

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE**

WRIT PETITION NO. 1144 OF 2006

Mahatma Gandhi Vidya Mandir & anr.... Petitioner

versus

Yashodhara J. pagar & ors..... Respondent.

ALONGWITH

WRIT PETITION NO. 1145 OF 2006

Mahatma Gandhi Vidya Mandir & anr.... Petitioner

Versus

Smt. Surekha N. Shinde Repondent.

Mr. A.V.Bukhari i/b Mr. Anilkumar Patil for the petitioner in both above petitions.

Mr. P.N.Joshi for Respondent no.1 in both the petitions.

Mr. S.K.Chinchalikar AGP for Respondents 3 & 4. in both the petitions.

None for Respondent no.2 in both the above petitions.

ALONGWITH

WRIT PETITION NO. 1146 OF 2006

Mahatma Gandhi Vidya Mandir & anr.... Petitioner

versus

Jadhav H. Karbhari and others Respondent.

Mr. A.V.Bukhari i/b Mr. Anilkumar Patil for the petitioner.

Mr. A.R.Shaikh for respondent no.1.

Mr. S.K.Chinchalikar AGP for Respondents 3 & 4.

None for Respondent no.2.

**CORAM; A.P. DESHPANDE, J.
DATED; 28TH FEBRUARY, 2007**

P.C.;

1. Rule. Rule made returnable forthwith. Taken up

for final hearing by consent of parties.

2. As the question of fact and law involved in these

writ petitions is identical, the same are heard together and are being disposed of by this common judgment.

3. The petitioner no.1 is a public trust and society registered under the Society Registration Act. It administers and manages a new Marathi primary school at Khadda Jin, Tal. Malegaon. The said school is a recognised school receiving grant from the Government etc. and the service conditions of the employees working in the said school are governed and regulated by the MEPS Act and the Rules made thereunder. Respondent no.1 in all three petitions, were appointed as Assistant teachers in the school under an assumption that they are eligible and qualified for such appointment. Respondent no.1 had produced a D.Ed certificate which they claimed to have acquired consequent upon passing of postal D.Ed examination, conducted by one "Institute of Rural Development and Multipurpose Technical Centre, Shirur". It was claimed by respondent no.1 that the said D.Ed course conducted by the Institute of Rural Development and Multipurpose Technical Centre has been granted

equivalence by the State of Maharashtra with the recognised D.Ed. qualification. The petitioner terminated respondent no.1 from service and aggrieved thereby the respondent no.1 preferred an appeal before the School Tribunal calling in question the legality and validity of the order of termination. The Tribunal considered the stand of the management so also Education Officer that the D.Ed. qualification possessed by respondent no.1 has not been recognised by State Government as equivalent to the recognised D.Ed. course, it proceeded to dismiss the appeal by holding that the respondent no.1 herein is an untrained teacher and not eligible and qualified for being appointed as Assistant teacher, having regard to the provisions of section 5 of the Act read with Rule 6 of the Rules.

4. After dismissal of the appeal on the ground that respondent no.1's D.Ed qualification is not granted equivalence by the State of Maharashtra, the respondent no.1 in all three appeals filed Review Application before the Tribunal and allowing those Review Applications placed on record of the tribunal, the appeals also came to be allowed. The Review applications and the appeals came to be allowed on the basis of a document purported to be Government Resolution dated 16-4-1972, which goes to indicate grant of equivalence to the postal D.Ed course

conducted by the Institute of Rural Development and Multipurpose Technical Centre, Shirur. This document was filed for the first time along with the review applications. As the Tribunal found that the qualification acquired by respondent no. 1 was granted equivalence by the State of Maharashtra, it allowed the Review Petitions and consequently allowed the appeals filed by respondent no.1.

5. Aggrieved by the judgment of the School Tribunal passed in Review Applications which in turn allowed the appeals, the school management filed these writ petitions, mainly contending that the the Government Resolution dated 16-4-1972 is a bogus document. To substantiate the said fact, a communication dated 27-11-2006 issued by Desk Officer, State of Maharashtra to Dy. Director of Education of all Division came to be placed on record, which goes to intimate that the Government has not granted recognition/equivalence to the postal course conducted by the above referred institute. As this court was confronted with the two contradictory documents, one purported Government Resolution dated 16-4-1972 and other, the communication from the desk officer dated 27-11-2006, this court by order dated 17-1-2007 had called upon the State of Maharashtra to file an affidavit and explain the contradiction emerging on account of the purported Government

Resolution and the communication from the State Government dated 27-11-2006. Pursuant to the order passed on 17-1-2007, an affidavit dated 14-2-2007 has been filed by the department of School Education and Sports Department, Bombay, sworn by Shri Umaranikar, the section officer. It is stated in the affidavit that the Government Resolution dated 16-4-1972 does not seem to be issued by the School

Education Department. It is then stated as follows:

"I further say and submit that the format of the said said Government Resolution, name of the signing authority and the designation of the signing authority clearly indicate that the said Government Resolution is fake. From the records available it is found that Shri F.P.Farwali who has signed the said Government Resolution, has not worked in the department. Moreover, there is no such post as "___" in the Departmental hierarchy of the Government. This itself is a clear indication that the document purported to be a Government Resolution dated 16-4-1972 is a fake one."

Affidavit thereafter goes to state that the Institute of Rural Development and Multipurpose training centres, Shirur, Dist. Pune has not been permitted to run D.Ed course through postal correspondence by the State

Government or by the National Council for
Teacher Education.

6. Perusal of the entire affidavit filed on behalf of the State leaves no room of doubt that a fake and bogus document purported to be a Government Resolution was placed on record before School Tribunal, and an order has been snatched, which goes to allow the Review Petition and consequently the appeals filed by the respondent no.1. On this ground alone the impugned order passed by the Tribunal in the Review petition and appeals needs to be quashed and set aside. It is obvious that the respondent no.1 had not approached the Tribunal with clean hands, to say the least. Even on merit, if the respondent no.1 is divested of the status of an employee possessing D.Ed. course, respondent no.1 is not eligible for being appointed and hence no right is created in the respondent no.1 qua the post wherein they have worked. The appointment itself is based on D.Ed. certificate, which is fake and bogus. The respondent no.1 cannot claim any right and assail the termination. Having regard to the facts and circumstances that have come on record of these petitions, the writ petitions deserve to be allowed and I proceed to allow the same.

7. At this stage, the learned AGP appearing for the

State has submitted that appropriate investigation has been directed in the matter and the Government is proceeding with the same. In this view of the matter, I do not propose to issue any directions in that regard in the present judgment. Hence the following order.

i) The impugned judgment and order dated 30-8-2005 passed by the Presiding Officer School Tribunal, Nashik region, Nashik allowing the Review Petition and the Appeals stand quashed and set aside.

ii) Appeals filed by respondent no.1 stands dismissed.

iii) Writ Petitions are allowed subject to costs of Rs. 1000/- to be paid by each of the respondent no.1. to the Legal Services Authority.

Rule made absolute in above terms.

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