appointed as a Head Master or Head Mistress of a school by the management. By virtue of Rule 18 of the Secondary School Code, management had very limited choice in the matter of appointing Head of the school i.e. either Head Master or Head Mistress. Under the MEPS Rules, Head of a school is required to discharge multiple responsibilities and duties. Taking into consideration the multiple nature of the duties, the choice in the matter of appointment of a Head of a school is enlarged. Now under the MEPS Rules, the management can exercise its choice in the matter of appointment of Head of a school from amongst the persons included in the definition of Head of a school. The first part of definition of Head of a school u/s 2(9) of the MEPS Act, defines who is the Head of a school and latter part would indicate any person from inclusive definition could be appointed as the Head of a school. This is precisely the context of inclusive definition. In our view, the view taken in the case of Shobha Nathuji Chahande (cited supra) is perfectly correct. The exception carved out for the post of Head, as contemplated in sub-rule (4) of rule 3 of the MEPS Rules, is not applicable to the post of Assistant Head in girls' school. The earlier view taken in the case of Shobha Nathuji Chahande (cited supra), therefore, does not require reconsideration.

40. Legal fiction does not warrant the extension beyond the purpose for which legal fiction is created. In case of Braithwaite and Co. (India) Ltd. Vs. The Employees' State Insurance Corporation, , the Apex Court held that a legal fiction is adopted in law for a limited and definite purpose only and there is no justification for extending it beyond the purpose for which the Legislature had

adopted it.

41. In case of Industrial Supplies Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , the Supreme Court has said that when a legal fiction is incorporated in a statute, the Court has to ascertain for what purpose the fiction is created and after ascertaining the purpose, full effect must be given to the statutory fiction and then it should be carried to its logical conclusion. With limited purpose, the legal fiction created by inclusive definition is introduced in the MEPS Act, The legal fiction is created in order to give better choice to the management in the matter of appointment of Head of a school from amongst the persons who are included in the latter part of Section 2(9) of the MEPS Act. Therefore, this limited purpose cannot be over-stepped by applying the exception of rule 3(4) of the MEPS Rules to the post of Assistant Head.

42. We answer the reference in the negative. Both the writ petitions be placed before the appropriate Bench.