

**Madhya Pradesh Ashaskiya School Viniyaman Adhiniyam,
1975**

33 of 1975

[18 October 1975]

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An Act to provide for regulation of Ashaskiya Schools in the State of Madhya Pradesh for their better organisation and development and matters connected therewith or incidental thereto. Be it enacted by the Madhya Pradesh Legislature in the Twenty-sixth year of the Republic of India as follows :-- 1. Received the assent of the President on the 18th October, 1975 assent first published in the "Madhya Pradesh Gazette (Extraordinary), dated the 29th October, 1975.

CHAPTER 1
PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called The Madhya Pradesh Ashaskiya School Viniyaman Adhiniyam, 1975.
- (2) It extends to the whole of Madhya Pradesh.
- (3) It shall come into force on such date as the State Government may, by notification, appoint and different dates may be appointed for different provisions of this Act, and any reference to the commencement of this Act in relation to any provision thereof shall be construed as a reference to the date on which that provision comes into force.

2. Definitions :-

In this Act, unless the context otherwise requires,--

- (a) "Teacher" includes the Head of a school;
- (b) "Employee" includes a teacher and every other employee working in a recognised school;
- (c) "Manager" or "Managing Committee" in relation to a school means the person or body of individuals, as the case may be, by whatever name called, who is entrusted with the management of

the affairs of the school and the expression "management of a school" shall be construed accordingly; Company the essential distinction seems to be that whereas the manager has to be subject to the superintendence, control and direction of the Board of Directors the Managing agent is not so subject. [CIT, Kerala v. Algappa Textile Cochin Ltd., AIR 1980 SC 235.]

(d) "Recognised School" means a school recognised under Section 16 or deemed to be recognised under Section 4;

(e) "Existing employee" means an employee of an existing school who is employed in such school immediately before the commencement of this Act, and includes an employee who was employed in such school for a period of not less than twelve months immediately preceding the 22nd day of April, 1974;

(f) "Existing School" means a school which is in existence at the commencement of this Act and the expression "new school" shall be construed accordingly;

(g) "School" means an Ashaskiya primary, middle, secondary and technical secondary school and includes training institution upto the secondary level and any other institution which imparts education or training below the degree level but does not include any school or institution established, administered and managed by-

(i) the Central Government; or

(ii) the State Government; or

(iii) any authority or body designated or sponsored by the Central Government or the State Government, as the State Government may, by notification specify;

(h) "Head of a school" means the principal academic officer, by whatever name called, of a recognised school;

(i) "Director" means the Director of Public Instructions and includes any other officer authorised by him to exercise all or any of the powers or to perform all or any of the functions conferred or imposed on the Director by or under this Act;

(j) Words and expressions used but not defined in this Act and defined in the Madhya Pradesh Primary Education Act, 1961 (No. 33 of 1961) or the Madhya Pradesh Madhyamik Shiksha Adhiniyam, 1965 (No. 23 of 1965), as the case may be, shall have the meaning assigned to them in the said Acts.

CHAPTER 2

ESTABLISHMENT AND RECOGNITION OF SCHOOLS

3. Power Of State Government To Regulate School Education :-

On and from the commencement of this Act, the State Government may regulate education in all the schools in the State in accordance with the provisions of this Act and the rules made thereunder.

4. Regulation Of Establishment Of New Schools, Opening Of Higher Classes In Existing Schools And Recognition Of Existing Schools :-

(1) On and from the commencement of this Act and subject to the provisions of clause (1) of Article 30 of the Constitution, the establishment of a new school or the opening of a higher class in any existing school or the closing down of a school or a class in any school in the State shall be subject to the provisions of this Act and the rules made thereunder and any school or higher class established or opened otherwise than in accordance with the provisions of this Act and the rules made thereunder shall not be recognised under this Act.

(2) On and from the commencement of this Act, all the existing schools shall be deemed to have been recognised under this Act and shall be subject to the provisions of this Act and the rules made thereunder :

Provided that where any such school does not satisfy the conditions specified in the proviso to sub-section (1) of Section 6, the appropriate authority may, by order in writing, require the management of the school to satisfy such conditions within the period specified therein which shall not be less than thirty days and on failure of the management of the school to comply with the order to the satisfaction of the appropriate authority, it may withdraw recognition from such school.

5. Appointment Of Appropriate Authorities And Appellate Authorities :-

(1) The State Government may, by notification, appoint such number of Appropriate Authorities and Appellate Authorities, as it may deem fit, to discharge the functions of the Appropriate Authority and the Appellate Authority under this Act within such area as may be specified in such notification.

(2) No person shall be appointed as Appropriate Authority unless he holds in the Education Department an office not below such rank as may be prescribed and no person shall be appointed as Appellate Authority unless he holds an office in the Education Department

higher in rank than that held by the Appropriate Authority.

6. Recognition Of Schools :-

(1) The Appropriate Authority may, on an application made to it in the prescribed form and in the prescribed manner, recognise any school or grant permission for opening of a higher class in any existing school :

Provided that no school shall be recognised unless the school:--

(a) has adequate funds to ensure its financial stability for a period of not less than three years;

(b) has a scheme of management of the school in accordance with the rules made in this behalf;

(c) has suitable and adequate accommodation and sanitary facilities having regard, among other factors, to the number, age and sex of the pupils attending it;

(d) provides for courses of study, use of books and efficient instruction as may be laid down by or under any other law for the time being in force;

(e) has teachers possessing such qualifications as may be prescribed ;

(f) has facilities as may be prescribed for physical education, library service, laboratory work, workshop practice and other curricular activities.

(2) The recognition granted under sub-section (1) shall not, by itself, entitle any school to receive aid.

(3) Every application for recognition of a school or permission of opening of a higher class in existing school shall be entertained and considered by the appropriate authority concerned and the decision thereon shall be communicated to the applicant and where recognition or permission is not granted, the reasons for not granting such recognition or permission shall also be communicated to the applicant.

(4) Where recognition to a school or a permission to open a higher class is refused, any person aggrieved by such refusal may, within thirty days from the date of communication to him, of such refusal, appeal against such refusal in the prescribed manner to the appellate authority concerned appointed under Section 6.

(5) Where the management of a school--

(a) obtains recognition or permission by fraud, misrepresentation or suppression of material particulars; or

(b) after obtaining recognition or permission fails to comply with

any of the conditions specified in the proviso to sub-section (1), the appropriate authority may--

(i) in case of (a) above after: giving the management of the school a reasonable opportunity of showing cause against the proposed action; and

(ii) in case of (b) above, after giving the management of the school a reasonable time for the compliance of the condition and after giving reasonable opportunity of showing cause against the proposed action, withdraw the recognition or permission granted under sub-section (1).

(6) The management of the school aggrieved by the order of the Appropriate Authority under the proviso to sub-section (2) of Section 5 or sub-section (4) of this Section may appeal to the Appellate Authority within such period and in such manner as may be prescribed and the Appellate Authority shall dispose of the appeal within six months from the date of presentation thereof and if the appeal is not disposed within that period the order of withdrawal of recognition or refusing permission, shall, on the expiry of the period of six months, stand cancelled.

(7) On hearing an appeal preferred under the proviso to sub-section (2) of Section 4 or sub-section (4) or sub-section (6) of this Section, the appellate authority may, after giving the appellant a reasonable opportunity of being heard and after satisfying itself as to the reasonableness of the order appealed against, confirm, modify, or reverse the order appealed against and the order of the appellate authority and subject to the order of the appellate authority in appeal, order of the appropriate authority shall be final and binding on the management of the school.

7. Aid To Recognised Schools :-

(1) The State Government may, subject to such conditions as may be prescribed, grant aid to recognised schools to such extent as it may consider necessary.

(2) Every existing school receiving, immediately before the commencement of this Act, aid shall be eligible for continuance of such aid so long as it fulfils the conditions for receiving aid prescribed under sub-section (1).

8. Prohibition Of Use Of Word "School" In Certain Cases :-

(1) No school other than a recognised school or new school awaiting recognition in accordance with the provisions of this Act shall have

the word "school" or its equivalent in any Indian Language as a part of its name.

(2) No person shall use or cause to be used the word "school" in contravention of sub-section (1).

CHAPTER 3

TERMS AND CONDITIONS OF SERVICE OF EMPLOYEES

9. Terms And Conditions Of Service Of Employees :-

(1) The State Government may make rules regulating the minimum qualifications for recruitment and the conditions of service of employees of recognised schools:

Provided that neither the salary nor the rights in respect of leave of absence and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantages of such employees :

Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.

(2) No existing employee or employee of a recognised school shall be dismissed, removed or reduced in rank nor shall his services be otherwise terminated save in accordance with the rules made in this behalf.

(3) Any existing employee or employee of a recognised school who is dismissed, removed or reduced in rank may within thirty days from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under Section 11.

(4) If an existing employee or employee who is placed under suspension, continues to be so for more than three months he may make an application for revision to the Director. After giving opportunity of being heard to the parties concerned, the Director shall pass such orders thereon as he may deem fit.

(5) Notwithstanding anything contained in sub-section (2), sub-section (3) or sub-section (4), the provisions of these sub-sections shall not apply to the employees of schools established and administered by local bodies.

10. Employees Governed By Code Of Conduct :-

Every employee of a recognised school shall be governed by such code of conduct as may be prescribed and on violation of any provision of such code of conduct, the employee shall be liable to

such disciplinary action as may be prescribed :

Provided that where employees of schools established and administered by local bodies are governed by conduct rules framed by that local body, it shall not be necessary to frame a separate code of conduct.

11. Tribunals :-

(1) The State Government may, by notification, constitute such number of Tribunals as it may deem fit for such area as may be specified in the notification.

(2) The Tribunal constituted under sub-section (1) shall be known as the School Tribunal of the area for which it is constituted.

(3) The Tribunal shall consist of a single person who shall be the Presiding Officer of the Tribunal.

(4) The qualifications, term of office and conditions of service of the Presiding Officer of the Tribunal shall be such as may be prescribed.

(5) If any vacancy, other than a temporary absence, occurs in the office of the Presiding Officer of the Tribunal, the State Government shall appoint any person, in accordance with the provisions of this Section and the rules made thereunder, to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(6) The State Government shall make available to the Tribunal such staff as may be necessary in the discharge of its functions under this Act.

(7) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of the State.

(8) The Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sittings.

(9) The Tribunal shall for the purpose of an appeal preferred under this Act have the same powers as are vested in a Court of appeal by the Code of Civil Procedure, 1908 (No. V of 1908), and shall also have the power to stay the operation of the order appealed against on such terms as it may think fit.

CHAPTER 4

SUPERSESSION OF THE MANAGEMENT OF RECOGNISED SCHOOLS

12. Supersession Of Management Of Recognised School :-

(1) Whenever the State Government is satisfied that the managing committee or manager of any recognised school, has neglected to

perform any of the duties imposed on it/him by or under this Act or any rule made thereunder and that it is expedient in the interest of school education to take over the management of such school, it may, after giving the managing committee or the manager of such school, a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding three years :

Provided that where the management of the school has been taken over for a period less than the said period of three years, the State Government may, if it is of opinion that in order to secure proper management of the school, it is expedient that such management should continue to be in force after the expiry of the said limited period, it may, from time to time, issue directions for the continuance of such management for such period as it may think fit, so, however, that the total period for which such management is taken over shall not, in any case, exceed three years.

(2) Wherever the management of any recognised school is taken over under sub-section (1), every person in charge of the management in such school immediately before its management is taken over, shall deliver possession of the school property to the State Government or any officer authorised by it in this behalf.

(3) After taking over the management of any recognised school under this Section, the State Government may arrange to manage the school through the Director or any other person authorised for the Director in this behalf (hereinafter referred to as the "authorised officer").

(4) Where the management of the school has been taken over under this Section, the State Government shall pay such rent as may be payable for the building of the school to the person entitled to receive it as was being paid by the Managing Committee or the manager immediately before the management of such school was taken over.

13. Consequences Of Taking Over Of Management Under Section 12 :-

(1) Where the management of any school has been taken over under sub-section (1) of Section 12 the managing committee or manager of such school may, within three months from the date of delivery of the possession of the school property under sub-section (2) of Section 12, make an application to the State Government for review and the State Government may after considering the

representation made by the managing committee or the Manager, pass such orders including an order for the restoration of the management or for the reduction of the period during which the management of such school shall remain vested in the authorised officer as it may deem fit.

(2) During such period as any school remains under the management of the authorised officer--

(a) the service conditions of the employees of the school who were in employment immediately before the date on which the management was taken over shall not be adversely affected;

(b) all educational facilities which the school had been affording immediately before such management was taken over, shall continue to be afforded;

(c) the school fund and any other fund shall continue to be available to the authorised officer for being spent for the purpose of the school; and

(d) no resolution passed at any meeting of the managing committee of such school shall be given effect to unless approved by the authorised officer.

14. Restoration Of Management Of School And Property Thereof :-

On the expiry of the period for which the management of the recognised school was taken over under sub-section (1) of Section 12, the State Government shall, or at any time before the expiry of such period may handover the management of such school to the managing committee or manager, as the case may be, and restore the possession of the property as far as possible in as good conditions as it was when possession thereof was taken subject only to the changes caused by the reasonable wear and tear to the managing committee or manager who on the date of taking possession was in lawful possession of the property and where there is no managing committee or manager, or the managing committee or manager, as the case may be, refuses to take over the management of such school and possession of the property, the State Government may make such alternative arrangement for the management of such school or close down such school as it may, in the circumstance, thinks fit and in case of closure the property shall be utilised for the purposes for which such school was established.

15. Provisions Of Section 12 Not To Apply To Minority School :-

Nothing contained in Section 12 shall apply to any minority school.
Explanation.-- In this Section "minority school" means a school established and administered by a minority having the right to do so under clause (1) of Article 30 of the Constitution.

CHAPTER 5

MISCELLANEOUS

16. Inspection Of Schools :-

- (1) The Director may inspect any school in such manner as may be prescribed.
- (2) The Director may arrange special inspection of any school on such aspects of its working as may, from time to time, be considered necessary by him.
- (3) The Director may give directions to the Managing Committee or Manager requiring to rectify any defect or deficiency found at the time of inspection or otherwise in the working of the school.
- (4) If the Managing Committee or Manager fails to comply with any direction given under sub-section (3), the Director may, after considering the explanation or report, if any, given or made by the Managing Committee or Manager, take such action as he may think fit.

17. School Fund :-

- (1) In every recognised school there shall be a fund to be called the "School Fund" and there shall be credited thereto--
 - (a) any aid granted by the State Government;
 - (b) income accruing to the school by way of fees, charges or other payments; and
 - (c) any other contributions, endowments and the like received by the school.
- (2) The School Fund and all other funds (including the pupils fund) established with the approval of the Director shall be accounted for and operated upon in accordance with the rules made under this Act.
- (3) The Managing Committee of every recognised school shall file every year with the Director such duly audited financial and other returns as may be prescribed and every such returns shall be audited by such authority as may be prescribed.

18. Public Examinations To Which Students Presented :-

(1) For the purpose of any public examination every recognised secondary school shall be affiliated to the Board of Secondary Education, Madhya Pradesh and shall fulfil the conditions specified by the Board in this behalf :

Provided that the State Government may, by special order, exempt any recognised secondary school from the provisions of this sub-section.

(2) The students of recognised secondary schools shall be prepared for, and presented to the public examination or such other form of evaluation held or made for the students of such schools.

(3) The students of every recognised primary and middle school shall be prepared for and presented to such public examination as may be held by the Director or the authorities empowered by the Director for the students of such schools.

19. Bar Of Jurisdiction Of Civil Court :-

No Civil Court shall have jurisdiction in respect of any matter in relation to which the State Government or the Director or any other person authorised by the State Government or Director or any other officer or authority appointed or specified by or under this Act, is empowered by or under this Act to exercise any power, and no injunction shall be granted by any civil Court in respect of anything which is done or intended to be done by or under this Act.

20. Indemnity :-

No suit, prosecution or other legal proceedings shall lie against the State Government, Director or any other person authorised by the State Government or Director for anything done or intended to be done in good faith in pursuance of this Act or any rules made thereunder.

21. Penalties :-

Whoever--

(a) omits or fails, without any reasonable excuse, to carry out any orders made by the Tribunal; or

(b) presents any student for any public examination without complying with the provisions of Section 18; or

(c) omits or fails to deliver any school property to the State Government or any officer, authorised by it under sub-section (2)

of Section 12; or

(d) in contravention of Section 8 uses the term "School" or its equivalent in any Indian Language in relation to such institution; or

(e) commits any breach of any rule framed under this Act;

shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 1,000 or with both.

22. Delegation Of Powers :-

The State Government may, by order, delegate any of its powers and duties under this Act, except the power to make rules, to any officer subordinate to it not below the rank of Director.

23. Power To Make Rules :-

(1) The State Government may, subject to the condition of previous publication make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the manner in which education may be regulated by the State Government ;

(b) the conditions which every existing school shall be required to comply with ;

(c) establishment of a new school or the opening of a higher class in an existing school, or the closing down of a school or an existing class in any existing school;

(d) the form and manner in which an application for recognition of a school shall be made;

(e) the facilities to be provided by a school to obtain recognition;

(f) the manner in which an appeal against the refusal or withdrawal of recognition shall be made;

(g) the conditions under which aid may be granted to recognised schools and on the violation of which aid may be stopped, reduced or suspended;

(h) the minimum qualifications for, and method of recruitment and the terms and conditions of service of employees;

(i) the code of conduct for the employees and the disciplinary action to be taken for the violation thereof;

(j) the manner of inspection of recognised schools;

(k) financial and other returns to be filed by the Managing

Committee of recognised schools and the authority by which such returns shall be audited;

(l) manner of accounting and operation of school fund and other funds of a recognised school;

(m) fees and other charges which may be collected by a recognised school;

(n) the particulars of property of the Society earmarked for the school which shall be furnished to the appropriate authority at such intervals as may be indicated by that authority;

(o) fees, not exceeding Rs. 10 for preferring an appeal under this Act;

(p) any other matter which is to be, or may be, prescribed under this Act.

(3) All rules made under this Section shall be laid on the table of the Legislative Assembly.

24. Power To Remove Difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order not inconsistent with the provisions of this Act, remove the difficulty :

Provided that no such order shall be made after the expiry of period of two years from the commencement of this Act.