

Filed on : 05/01/2024
Registered on : 05/01/2024
Decided on : 18/ 03/2026
Period : 2Y: 2M 13D

BEFORE THE SCHOOL TRIBUNAL PUNE

(PRESIDED OVER BY SHRI. D.R.DANDE)

APPEAL No. 01/2024
CNR NO. MHSS12000001-2024

Exh.29

Suresh Bhagu Kathe,
Age :35 years, Occu. Nil,
Flat No.D 1310, Swapnapurti Housing Society,
Near Mantra Mument, Borhadewadi Moshi
Pune 412105

...Appellant

V/s.

1. Adarsha Shikshan Sanstha,
Through President
Shri.Pravin Suresh Barase,
Age: Adult, Occu.Business,
Address: Dighi Road, Bhosari
Pune 411039.

2. Adarsha Shikshan Sanstha,
Through Secretary,
Shri.Prathamesh Pravin Barase,
Age: Adult, Occu.Business,
Address: Dighi Road, Bhosari Pune 411039.

3. Head Mistress,
late Shri.S.N.Barase Madhyamik
Vidyalaya,Dighi Road, Bhosari, Pune 411039.

4. Education Officer,(Secondary)
Zilla Parishad, Pune 411001

5. The Deputy Director of Education
Pune Region, Dr.Ambedkar Road,Pune 411001.

6. The Account Officer,
Shri.Dayanand Kokare,
(Education Department),
Pune Zilla Parishad, Pune 411001.

..Respondents

Appeal Under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

Appearances : Mr. Ashish Ingle Adv for the Appellant .
 : Mr. Subhash Langote & Neeraj Chaughule Advocates
 for the Respondent Nos.1 to 3.
 : Exparte against Respondent Nos.4 to 6.

JUDGMENT

(Delivered on:18 /03/2026)

1) This is an Appeal by virtue of Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter termed as 'MEPS Act').

2) By filing this Appeal, Appellant has prayed for declaration that termination order dated 07/12/2023 may be declared as illegal and improper and further prayed to quash and set aside the termination order. Appellant also prayed to reinstate him to the post of Assistant Teacher with continuity of service, full back wages and other consequential benefits.

Case of the Appellant is as under:-

3) Appellant is Teacher by profession. Qualification of the Appellant is M.A.B.Ed and SET. He is qualified to be appointed as Assistant Teacher. He is from backward class. The Respondent No.1 Trust/Educational Society appointed the Appellant as Assistant Teacher on 15/06/2012 for teaching Marathi/Geography subject, by following due procedure of law. Government has accorded sanction to his appointment. Appellant is very loyal, amiable and hard worker. Appellant was popular teacher amongst his colleagues and students. Considering his performance Appellant was confirmed in service.

4) From the very beginning of service of the Appellant, Management has scorn, anger and malice against him. So also Management had revengeful attitude against Appellant. Due to ill-will against Appellant and as Appellant from scheduled tribe category, in order to teach lesson to the Appellant Respondent No.5 sent letter to the Respondent No.1 Trust and intimated to take action against Appellant. So in view of the letter of the Respondent No.5, the Respondent No.1 on 07/12/2023, passed impugned order of termination of services of the Appellant. Deliberately Respondent Nos.1,4 and 5 have not supplied documents in respect of valid appointment to the Appellant. No show cause notice was issued nor charge sheet was slapped on Appellant. No inquiry under MEPS Rules was conducted against Appellant. Without any inquiry and without any fault on the part of the Appellant, he is terminated from service. Termination order is result of anger, malice and revengeful attitude against Appellant. Thus, termination order is illegal. Termination order caused grave injustice on the Appellant. Appellant is only bread earner of his family. His family members depend on his income. With these pleadings, Appellant prayed for declaration that impugned termination dated 07/12/2023 is illegal. He further prayed for his reinstatement in service to the post of Assistant Teacher with full back wages and consequential benefits.

5) In response to notice, Respondent Nos.1 to 3 appeared before this Tribunal and resisted Appeal by filing written statement at Exh.15. Respondent Nos.1 to 3 have denied that qualification of the Appellant is M.A.,B.Ed & SET and he is qualified to be appointed as a Assistant Teacher. It is also denied that Appellant was appointed in the school as per the appointment order dated 15/06/2012 by following due procedure for teaching Marathi/Geography subject. It is denied that, Appellant had sincerely worked in the school. It is denied that, Respondent Nos.1 to 4

have anger, grudge and revengeful attitude against Appellant only because he belongs to Backward Community i.e. Mahadev Koli Caste. It is denied that, Respondent No.5 has illegally canceled approval granted to the appointment of the Appellant. It is denied that without any fault on the part of the Appellant, Respondent NO.5 has sent letter on 09/11/2023 and Respondent No.1 illegally and blindly acted on the said letter and terminated the services of the Appellant. It is denied that, termination order dated 07/12/2023 issued by Respondent No.1 Trust is illegal and liable to be quashed and set aside. It is denied that termination of the Appellant is in violation of provisions of MEPS Act.

6) It is specific case of the Respondent Nos.1 to 3, that appointment of the Appellant was not against clear, vacant and permanent post. Appointment was without following valid recruitment procedure. No advertisement was published by the Respondent No.1 Trust. Appellant had not submitted application for appointment as Assistant Teacher. Appellant was not interviewed. Selection procedure never ever followed at the time of appointment of the Appellant. No appointment order was issued to the Appellant to work on probation period or no order of regular appointment was issued to him. Approval was also not granted by following due procedure. Termination of the services of the Appellant is neither stigmatic nor on the ground of any misconduct/misbehavior or by way of punishment. Hence, question of holding any inquiry against the Appellant does not and cannot arise at all. The school is not only recognized by the State of Maharashtra, but it is also receives some grant in aid. Therefore, strict procedure of recruitment/ appointment ie. publication of advertisement in the newspaper, interview by the Management and selection of a candidate after such selection procedure is necessary to be followed /complied. At the time of recruitment, Respondent No.1 is also bound to assess the backlog for various backward categories viz. SC, ST.,

OBC etc. The backlog of teaching staff is yet to be cleared by Respondent No.1. The Roster register to be maintained is assessed and examined by the competent authority of the State viz.B.C.Cell. The issues and grievances raised by the Appellant in respect of his alleged and so called services with the Respondent Nos. 1 to 3 were already raised and agitated and same were adjudicated by the Authorities of the Department of the Education. The concerned Competent Authority has heard all the parties including the Appellant as well as the Respondent No. 1 Institution, the concerned Authority of the Dept. of Education viz. the Dy Director of Education Pune Region, Pune, has recorded findings against the Appellant. The Respondent No. 05 has after hearing the parties come to the conclusion that the Appointment of the Appellant is not as per the procedure laid down in Sec. 5 (1) of the M.E.P.S. Act, 1977. The competent Authority submitted his detail Report on 09/11/2023. Now this proceeding is initiated only to try the luck. When Education authorities observed that appointment of Appellant is not valid, it neither legal nor proper but is also unfair on the part of Appellant to file this Appeal. The conduct of the Appellant of choice of Forum cannot be entertained.

7) The Appellant has deliberately avoided to file documents in the present proceedings pertaining to the issue raised by the Authorities of the Department of Education, those issues were heard and concluded by said authorities against the Appellant. Appellant had taught Marathi and Geography subject itself does not confer any legal right in favour of the Appellant to acquire status of regular teacher. Lastly, Respondents prayed for dismissal of the Appeal.

8) Despite of service of notice, the Respondent No.4 to 6 failed to appear before this Tribunal, therefore matter proceeded exparte against them.

Submissions

9) Learned counsel for Appellant Mr.Ashish Ingle has argued that Appellant is qualified to be appointed as Assistant Teacher. Management on 15/06/2012, by following due procedure appointed Appellant as Assistant Teacher for teaching Marathi/ Geography subject. Appointment of the Appellant was against clear, vacant and permanent post. After joining school by the Appellant, Management of the school sent proposal for grant of approval to the Education Officer. Approval was granted to the appointment of the Appellant. Subsequently Deputy Director of Education illegally withdrawn approval granted to the appointment of the Appellant on the ground that proper procedure was not followed at the time of appointment of the Appellant as well as order of sanction of extra divisions/standards in the school is false and bogus. Management had not published advertisement, but publication of advertisement is duty of the Management. When advertisement is not issued, it is fault on the part of Management, employee has no concern with it. Deputy Director of Education had no authority to withdraw approval granted to the appointment of the Appellant. No employee can be terminated from service on the ground that approval granted to the appointment is withdrawn. No inquiry contemplated in the MEPS Rules 36 and 37 has been conducted against the Appellant by the Management. Therefore, termination is illegal.

10) Per contra, learned counsel for the Respondent Nos.1 to 3 Mr.Neeraj Chaugule has argued that appointment of the Appellant was without following due procedure contemplated under Section 5 of MEPS Act r/w Rule 9 of MEPS Rules 1981. His appointment is not legal and valid, therefore it is *non-est* (no appointment in the eye of law). Deputy Director of Education has withdrawn approval granted to the appointment

of the Appellant, therefore Appellant is terminated from service. Hence this Tribunal cannot protect services of an employee whose appointment is not legal and valid. Appeal is liable to be dismissed.

11) Following points arise for my determination, I have recorded my findings against each of them with reasons as follows:-

	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the Appellant was appointed by the Respondent nos.1 & 2 on clear, vacant and permanent post on probation period by following due procedure U/s.5(1) of the MEPS Act,1977 r/w Rule 9 of MEPS Rules?	..In the negative.
2)	Whether termination of the Appellant dated 07/12/2023 is illegal and bad in law?	..Does not survive.
3)	Whether the Appellant is entitled for reliefs sought?	..In the negative.
4)	What order?	..As per final order.

REASONS

AS TO POINT NO.1:-

12) In order to substantiate averments in the Appeal Memo and to prove that his termination is illegal, Appellant has filed 12 documents with list Exh.4 which include termination order, order of approval granted to the appointment of the Appellant, copy of Register of roster, documents showing educational qualifications of Appellant, caste validity certificate etc. Appellant has also filed documents with list Exh.27. Said documents include copy of appointment order of the Appellant, joining report, copy of list of candidates who were appeared for interview, Copy of application moved by the Head Master to the Education Officer for granting approval to the appointment of the Appellant, copy of order passed by Deputy Director of Education Pune dated 09/09/2023 and copy of inquiry report of

committee constituted under chairmanship of Commissioner of Education on the basis of complaint moved by the Appellant to the National Commissioner for SC/ST, New Delhi.

13) In order to substantiate averments in the Written statement Respondents have filed and relied on only document i.e. letter/order passed by the Deputy Director of Education dated 09/11/2023 by which approval granted by the Education Officer to the appointment of the Appellant is canceled.

Undisputed facts:-

1	Appellant was appointed as Assistant Teacher as per the appointment order dated 01/06/2012 in Kailaswasi S.N.Barase Madhyamik Vidyalaya.
2	Management of the School has sent proposal to Education Officer, Zilla Parishad, Pune for grant of approval to the appointment of the Appellant.
3	As per the order dated 14/07/2024, Education Officer has accorded approval to the appointment of the Appellant.
4	Deputy Director of Education has arranged hearing in respect of validity of appointment of the Appellant and after giving opportunity to both parties, on 09/09/2023, has declared that due to illegalities in the appointment, approval accorded to the appointment of the Appellant is canceled.
5	As approval accorded to the appointment of the Appellant is canceled by the Deputy Director of Education, Management of the school on 07/12/2023, issued termination order and thereby terminated services of the Appellant.

14) I have given thoughtful consideration to the submissions made before me. This Tribunal is conscious of the law that the Appellant has to prove that management in consonance with section 5 of the MEPS Act r/w Rule 9 of MEPS Rules 1981 has validly appointed him on clear vacant and permanent post .

15) In the case of **Ku.Jaimala Bhaurao Ramteke Vs.Presiding Officer in Writ Petition No.5413 of 2008** Hon'ble Bombay High Court has observed in Paragraph No.27 as follows:-

27. Here is the case where respondent Nos. 2 & 4 are alleging that petitioner was appointed in the said post inasmuch as she was daughter in law of the secretary of the managing committee of respondent Management. I need not go into the details of such allegations and appreciation thereof. Fact remains that once the appointment is not proved to have been taken place by following legal procedure, it would not create any right in favour of the petitioner that of a "permanent employee". I need not go into the aspect of remedies available to the petitioner in such circumstances.

Such aspect was considered in the Nehru Jankalyan's case, referred above, wherein in para 12 it has been observed thus--

"12. For the reasons stated hereinabove, the impugned order passed by the School Tribunal is misconceived and illegal and hence, the same is quashed and set aside.

On the backdrop of above referred facts, it is undoubtedly clear that conduct of the petitioner Management in not obtaining prior permission from the concerned Education Authority before appointment respondent NO.1 is inconsistent with sub-section (1) of section 5 of the Act and entire fault lies with the Management. It is no doubt true that such appointment being inconsistent with the provisions of the Act is not valid.

16) In the case of **Chandramani Devraj Tiwari Vs. The Secretary Smt R.B.Tiwari 2008(3)BOM.CR 206** in paragraph no.12 the Hon'ble High Court has observed as follows:-

Moreover, to claim benefits of deemed permanency under Section 5(2) of MEPS Act, 1997, it was necessary for the appellant to prove before the learned Presiding Officer that he was duly selected in the manner prescribed. There was nothing on record before the learned Presiding Officer to show that there was an advertisement inviting applications to which the petitioner had responded and he was subjected to selection process by competition amongst all eligible and desirous candidates. Assuming for the sake of argument that some illegality was committed by mutual consent, that could not in itself confer any legal sanction to the

appointment of the appellant.

17) In the case of **Charudatta Ramchandra Bagadi Vs. Secretary, Shetkari Shikshan Mandal, Dholgarwadi And Others 2023 MEC 246** Hon'ble Bombay High Court by discussing various authorities and provisions of MEPS Act and Rules has observed in paragraph No. 37, in last four lines as follows:-

The requirements of said MEPS Act and the said Rules as interpreted by various judgments of this Court clearly show that issuance of advertisement in local news paper having wide circulation and giving adequate time to apply and to conduct interviews is very important step in the recruitment process.

18) It is further observed that after perusal of documents filed on record it cannot be said that appointment of the petitioner is validly made in accordance with Section 5(1) of the MEPS Act and relevant MEPS Rules. Hence Hon'ble High Court further pleased to dismiss writ petition.

19) Learned counsel for Respondents relied on the authority of **Prakash Daulat Patil Versus State of Maharashtra 2024 MEC 651** wherein Hon'ble High Court in Paragraph No.12 has observed as follows:-

employment of assistant teachers in private schools in the State of Maharashtra are not only governed by a State Legislation i.e. the Act of 1977 and the Rules of 1981, but in aided schools burden of payment of salary of such teachers is also borne by the State exchequer. Accordingly, any such employment lies in the realm of the public employment and hence the recruit-ment/selection/appointment of such teachers in private aided schools has to be necessarily in conformity with the fundamental right enshrined under Article 16 of the Constitution of India. Rule 9(2A) of the Rules of 1981 requires that the advertisement of vacancy shall not only be published in at least one local newspaper having wide circulation but also that the vacancy will have to be notified to the Employment Exchange Centre of the District and District Social Welfare Officer. The purpose is to provide equal opportunity to all eligible candidates to participate for appointment in public employment. If the vacancy against which the

petitioner is said to have been appointed has not been widely advertised, that itself would be violative of Article 16 of the Constitution of India, which is a fundamental right.

20) Learned counsel for Respondents further relied on authority in the case of **Nazira Begum Lashkar Vs. State of Assam & Ors JT 2000 (Suppl.2) SC 417** wherein Hon'ble Supreme Court has observed as follows:-

Since the appointments to the posts are governed by a set of statutory rules, and the prescribed procedure therein had not been followed and on the other hand ap-pointments have been made indiscrimi-nately, immediately after posts were al-lotted to different Districts at the behest of some unseen hands, such ap-pointments would not confer any right on the appointee nor such appointee can claim even any equitable relief from any Court.

21) Learned counsel for Respondents further relied on the authority of **Vitthal Rukmai Shikshan Prasarak Mandal Vs. Suresh Chimaji Kashid in Writ Petition No.3160 of 2001.** Wherein Hon'ble High Court in paragraph no.5 has observed as follows:-

The order of reinstatement could have only be passed if there is clear finding by the School Tribunal that the petitioner was appointed against regular vacancy by following the due process and that the other procedure for recruitment under schools Act had been complied with.

22) Learned counsel for Respondents further relied on the authority **Rayat Shikshan Sanstha & Anr Vs. Yeshwant Dattatraya Shinde 2009 (5) ALL MR 151.** Wherein in paragraph No.3 has observed as follows:-

Admittedly there is no evidence on record that the appointment of the Respondent was made after following the procedure laid down in the M.E.P.S. Act and Rules. The Tribunal has come to a conclusion that the said appointment was made on a clear and permanent vacancy. Admittedly, no advertisement was

issued, nor any interview was held and, as such, cannot be said that the appointment was made on a clear and permanent post. The Tribunal, however, came to the conclusion that the appointment was made on a clear and permanent vacancy because the management was not in a position to produce the relevant material on record. In my view, the burden of establishing that the appointment was made on a clear and permanent post that too were following the procedure laid down under the Act and Rules, is squarely on the Appellant and not on the management. The Tribunal, therefore, in my view, committed an error of law which is apparent on a face of record. The services of the Respondent were terminated, no interim relief was granted by the Tribunal. No interim order was granted by this Court also.

23) Learned counsel for the Appellant further relied on authority in the case of **Navjeevan Shikshan Sanstha, Bhishnur and Another Vs. Chandrashekhar Anandraoji Rewatkar and others 2015(1) Mh.L.J.782** wherein Hon'ble Bombay High Court has observed as follows:-

Reinstatement in service-petition is against order of reinstatement in service passed by the School Tribunal-It was specific case of respondent No.1 that after obtaining prior permission from Education Officer advertisement was published and pursuant thereto, he was duly appointed-denial by management that appointment was made in clear and permanent vacancy no copy of advertisement filed on record by the respondent no.1-In absence of basic material in form of permission granted by Education Officer for filling posts in question it cannot be said that respondent no.1 was appointed after following due procedure as prescribed-impugned order of reinstatement liable to be set aside and quashed.

Initial entry in service has to be a lawful entry and any irregularity in that regard cannot create any vested right in favour of employee- it is not material as to who is at fault-in either event, if it is found that entry in service is not after following prescribed procedure such entry in service cannot be sustained.

24) Learned counsel for the Respondents has relied on case of **Vilas Laxman Gavai Vs.Dnyandeo Uttamrao Dhandar & 3 Ors Writ Petition No.3364 of 2008 with Writ Petition No.4434 of 2008 Decided on 1 July, 2017** wherein Hon'ble Bombay High Court in Paragraph No.12 has observed as follows:-

Further the observations in paragraph 13 of the impugned judgment and order would indicate that there are no pleadings of either parties that lawful recruitment process was followed while giving appointment to respondent no.1 that is no advertisement was published to fill up the post, no other candidate was called for interview and there was no selection process undertaken. Despite these observations, Tribunal held that the management is not entitled to take benefit of its own wrong. Considering the fact that respondent no.1 was appointed by the management for an academic session 1996-97, responsibility came to be fastened on the management and the Tribunal held that the appointment of respondent no.1 needs to be protected. 13] The above observations are contrary to the settled position of law that in the absence of compliance of Section 5 of the MEPS Act, back-door entry and appointment cannot be protected. As respondent no.1 has failed to establish his case before the Tribunal, there is no question of going into the defence raised by the management in response to memo of appeal. At the most, on the basis of material placed on record, it can be said that management, without following the procedure prescribed under Section 5 of the MEPS Act, appointed respondent no.1 for a temporary period. As respondent no.1 failed to establish that his appointment was on a clear and permanent post by following the procedure laid down under the Act and the Rules, this court finds it unnecessary to go into the action of management in appointing respondent no.1 for a temporary period. However, considering the fact that respondent no.1 had no right to post, relief of reinstatement could not have been granted to him. As this court finds that impugned judgment and order is contrary to the settled proposition of law, interference is warranted in writ jurisdiction. Hence, the following order:

(i) Writ Petition No.3364/2008 Writ Petition is allowed. Rule is made absolute in terms of prayer clauses (a) & (b). No costs.

25) In the case of **Mahatma Phule Krida Prasarak Mandal & Anr Vs. Suresh T.Waghmode & Ors (Un-reported) Writ Petition No.3993/1997.** Wherein, Hon'ble Bombay High Court in para no.4 has observed as follows:-

In so far as the order of the School Tribunal considering the approval granted by the Education Officer to the appointment of Respondent No.1 is concerned, the order of the Education Officer granting approval or refusing approval is not relevant for deciding the status of respondent No.1, because to the proceedings before the Education Officer for grant of approval the teachers is never a party. The matter concerning grant of approval is between Management and the Education Officer and is relevant only for the reasons of grant by the State Government to the

Management. Therefore the School Tribunal has to decide about the nature of appointment of respondent No.1 on the abasis of the appointment order, advertisement etc and not on the basis of the approval granted by the Education Officer.

26) In the case of **Priyadarshini Education Trust Through ... vs Ratis (Rafia) Bano D/O Abdul Rasheed 2007(6) MHLJ 667**, one of the debatable issue before Hon'ble High Court was that, whether teacher was duly appointed. Hon'ble Bombay High Court in paragraph No.12 of the Judgment has observed as follows:-

In view of the provisions as contained in Section 5 of the MEPS Act and Rule 9 of MEPS Rules read with Articles 14 and 16 of the Constitution and the observations of the Hon'ble Apex Court in the reported judgment which guide us, we draw following conclusions;

(i). "duly appointed, in the manner prescribed" would be an appointment of a person who is eligible (qualified for the post) for appointment, who is selected by due process of selection i.e. by competition amongst all eligible and desirous candidates, and who is appointed on a permanent vacant post. In other words, inviting applications, as also holding of screening tests, enabling all eligible and desirous candidates to compete for selection and appointment, is a must.

(ii). Once an eligible candidate (duly qualified as required) is selected by selection process as above, for filling in a permanent vacancy, there is no option for the management and it is obligatory on it to appoint such person on probation for a period of two years. It is neither open for the management to appoint him for one academic year or any period shorter than two years probation period, nor it is open for Education Officer to grant approval for such shorter period.(in fact, in view of requirement as in Clause (i) above, the process of grant of approval by Education Officer should begin with examination of selection process and its validity.)

(iii). The candidate thus selected with due process and appointed on probation shall enjoy statues of deemed permanency on completion of two years, unless extension of probation is informed, or termination is ordered.

(iv). The appointment of a person not belonging to reserved category, in a post reserved for a particular category, because the candidate of that category is not available, shall be absolutely temporary and on an year to year basis, governed by Sub-rule (9) of Rule (9), although in a permanent vacancy.

27) So in view of the above observations of Hon'ble Superior Courts, it is clear that burden is on the shoulders of Appellant to prove that he was duly selected in the manner prescribed by law and unless and until

he proved that his appointment is valid, he is not entitled for reliefs claimed. So keeping in the mind ratio in the above authorities and the settled legal position that burden is on the shoulders of the Appellant to prove that his appointment is valid and then only, he is entitled for protection of his services, let me examine whether the appointment of the Appellant is as per the procedure prescribed by law ?

28) It is specific case of the Appellant that on 15/06/2012, he was appointed as Assistant Teacher by the Respondent No.1 Trust in Kailaswasi S.N.Barase Madhyamik Vidyalaya by following due procedure. So according to Appellant his appointment is legal and valid and it is as per the procedure established by law. In order to prove that his appointment is legal and valid, Appellant mainly relied on his appointment order filed with list Exh.27. Relevant portion of the appointment order is reproduced as follows:-

1) With reference to your application dated 30/5/2021 I have the pleasure to inform you that you are hereby appointed as Asst. teacher in the K. S.N. Barse Madhyamik vidyalaya School/Collage on Rs. 5500-9300-34800 month in the scale of Rs..... with effect from..... or the date you report on duty. You will be entitled to allowances such as Compensatory Local Allowanc House Rent Allowance and Dearness Allowance as specifically sanctioned by the Government from time to time.

2) Your appointment is purely temporary for a period of..... months/years fromin the leave/deputation vacancy after expiry of the above period. Your services shall stand terminated without any notice.

OR

2) Your appointment is on probation for a period of two years.

(3) The terms of your employment and condition of service shall be as laid down in the Maharashtra Employees of Private School (Conditions of Service) Regulation Act. 1977 and the Rules made thereunder.

29) On perusal of relevant portion of the appointment order, it appears that it is in the format of Schedule 'D' of the MEPS RULES. However, there is no reference in the appointment order as to whether it is appointment order on probation period or it is temporary appointment

order. Had it been the fact that, appointment of the Appellant was on probation period, Management must have mentioned in the appointment order the period during which Appellant was on probation. Management has kept blank the most of the portion of the appointment order. So on perusal of appointment order, inference cannot be drawn that said appointment order of the Appellant is on probation period.

30) Appellant has further relied on list of 20 candidates who were allegedly present for facing interview, but no date is mentioned in the list of candidates. So said list cannot be relied. It is admitted position that Management sent proposal for grant of approval to the appointment of the Appellant. Copy of said letter is also relied by the Appellant. Appellant has filed copy of order of approval dated 14/07/2014. On perusal of said approval order, it is clear that the then Education Officer Shri.B.K.Dahiphale granted approval to the appointment of the Appellant.

In my candid opinion approval order is not document to prove validity of appointment.

31) It is not case of the Appellant that Management had issued advertisement in daily newspaper having wide circulation in the district and invited applications from eligible candidates.

During arguments learned counsel for the Appellant Mr.Ashish Ingle has fairly submitted that Management has not published any advertisement. He further submitted that it is fault of the Management and not of the Appellant.

32) I am in agreement with learned counsel for Appellant that, it is duty of the management to publish an advertisement, but it is equally true that it is duty of the Appellant to prove that his appointment is legal

and valid and as per the procedure established by law. It duty of the Management to under take fair and proper recruitment procedure by publishing an advertisement in daily newspaper having wide circulation in the district and call applications from eligible candidates, shortlist the candidates, conduct interview of the eligible candidates and lastly select meritorious candidate only. Management has to follow procedure established by law. If Management without publication of advertisement and without interview has directly issued appointment order, it is violation of provision of MEPS Act and Rules as well as Article 14 and 16 of the Constitution of India. Appellant cannot escape himself by saying that Management has not published advertisement, so it is fault of Management, he is not responsible for it. When Management has not published any advertisement, I am afraid that Appellant is validly appointed in the manner prescribed by law.

33) Section 5(1) of the MEPS Act reads as under:-

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, 2 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 list of surplus persons maintained by him, for absorption in other schools; and in the event of such person being available, the Management shall appoint that person in such vacancy.

34) On perusal of above sub section, it is clear that before filling any permanent post, it is duty of the Education Society to ascertain from Education Department that whether any suitable person is available from the list of surplus teachers maintained by Education Department for

absorption in any other school. If such person is available, management has to appoint such person in such vacancy. Before conducting recruitment procedure, it is necessary for the management to get certificate from the Education Department that no surplus teacher is available for appointing on vacant post. As per the GR dated 27/10/2016, Government has decided not to grant approval to appointment made without receiving No-objection-certificate i.e. NOC from Education Department. Here in the matter, without NOC of Education Department appointment of the Appellant was made and in violation of MEPS Act and Rules and circulars time to time issued by the State government approval was granted. Though, initially approval was granted now Deputy Director of Education has cancelled approval. Thus, in my view appointment is in violation of Section 5(1) of the MEPS Act.

35) It is pertinent to note that, School Education & Sports Department on 23/08/2017 passed one corrigendum/शासन शुध्दीपत्रक No.SSN-2017/(20/17)TNT-2 As per the that corrigendum, when it is necessary to cancel approval which was already granted to the appointment of a teacher, superior officer of the officer who has granted approval, shall issue notice to both parties and give opportunity of hearing and thereafter take appropriate decision on cancellation or continuation of approval.

36) It is worthwhile to mention here that, in the Appeal as well as in the written statement there is reference that, on the basis of the complaint made by the Appellant, Deputy Director of Education, Pune arranged hearing and after hearing declared that, management had appointed teachers without permission of the Education Department. Appointment of the Appellant is not as per the procedure. In the Appeal Memo there is reference that, only because Appellant belongs to backward community (Mahadev Koli Caste) and due to anger, ill-will Deputy

Director of Education Pune written letter to the Respondent No.1 for action against Appellant. Appellant as well as Respondents have filed report of submitted by Deputy Director of Education to Education Officer, Secondary, Z.P.Pune regarding cancellation of approval. It is pertinent to note that After hearing both sides Shri.Rajendra Ahire the then Deputy Director of Education has passed order/drafted report. In his report dated 9th November, 2023 it is mentioned as follows:-

निर्णय:-

१. शासन निर्णय दिनांक १६/०८/२०१२ मध्ये सदरील तुकड्या मंजूर नाहीत.
२. मा. आयुक्त (शिक्षण) यांनी गठीत केलेल्या चौकशी समितीच्या अहवालातील निष्कर्षानुसार सदर तुकडी बनावट असल्याचे निष्पत्र झालेले आहे.
३. शिक्षणाधिकारी (माध्य) जि.प. पुणे कार्यालयाच्या जावक रजिस्टर मध्ये तुकडी मंजूरी आदेशाची नोंद नाही. सबब तुकडी मंजूरी आदेश बनावट व खोटा आहे. त्यामुळे सदर तुकड्यांना अनुदानासाठी शिक्षणाधिकारी (माध्य) यांनी शिफारस केलेली नाही.
४. महाराष्ट्र खाजगी शाळेतील कर्मचारी (सेवेच्या शर्ती) विनियम अधिनियम १९७७ मधील नियम ५(१) नुसार जाहिरात पूर्व परवानगी घेण्याची तरतुद असताना पूर्व परवानगी घेतलेली नाही, सदर तरतुदीचा भंग झालेला आहे.
५. महाराष्ट्र खाजगी शाळा कर्मचारी (सेवेच्या शर्ती) नियमावली १९८२ मधील नियम क्रं.९ (८) नुसार प्रदेशात भरपूर खप असलेल्या निदान एखादया तरी वृत्तपत्रात त्या रिकाम्या जागांबाबत जाहिरात देईल अभी तरतूद असताना सुध्दा संस्थेने वृत्तपत्रांमध्ये जाहिरात न देता, सदर कर्मचा-यांच्या नियुक्त्या केलेल्या आहेत. त्यानुसार वरील नमूद नियमाचा संस्थेने भंग केलेला आहे.
७. सबब शासन निर्णय दिनांक २३/८/२०१७ नुसार शिक्षणाधिकारी (माध्यमिक) जि. प. पुणे यांचे दिनांक १४/०७/२०१४ अन्वये दिलेले श्रीम चोपडे ममता सदाशिव, श्री डोळस अंकुश रामचंद्र व श्री काठे सुरेश भागु सहशिक्षक यांच्या वैयक्तिक मान्यता आदेश रद्द करण्यात येत आहेत.

37) Deputy Director of Education has clearly observed that, without following due procedure Appellant was appointed in the school. It is also observations of the Deputy Director of Education that, order of sanction of Divisions of the school is bogus and wrong. It is clearly

observed by the Deputy Director of education that approval given to the appointment of Appellant is liable to be canceled.

38) I am conscious of the observations of Hon'ble Bombay High Court in the case of **Saint Ulai High School Versus Devendraprasad Jagannath Singh and others 2007 (1) Mh.L.J 597.** Hon'ble Bombay High Court in the case of Saint Ulai has observed that approval is not condition precedent to validate appointment.

In view of the observations in Saint Ulai's case (cited supra), I am not bothering about the observations of Deputy Director of Education in his report dated 09/11/2023, but I am deciding validity of the appointment of the Appellant on the basis of the material/documents produced by both parties.

39) At the cost of reputation grant of approval to the appointment of a teacher or withdrawal of approval to the appointment has no connection with the validity of the Appointment. If the appointment is valid and in consonance with Section 5(1) of MEPS Act, 1977 r/w Rule 9 of MEPS Rules, 1981, merely because Education Officer or Deputy Director of Education has not accorded approval to the appointment does not invalidate the appointment. Merely because Education Officer has withdrawn the approval earlier granted does not invalidate the appointment.

In my candid opinion, Management has not published any advertisement and no proper procedure as required by section 5 of MEPS Act and Rule 9 of MEPS Rules is followed.

40) As per the Article 14 of constitution of India there is right of equality. Every person who is eligible for appointment as a teacher has right to apply for vacant post. Fundamental right of hundreds of eligible

candidates is violated in the matter at hands because equal opportunity was not given to all eligible candidates. So appointment of Appellant is nothing but back door entry which is not legal. No doubt, appointment order in the format of schedule D was issued, approval was also granted (however subsequently as per the letter dated 09/11/2023 Deputy Director of Education observed that approval is wrongfully granted), but prime question is that whether appointment of the Appellant is valid ? Answer of the question is “No”.

41) It is true that documents filed on record prima facie show that Appellant has provided his service to the school for some years. According to Management appointment of the Appellant is not valid. When Management of the school has come up with the case that appointment of the Appellant is not valid, heavy burden lies on the shoulder of the Appellant to prove that his appointment is legal and valid. Merely because one person has provided his services continuously for some years does not mean that Court/Tribunal, though his entry in the school is not by legal and valid way, protect his services on the ground of long standing service.

42) In the case of **Secretary, State of Karnataka versus Umadevi and others 2006 AIR SCW 1991** the Hon’ble Supreme Court has observed as follows:

Regularization of daily wages/temporary/contractual employee does not mean permanence in service. when the appointment is in violation of provisions of law or rules made there under then it is immaterial how long the employee has served.

43) It is true that, if any teacher has provided his services more than 2/3 years he/she shall be deemed permanent in service, but the question of application of section 5(2) ‘deemed permanency’ will come into

picture after appointment is as per the Section 5(1) of the MEPS Act, 1977 and it is by following due procedure.

44) Learned counsel for the Appellant Mr.Ashish Ingle has argued that order passed by the Deputy Director of Education dated 09/11/2023 (by which approval accorded to the appointment of the Appellant is withdrawn) is wrong and illegal. He further argued that, as an incidental question this Tribunal has authority to test the validity and legality of the order passed by the Deputy Director of Education. In support of his submission he relied on the case of **Arati Vithalrao Warkhede Vs. Education Officer (Secondary) Zilla Parishad, Wardha and Ors 2011(5)ABR (NOC) 401 (Bom)** . In the authority Hon'ble Bombay High Court in paragraph No.6 has observed as follows:-

6. We find substance in this submission. It is clear that in a given case, the question whether approval to the services of the teacher has been wrongly refused or granted might itself be a question that may arise for determination in an appeal. The present case is one such example. The petitioner's services have been terminated on the ground that the Education Department has refused to grant approval to her services. In such a case, we have no doubt that the question whether the petitioner has been wrongly refused approval is a question that will arise for determination before the School Tribunal. We are of the view that a School Tribunal, which has the jurisdiction to decide whether the dismissal, removal or otherwise termination of the services of a teacher by the management is wrongful or not, has the power to decide whether reason for such termination, i.e. whether the refusal of approval is right or wrong, as an ancillary or incidental question. The want of an express enumeration of powers does not exclude such incidental powers as are reasonably necessary to accomplish the purpose of deciding whether the dismissal or termination of services is wrongful or not.

In the authority, Hon'ble Bombay High Court has observed that, School Tribunal has power to decide whether reason for such termination, i.e. whether the refusal of approval is right or wrong, as an ancillary or incidental question.

45) So in view of the above observations, it is clear that as an incidental question, School Tribunal has authority to decide the issue that whether rejection of approval is legal and proper ? It is right or wrong ? as an ancillary or incidental question.

46) Learned counsel for the Appellant further relied on authority in the case of **Jadhav Amol Krushna Vs. The State of Maharashtra and others Writ Petition No.1373 of 2019**. In the authority of Hon'ble Bombay High Court in paragraph No9 it has been observed as follows:

9. Therefore, when the impugned order came to be passed, the aspect of whether there was any fraud or misrepresentation or suppression was to be dealt with. The impugned order based on a show cause proceeds only on the basis that Rule 9(8) has not been followed, and with no allegation of any fraud, suppression, misrepresentation or collusion. Therefore, since neither the show- cause-notice nor the impugned order is based on fraud, misrepresentation or suppression, such impugned order would be contrary to the order passed on 16 August 2017. Considering the language of the Government Resolution dated 23 August 2017 whereby show-cause-notice and opportunity of hearing are contemplated, a reasoned order is to be passed first putting the party to the notice of the fraud or misrepresentation or suppression and then to deal with the same in the impugned order. Since this has not been done and, in view of the order passed on 16 August 2017 in Petitioner's own case, the impugned order is liable to be quashed and set aside.

47) It is true that, here in the matter as per the Government Resolution dated 23/08/2017 Deputy Director of Education has cancelled the approval granted to the appointment of the Appellant. But in the authority Hon'ble High Court has not declared that resolution dated 23/08/2017 is illegal.

Here in the matter, approval was granted by the Education Officer and it is cancelled by the Deputy Director of Education which is higher authority of Education Officer. Review of the order of Education Officer is not made by the Education Officer himself. Notices were issued to both parties. Opportunity of hearing was given.

48) Apart from above discussion, when appointment of the Appellant is not legal and valid there is no question to decide whether order passed by the Deputy Director of Education of cancellation of approval is legal or illegal.

Here in the matter, Appellant failed to discharge burden lying on his shoulders that his appointment is as per the procedure established by law. Therefore, though Appellant has provided his services for some years to the school, he is not entitled for the benefit of deemed permanency. Hence the authorities relied by Appellant are of no use for the Appellant. In my candid opinion, as no proper procedure contemplated under the MEPS Act and Rules is observed, appointment is not legal and proper. Hence, I answer Point No.1 in the negative.

AS TO POINT NO.2 :-

49) Learned counsel Mr.Ashish Ingle for the Appellant vehemently argued that, appointment of any employee cannot be canceled only on the ground that Education Officer/Deputy Director of Education has canceled approval to the appointment.

Appellant has filed termination order on record. Same is not disputed by the Respondents. On perusal of termination order, it is clear that Appellant is terminated from service only on the ground that Deputy Director of Education on the basis of GR dated 23/08/2017, has canceled approval granted to the appointment of the Appellant dated 14/07/2014. This Tribunal is conscious of the settled legal position that when appointment of an employee is valid employee cannot be terminated on the ground that either approval has not been granted by the Educational Authorities or on the ground that approval granted is withdrawn. But here in the matter appointment of the Appellant is not legal and valid. So no question to decide legality and validity of termination order. The person

who entered by back door must be go by back door. The person who entered by back door in public employment cannot claim that procedure established by law must followed at the time of termination. When appointment of the Appellant is non-est there is no propriety to decide legality and validity of termination order.

While discussing Point No.1, I observed that the person whose appointment is not as per Section 5 of MEPS Act r/w Rule 9 of MEPS Rules 1981, as well as whose appointment is not in consonance with the Article 14 to 16 of the Constitution of India, cannot get any relief at the hands of this Tribunal. This Tribunal has jurisdiction to protect services of a person whose appointment is as per the MEPS Act and Rules. When appointment is itself is not legal and valid, this Tribunal cannot grant any protection to Appellant, therefore there is no question to decide whether termination is legal or illegal. Hence, I answer Point No.2 as 'Does not survive'.

AS TO POINT NO.3 :-

50) As appointment of Appellant is not as per the procedure prescribed by the law, Appellant is not entitled for any relief at the hands of this Tribunal. Therefore I answer Point No.3 in the negative.

In view of my negative findings to Point No.1 and Point No.3, Appeal must fail. Accordingly, following order.

ORDER

1. Appeal is dismissed.
2. No order as to costs.

Date- 18/03/2026.

**(Dnyaneshwar R. Dande)
Presiding Officer,
School Tribunal, Pune.**