

(2022) 09 BOM CK 0084
In the Bombay High Court
Case No : 76 Writ Petition No.6268 Of 2022

Sandeep Suresh Mahajan

APPELLANT

Vs

State Of Maharashtra Through Its Education Department And
Others

RESPONDENT

Date of Decision : 15-09-2022

Acts Referred:

Maharashtra Employees Of Private Schools (Conditions Of Service) Regulation Act,
1977 — Section 5(1)

Citation : (2022) 09 BOM CK 0084

Hon'ble Judges : M. G. Sewlikar, J

Bench : Single Bench

Advocate : V. S. Panpatte, S. B. Pulkundwar, M. B. Garje

Final Decision : Allowed

Judgement

M. G. Sewlikar, J

1. Rule. Rule made returnable forthwith. Heard finally at the stage of admission with the consent of the parties.

2. The petitioner was initially appointed as a Shikshan Sevak w.e.f 1st August, 2013 for a period of 3 years. Thereafter, he was appointed as Assistant Teacher and till the order of termination he was working as Assistant Teacher.

3. The petitioner was terminated by the respondent No. 3 on 13th April, 2016 on the ground that there is no approval to the appointment of the petitioner and for want of approval from the Deputy Director of Education and for non compliance of 5(1) of the The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act). This issue has been covered by the judgment of this Court in Writ Petition No. 10834 of 2018 – Shri Ketan S/o Kishor Jadhav Versus The State of Maharashtra and others in which this Court held thus :

“18. While rejecting the appeals filed by the petitioners, the School Tribunal has

failed to take into consideration the aforestated settled legal position. The Tribunal has erred in rejecting the appeals solely on the ground that the prior permission of the Education Officer and the Deputy Director of Education was not obtained before issuing the advertisement and filling up the posts. The Tribunal has ignored the representations forwarded by the Management to the Education Officer and the Deputy Director of Education and waiting for their response for more than one year and 10 months, the Management had also forwarded the representations to the Social Welfare Department as well as the Employment Exchange calling from them the names of the eligible candidates before issuing advertisement. In these circumstances, the Management was justified, so as to protect the interest of the students, to initiate and complete the process of filling up the posts by appointing the petitioners. It is not in dispute that the posts which are filled up by the Management were permanent clear vacant posts which were filled after following due procedure. The Management has also followed the reservation while filling up the said posts. These important aspects are ignored by the Tribunal while rejecting the appeals of the petitioners, hence the impugned order is vitiated and cannot be sustained.”

4. It is not in dispute that the appointment of the petitioner was against the sanctioned and permanent post. It is also not in dispute that the procedure for appointing the Assistant Teacher was followed in letter and spirit. Therefore, simply because of there is non compliance Section 5(1) of the MEPS Act and for want of approval of Deputy Director of Education proposed of the petitioner, services of the petitioner cannot be terminated. In this view of the matter, petition is allowed in terms of prayer clauses B, C and D.

5. Rule made absolute.