



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1619 OF 2003

Shri Bankatswami Shikshan Sanstha
Khadkighat, Taluka and District – Beed,
Through its Secretary

.. Petitioner

Versus

1] Dinkar S/o Govindrao Maske,
Age 37 years, Occ. Service,
R/o. Gawalwadi, Post. Palwan,
Taluka and District Beed

2] The Principal,
Shri Bankatswami Mahavidyalaya,
Beed

3] The Deputy Director of Vocational
Education and Training,
Bhadkalgate, Aurangabad

.. Respondents

...
Advocate for the petitioner : Mr. S.R. Barlinge
Advocate for the respondent no. 1 : Mr. K.G. salunke
Respondent no. 2 served - absent
AGP for respondent no. 3 – State : Mr. K.B. Jadhavar
...

CORAM : SACHIN S. DESHMUKH, J.

RESERVED ON : 21 NOVEMBER 2025
PRONOUNCED ON : 28 NOVEMBER 2025

JUDGMENT :

This petition was admitted by this Court on 04.06.2003.
While admitting the petition, interim relief was granted and the order of
the School Tribunal dated 11.03.2003 directing reinstatement was
stayed. As such, the order of reinstatement could not be implemented.

2. The petitioner has put forth the following prayers :-

- “(A) By a Writ of Certiorari or any other appropriate Writ, Order or directions in the like nature, the impugned judgment and order dated 11.3.2003 passed by the learned Presiding Officer, School Tribunal, Aurangabad in Appeal No. 10 of 2002 may kindly be quashed and set aside.*
- (B) The Record and Proceedings in Appeal No. 10 of 2002 may kindly be called for from the office of the Presiding Officer, School Tribunal, Aurangabad.*
- (C) Pending hearing and final disposal of this Writ Petition, the operation and execution of the impugned judgment and order dated 11.3.2003 passed by the learned Presiding Officer, School Tribunal, Aurangabad in Appeal No. 10 of 2002, may kindly be stayed.*
- (D) Grant ad-interim relief in terms of prayer clause (C) above;*
- (E) Any other relief to which the petitioner is found entitled to may please be granted.”*

3. The petitioner - management, raising an exception to the order of the School Tribunal, allowing the Appeal presented by the respondent - employee, setting aside the order of termination dated 01.01.2002 along with the backwages, has filed this petition.

4. The respondent – employee, having enrolled with the Employment Exchange, was recommended for the appointment with the petitioner - management for the post of Full Time Teacher in subject - Accounting and Auditing which was vacant. After being interviewed by the petitioner and having found suitable and eligible, the candidature of employee was considered by the petitioner. Initially, the appointment order of 10.02.1997 was issued in favour of the respondent and

approval to the same was also accorded by the office of the Deputy Director, Vocational Education and Training, Aurangabad.

5. Preceded by the initial appointment order, the order of continuous service was also issued for the subsequent academic year 1998-99 with only stipulation that same shall be approved by the competent authority. Eventually, the approval was also accorded by the competent authority till the academic year 2001.

6. Having rendered the services from the initial date of appointment and eventually, approval by the competent authority, the management terminated the services of the respondent - employee without assigning reasons, amounting to termination *de hors* the statutory protections.

7. Resultantly, the respondent - employee approached to the School Tribunal by presenting an Appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for short "**the M.E.P.S. Act**") and Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short "**the M.E.P.S. Rules**"), seeking reinstatement with full backwages, the employee enrolled the name with the Employment Exchange Office in the year 1996.

8. On account of the vacancy of Full Time Teacher in Accounting and Auditing, the respondent - employee received a call from the Employment Exchange. Having appeared for the interview, the respondent - employee was selected for the post of Full Time Teacher in the aforesaid subject. The services of the respondent - employee were approved by the competent authority and the same was continued for the subsequent year, as such, the employee has attained the status of permanency by virtue of section 5(2) of the M.E.P.S. Act.

9. Although, the appeal was presented in 2002, the petitioner - management having appeared before the School Tribunal, however, filed its written statement before the Tribunal on 09.01.2003, wherein a reference is made to the order of this Court passed in writ petition no. 1247 of 1996, attempting to contend that the appointment of the respondent - employee was not against a permanent vacancy. The employment was confined to one academic year and employee was wrongly continued in service without there being vacancy. The initial appointment order of the respondent – employee, is *ab initio* illegal, as such, cannot claim the right to the post when the post was occupied by another person, namely, Sunil Laxmanrao Kadam, who was reinstated pursuant to the order of this Court dated 13.08.2002 passed in writ petition no. 1247 of 1996.

10. The School Tribunal, considering the fact that the employee is duly qualified, further observed that the appointment order does not contain any stipulation, as is asserted by the petitioner - management that it was against a post occupied by aforesaid Sunil Laxmanrao Kadam. In absence of any stipulation and while allowing the appeal, the School Tribunal considered the length of the service rendered by the employee which confers the statutory protection those are available by virtue of the length of service so rendered by the employee, as such, the termination with effect from 01.01.2002 was held to be illegal and unsustainable and eventually, allowed the Appeal, setting aside the otherwise termination directing, reinstatement of the employee with the backwages. Eventually, the School Tribunal rejected the contentions of petitioner holding that the appointment order contained no such stipulation and the approval granted was continuous.

11. The order of the School Tribunal is subject matter of challenge in the present petition.

12. It is the contention of learned counsel for the petitioner - management - Mr. Barlinge, that the order of appointment of the respondent – employee, is confined to one academic year. Although, the approval was accorded to the said appointment, however, that by itself does not entail the respondent – employee, to claim the benefits of permanency. The only mistake can be attributed to the petitioner – management, is absence of stipulation in the appointment order that it

was against a permanent vacancy and the same would be subject matter of outcome of the litigation prosecuted by the other employee, namely, Sunil Laxmanrao Kadam.

13. In support of submissions, Mr. Barlinge has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Hindustan Education Society and another Vs. Sk. Kaleem sk. Gulam Nabi and others; AIR 1997 SC 2126*** and on the judgment of Co-ordinate Bench of this Court dated 29.04.2019 passed in writ petition no. 3114 of 1999 (***Shri Marutrao Ghule Patil and another Vs. Shri Ashok Raghunath Gadakh and others***), however, fairly concedes that if at all the backwages are to be awarded, those are to be awarded for period of one year only, as is contemplated under section 11 of the M.E.P.S. Act and not beyond same.

14. Per contra, Mr. Salunke, learned counsel for the respondent no. 1 - employee has supported the judgment rendered by the Tribunal. It is submitted that the School Tribunal is justified in allowing the Appeal presented by the respondent - employee the appointment order does not indicate any stipulation in relation to the period, as such, it cannot be confined to one academic year. On the contrary, an attempt is made to read the appointment order partially and not in its entirety. The appointment reads "your appointment is on probation for a period of two years." and the same is also admitted in

written statement. As such, it is not open for the petitioner to contend that the appointment is for one year. The name of the employee was recommended by the Employment Exchange. It is thereafter the employee was interviewed and selected by the petitioner, as such, it is not open for the petitioner – management to contend that appointment is for one year and not on probation and same does not warrant any consideration.

15. In the precess, reliance is placed on the judgment of the Hon'ble Apex Court in the case of ***Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (Judgment dated 12.08.2013 in Civil Appeal No. 6767 of 203)***, judgment of this Court in ***Satish Balkrishna Mule V. M.V. Chaskadbi, Chairman, Shri Samarth Vidya Prasarak Mandal*** reported in ***1998 DGLS (Bom.) 14*** and judgment of Co-ordinate Bench of this Court in case of ***Shramik Shikshan Mandal and another Vs. State of Maharashtra and others*** reported in ***2017 DGLS (Bom.) 612***.

16. Having heard the respective counsel for the litigating slides, I have perused the record.

17. Admittedly, the respondent - employee possesses the qualification and was enrolled with the Employment Exchange. Owing to such registration, the candidature of respondent - employee was referred by the Employment Exchange. Thereafter, the employee was

interviewed by the petitioner and, having found suitable and eligible, was appointed as a Full Time Teacher in the subject - Accounting and Auditing which culminated into the issuance of the appointment order dated 10.02.1997.

18. The appointment order indicates that the order was for a period of two year on probation. The appointment was approved by the competent authority. Preceded by the initial approval, even subsequent approvals are accorded by the competent authority. Respondent - employee having rendered the services from initial date of appointment i.e. 10.02.1997 till the date of termination. During this period, the employee attained the status of permanent teacher by virtue of operation of section 5(2) of the MEPS Act which is a self-operative statutory provision.

19. Once the employee attains the status of a permanent teacher, statutory protections are available, cannot be rendered redundant. Since Rules 35 to 37 of the M.E.P.S. Rules provides the mode of imposing penalty and conducting necessary enquiry and admittedly, no such measure was adopted by the petitioner – management before terminating the services and the services of the respondent – employee were terminated in a surreptitious and unlawful manner.

20. Although, it is a matter of record that Appeal was presented by the employee in the year 2002, the petitioner consciously chosen not to present its written statement and it is only after the order of this Court in writ petition no. 1247 of 1996, the written statement is presented on 09.01.2003, with a plea that in the light of the order of this Court in writ petition, the services of the respondent - employee are terminated.

21. It is further attempted to contend that the post in question was subject matter of adjudication in pending writ petition before this Court, "the employee could not have been appointed on probation" as the vacancy itself was not a permanent vacancy. Having already submitted that the respondent – employee was appointed on probation, in written statement, the subsequent attempt to dispute that the respondent – employee was never ever appointed on probation and the appointment orders were issued for academic year and year to year basis, is contrary to the record, as such, does not warrant any consideration and is liable to be rejected.

22. The further attempt of the petitioners, to submit that appointment was made against the vacancy which was the subject matter of litigation before this Court, also does not warrant consideration as the same plea is put forth in absence of any stipulation in the appointment order itself and nonetheless same is an afterthought. The appointment order will have to be read as it stands.

23. Admittedly, there is no stipulation, in the appointment order. Therefore, the plea put forth by the petitioner – management that it was the appointment order subject to outcome of aforesaid litigation, deserves no consideration and is liable to be rejected.

24. With regard to the entitlement of the employee for backwages is concerned, same has to be assessed from the perspective that the employee was 36 years old at the time of illegal termination, having rendered service for more than 4 years. Employee was appointed against permanent vacancy and was on probation and as such, entitled for the permanency by virtue of operation of sub-section (2) of section 5 of the MEPS Act.

25. The School Tribunal having considered the termination as illegal, directed the reinstatement with backages. This decision must be considered in the light of the principles laid down by the Hon'ble Apex Court in case of ***Hindustan Tin Works Private Limited V. Employees of Hindustan Tin Works Private Limited reported in (1979) 2 SCC 80***, wherein the Hon'ble Apex Court has held that once the termination of service found to be invalid, the workman is deemed to be in service.

26. The relief of reinstatement with continuity of service is normally granted, where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the employee contrary to the relevant law or in breach of statutory

protections and, simultaneously, deprived the employee of earnings. When the employer is found to be at fault, resulting which the employee is directed to be reinstated, the employer could not shirk / evade responsibility of paying the wages which the workman has been deprived of by such illegal or invalid action of the employer.

27. It has been further observed by the Hon'ble Apex Court that there cannot be a straight-jacket formula for awarding relief of backwages. All relevant considerations must be taken into account. More or less, it would be a motion addressed to the discretion of the Tribunal. "Full backwages would be the normal rule" and the party objecting to it must establish the circumstances warranting departure from the rule.

28. Admittedly, as stated herein-above, the employee was appointed at the age of 31 years, considering the qualification possessed by him and had enrollment with the Employment Exchange. The employee was subjected to interview. Having found eligible and suitable, eventually appointment order on probation was issued which is admitted by the petitioner in its written statement before the School Tribunal. Once issuance of appointment order on probation is accepted by the petitioner – management, it cannot retract or claim that appointment was on year to year basis. As such, the reliance placed by learned counsel for the petitioners Mr. Barlinge in the case of ***Hindustan Education Society*** (supra) so also judgment in writ petition

no. 3114 of 1999 rendered by a Co-ordinate Bench of this Court, do not lend any support.

29. The payment of backwages involves a discretionary element, it has to be dealt with, in the facts and circumstances of each case, as has been observed by the Hon'ble Apex Court in case of ***Hindustan Tin Works Private Limited*** (supra), that there exists a statutory sanction to direct payment of backwages in its entirety.

30. A co-ordinate Bench of this Court in ***Shramik Shikshan Mandal and another*** (supra), considered the statutory provision in the shape of section 11(2)(f) of the MEPS Act which empowers the Court to grant other reliefs in lieu of reinstatement.

31. Since the respondent - employee has now attained the age of superannuation, the judgment which is impugned in the present petition, to the extent of grant of reinstatement, is hereby modified.

32. In view of the judgment of the Hon'ble Supreme Court in ***Hindustan Tin Works Private Limited*** (supra), and considering the protracted litigation and the hardships of such trials and tribulations are not confined to the employee but his family members also suffered due to same in the present case, therefore, I am of the considered opinion that the respondent - employee is entitled for grant of 50% backwages till the age of retirement.

33. In the light of aforesaid facts and circumstances, I pass the following order :

ORDER

- I] The writ petition is partly allowed.
- II] The respondent - employee shall be entitled to the continuity of service with all retiral benefits till the age of superannuation along with 50% backwages, those shall be computed till the age of superannuation on the basis of the gross salary payable as per the applicable pay scale prevailing from time to time.
- III] The petitioner – management shall, therefore, calculate the backwages of the respondent – employee and ensure payment of the said amounts from the funds of the management within a period of 12 (twelve) weeks from today, failing which the same would entail interest at the rate of 6% per annum from the date of the impugned judgment of the Tribunal.
- IV] Proposal for retiral benefits shall be forwarded by the petitioner – management within eight weeks from today.
- V] Considering the fact that the employee was eligible, duly qualified and recommended by the Employment Exchange and was appointed on probation, completed the probation period and even thereafter continued rendering services and plea now raised by the

petitioner, is an afterthought and devoid of merit. Termination being patently illegal, cost will have to be mulcted upon the petitioners. Accordingly, petitioners shall pay cost of Rs.10,000/- (Rs. Ten Thousand) towards the cost of litigation to the respondent.

VI] Rule is made absolute in aforesaid terms.

[SACHIN S. DESHMUKH]
JUDGE

arp/