

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

WRIT PETITION NO. 1685 OF 2020

- | | |
|-----------------------------------|----|
| 1. Smt. Archana Suryakant Patil @ | 5 |
| Archana Gajanan Patil | |
| Aged 37 Years, Occ. Nil, | |
| R/o Gurav Guruji House, | |
| Dattanagar, Palus, Dist. Sangli | |
| ... Petitioner | 10 |

VERSUS

- | | |
|-----------------------------------|----|
| 1. Palus Shikshan Prasarak Mandal | |
| Palus, Dist. Sangli, Through | 15 |
| its Chairman/Secretary. | |
| 2. L.K. Vidyamandir & Junir | |
| College, Palus, Dist. Sangli, | |
| Through its Head Master. | 20 |
| 3. The Education Officer | |
| [Secondary], Zilla Parishad, | |
| Sangli. | |
| Respondents | 25 |

Mr. Vinayak Kumbhar for Petitioner.

Mr. S.D. Rayarikar, A.G.P. for the Respondent – State

Mr. Chetan G. Patil for Respondent Nos.1 & 2.

ARUN
RAMCHANDRA
SANKPAL

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CORAM : AVINASH G. GHAROTE, J. 30

JUDGMENT RESERVED ON : 5th JULY 2024.

JUDGMENT PRONOUNCED ON : 2nd AUGUST 2024

JUDGMENT:

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1. The petition questions the judgment dated 24.10.2019 passed by the learned School Tribunal, Kolhapur in Appeal No. 65 of 2014 (page 92), under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (“MEPS Act”), challenging the order of otherwise termination 40 dated 01.08.2014 by the respondent Nos. 1 and 2, seeking to set it aside and reinstatement with all consequential benefits including back-wages and seniority, which Appeal has been dismissed by the above said impugned judgment.

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2. The facts leading to the present petition are as under:

2.1 By an advertisement dated 12.03.2011 (page 36) published in daily ‘Lokmat’, the post of ‘assistant teacher (shikshan sevak) was advertised with the respondent No.2 along with various other 50 posts. The advertisement indicates that the post was not reserved for any reserved category but was an open post, and carried an honararium of Rs.4000/-.

2.2 The petitioner is claimed to have appeared in the interview, 55 on 16.03.2011, in pursuance to the aforesaid advertisement, and

by communication dated 17.03.2011 was intimated about her selection and asked to join within 15 days (page 37).

2.3 The petitioner was issued an appointment order, bearing outward No. 171/2011-12, dated 28.03.2011, appointing her as a shikshan sevak in the secondary school (page 38). The appointment order indicated that her appointment was on a honararium of Rs. 4000/- per month and for the duration of 13.06.2011 to 12.06.2014. It also indicated, that the petitioner would not be entitled, to emoluments, equal to the regularly appointed employees. The appointment order also enumerated that the engagement of the petitioner for the period of three years would be considered, for being appointed on a regular post.

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2.4 The engagement of the petitioner, as an assistant teacher (shikshan sevak) however, was not approved by the Education Officer on the ground that, the post was not sanctioned which is reflected from the communication dated 15.09.2011 (page 42).

2.5 In an appeal filed by the petitioner under Section 9 of the MEPS Act, the learned School Tribunal by the impugned

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judgment dated 24.10.2019 has dismissed the same, by holding that the petitioner was never appointed as a full time shikshan-sevika on a permanent vacant post (page 99), being aggrieved by which the present petition has been filed. 80

3. Mr. Vinayak Kumbhar for the petitioner, submits that, the appointment of the petitioner was on probation for a period of three years, as would be indicated from the order of appointment dated 28.03.2011 for duration from 13.6.2011 to 12.6.2014. That 85 the appointment was on an existing vacancy for the aforesaid duration, according to him, is further demonstrated from the advertisement at page 36, dated 12.03.2011, which indicated that the post was for open category. He therefore submits, any subsequent reduction in the sanctioned strength when the work 90 load was available, would not inure to the benefit of the management as in view of the Government Resolution dated 27.06.2016, the petitioner ought to have been declared surplus.

4. Mr Chetan G. Patil, learned counsel for respondent Nos. 1 95 and 2 however, opposes this contention and submits that the appointment of the petitioner was not as a full-time teacher, but

as a part-time teacher only for the period 13.06.2011 to 30.04.2012, for which he invites my attention to the appointment order dated 28.03.2011 (page 43). He therefore submits, that 100 since the appointment was not on a probation, and approval was denied by the Education Officer by his order dated 15.09.2011, which was never challenged, the petitioner cannot claim the benefit of the Government Resolution dated 27.06.2016 to claim that she should have been declared as surplus. 105

5. Though reliance has been placed by the learned counsel for the petitioner on the appointment order dated 28.03.2011 (page 38) outward No 171/2011-12, there is yet another appointment order of the petitioner, of the same date i.e., 28.03.2011, under 110 the same outward No. 171/2011-2012, which indicates the appointment of the petitioner as a part-time teacher for the duration 13.6.2011 to 30.4.2012 on the monthly honararium of Rs. 2000 per month (page 43), the rest of the things being identical to the appointment order at page 38. 115

6. The communication dated 06.08.2014, issued by the

petitioner (page 45) however, reflects that it is the appointment order at page 43, which appointed her as a part-time teacher for the duration 13.6.2011 to 30.04.2012, which was accepted by the petitioner, as it acknowledges that she had worked with respondent No. 2 college, as a part-time teacher for the duration 13.6.2011 to 30.4.2012 and since 1.8.2014, she was being asked not to report for duty. 120

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7. The learned counsel for the respondent Nos. 1 & 2, further invites my attention to an undertaking given by the petitioner on 28.3.2011 itself (page 3 of the compilation filed by the respondents), under which, the petitioner acknowledges, that her appointment was a temporary appointment on part-time basis which is also in consonance what is stated in her communication dated 06.08.2014 (page 45) as indicated above. It is therefore apparent that the petitioner, was never appointed, on a sanctioned post on probation, which would be the requirement to consider her to be declared as surplus, even if it is presumed that the post was available for academic session 2010-2011. 130 135

8. The very fact that there are two different appointment

orders in respect of the petitioner, (pages 38 and 43), itself is a situation, which creates a shadow, upon the appointment of the petitioner. As the petitioner, by her communication dated 06.08.2014 (page 45) has accepted that her appointment was as a part-time shikshan sevak for the duration 13.06.2011 to 30.04.2012, the order of appointment of the same date and same outward number (page 38) for a different duration and having a different connotation regarding the tenure of appointment, also leaves much to be said.

9. Since by the communication dated 06.08.2014 (page 45), the petitioner has accepted that her appointment was on a part-time basis, for a duration of one academic session, the plea of being appointed as a full time shikshan sevika on a permanent vacant post has rightly been rejected by the learned School Tribunal.

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10. Though reliance has been placed by the learned counsel for the petitioner on *Nagapur Shiksan Mandal And Anr Vs Varsha Vinod Sayam And Anr 2014 (5) Mh.L.J. 550*, that was a case where the teacher was appointed on probation, though on part-

time basis, and was held to have completed the three years 160
probation period satisfactorily and was continued for a period of
9 years, in which situation she was held to be entitled to the
relief, considering which the same is of no assistance to the plea
of the learned counsel for the petitioner.

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11. The Government Resolution dated 27.06.2016, in view of
the above discussion thus would have no applicability.

12. I therefore do not see any reason to interfere with the
impugned judgment passed by the learned School Tribunal. The 170
petition is therefore without any merit and it is dismissed. No
costs.

(AVINASH G. GHAROTE, J.)