



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2206 OF 2007

1. The Head Master,
Varpudkar High School,
Wakhari, Taluka Basmat,
District Hingoli
2. The President,
Shri. Hatkeshwar Gramin Shikshan
Prasarak Mandal, Karanjala,
C/o. Narayana Hospital,
Behind B & C Rest House,
Basmat, Taluka Basmat,
District Hingoli

.. Petitioners
(original respondents
No.2 and 4)

Versus

1. Madhavrao Sakharam Kale,
Age 32 years, Occu. Service,
R/o.C/o. P. M. Swamy,
Bahirjinagar, Basmat,
Taluka Basmat, District Hingoli
2. Shri Hatkeshwar Gramin Shikshan
Prasarak Mandal Karanjala,
Through its Secretary
Shri Yellapa Tukaram Mitkar,
Age 36 years, Occu. Service,
R/o. C/o. Ahilyadevi Holkar Girls School,
Basmat, Taluka Basmat, District Hingoli
3. The Education Officer (Secondary)
Zilla Parishad, Hingoli

.. Respondents
(No.1 original appellant and
No.2 and 3 are original
respondents No.1 and 3)

Mr. V. G. Sakolkar, Advocate for Petitioners;
Mr. R. R. Deshpande, Advocate h/f. Ms. Priyanka R. Deshpande,
Advocate for Respondent No.1;
Mr. B. V. Virdhe, AGP for Respondent No.3

CORAM : SACHIN S. DESHMUKH, J.

DATE : 18-08-2026

JUDGMENT:-

1. The petitioners have raised a challenge to the judgment and order dated 08.03.2007 passed by the learned Presiding Officer, School Tribunal, Latur Region, Latur in Appeal No.86 of 2006, allowing the appeal preferred by respondent No.1 and the petitioners were directed to reinstate him on the post of Junior Clerk with back wages and consequential benefits.

2. Respondent No.1 claims to have been appointed as a Junior Clerk in Varpudkar High School, Wakhari, Taluka Basmat, District Hingoli, pursuant to an appointment order dated 20.06.1995, and joined the said post on 26.06.1995 and continued to work as a Junior Clerk thereafter. As per the respondent no. 1, when the school was to receive grant-in-aid, the management sought to create a record in favour of one Udhav Randale, stated to be the brother of the President of the Trust, and that upon his approaching the Education Officer with grievance, was served with an order dated 04.11.2003 terminating his services retrospectively with effect from 03.08.2003.

3. Being dissatisfied with the same, Respondent no. 1, preferred an appeal before the School Tribunal challenging the termination. The Petitioners, on the other hand, disputed the very appointment of Respondent No.1 and contended that the

documents relied upon by him were false and fabricated, that there was no sanctioned vacant post of Junior Clerk, that the only sanctioned post was already occupied by another employee, and that the alleged appointment had neither been issued by the competent authority nor approved by the Education Officer. The learned School Tribunal, however, accepted the case of respondent No.1, allowed appeal and directed his reinstatement with back wages and consequential benefits. Aggrieved thereby, the petitioners have approached this Court by filing the present petition.

4. The learned Counsel for the Petitioners submits that the impugned judgment is unsustainable as the learned Tribunal failed to appreciate that Respondent No.1 was never validly appointed against any sanctioned vacant post of Junior Clerk. It is submitted that there was only one sanctioned post of Junior Clerk in the school, which was already occupied by some other person, whose appointment had been approved by the Education Officer. There was no advertisement, no sanctioned vacant post, no valid appointment order issued by the competent authority and no approval of the Education Officer in respect of respondent No.1.

5. The learned counsel for the petitioners further submits that the documents relied upon by Respondent No.1 were disputed as false and fabricated, yet the learned Tribunal failed to properly

consider the objections raised by the Petitioners and erroneously shifted the burden upon the management. The Secretary of the Managing Committee had no authority to issue the alleged appointment order, in view of the resolution dated 22.10.1994 conferring the power of appointment upon the President of the management. Mere alleged continuation in service for more than two years could not confer deemed permanency upon Respondent No.1 in the absence of a valid appointment against a sanctioned permanent vacancy. Accordingly, prayed to allow the petition.

6. The learned counsel for respondent no. 1 has supported the order under challenge and relied upon its findings, thereby praying to dismiss the petition.

7. Having heard the learned counsel for the litigating sides and perusal of the record and proceedings, the following question arises for consideration:

“Whether the learned School Tribunal was justified in allowing the appeal and directing reinstatement of Respondent No.1 with back wages and consequential benefits?”

8. The petitioners contend that respondent No.1 was never validly appointed against a sanctioned vacant post of Junior Clerk and specifically argued before the learned Tribunal that the only sanctioned Junior Clerk post was already occupied by some other person to which already accorded approval by the Education

Officer, while further disputing the Secretary's authority to issue the appointment order and noting that Respondent No.1's appointment for want of a sanctioned vacancy and approval. However, the learned Tribunal principally proceeded on the basis of the 20.06.1995 appointment order and subsequent documents indicating respondent No.1 working as a Junior Clerk, holding that evidence, coupled with over two years of continuous service, granted Respondent No.1 the status of deemed permanency.

9. In my considered opinion, the approach of the learned Tribunal overlooks the foundational question as to whether the initial appointment of Respondent No.1 itself satisfied the statutory requirements governing appointment to a post in a private school. The mere existence of an appointment order, or subsequent documents describing a person as an employee, cannot by itself conclude the question whether the appointment was made against a sanctioned vacant post and by the competent authority in accordance with the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder.

10. The question of deemed permanency necessarily arises only after the employee establishes a valid appointment falling within the statutory scheme. Mere continuation in service for a period of two years cannot, by itself, cure an appointment which was not

made against a sanctioned permanent vacancy or which was otherwise contrary to the statutory requirements. The learned Tribunal was, therefore, required to first determine whether there existed a sanctioned vacant post of Junior Clerk against which respondent No.1 could have been appointed and whether the alleged appointment was made by the competent authority in accordance with the prescribed procedure.

11. The legal position in this regard is no longer *res integra*. In ***Rayat Shikshan Sanstha and another versus Yeshwant Dattatraya Shinde, 2009 (6) Mh.L.J. 476***, this Court held that the burden of establishing that the appointment was made on a clear and permanent post and in accordance with the procedure prescribed under the MEPS Act and Rules is upon the employee claiming the benefit of such appointment. The Court interfered with the order of the School Tribunal where the Tribunal had inferred the existence of a clear and permanent vacancy without sufficient material.

12. In view of the aforesaid precedent, it was incumbent upon the respondent no.1 to prove that appointment was against a sanctioned permanent vacancy and whether the appointment was made in accordance with the procedure prescribed under the MEPS Act and Rules. The documents relied upon by respondent No.1, by itself cannot establish that his initial appointment was made

against a sanctioned permanent vacancy and in accordance with the statutory procedure.

13. Equally, the finding of deemed permanency could not have been recorded merely because Respondent No.1 allegedly worked for more than two years. The statutory benefit of deemed permanency cannot be invoked without first establishing the legality and nature of the appointment from which such permanency is claimed. The Tribunal has, therefore, committed a material error in proceeding to consider the question of permanency without satisfactorily determining the legality of the initial appointment.

14. This Court is conscious of the fact that the jurisdiction of this Court under Article 227 of the Constitution is supervisory and that this Court ordinarily does not substitute its own appreciation of evidence merely because another view is possible. The grievance goes to the very foundation of the Tribunal's decision, namely, whether respondent No.1 had a legally sustainable appointment against a sanctioned vacant post in the first place. Failure to determine a material issue which goes to the root of the relief granted constitutes a jurisdictional error warranting interference in exercise of supervisory jurisdiction.

15. Once the finding of deemed permanency fails, the consequential direction of reinstatement with back wages and

other benefits also cannot sustain. The question of legality of the retrospective termination, which was considered by the learned Tribunal, cannot independently confer a right of reinstatement upon respondent No.1. Moreover, the material on record conclusively establishes that no sanctioned vacant post existed to allow Respondent No.1 to acquire statutory permanency.

16. In view of the aforesaid facts and circumstances, the Writ Petition succeeds and is allowed in terms of prayer clause "B".

17. The judgment and order dated 08.03.2007 passed by the learned Presiding Officer, School Tribunal, Latur Region, Latur in Appeal No.86 of 2006 is quashed and set aside.

18. There shall be no order as to costs.

19. Rule made absolute, accordingly.

[SACHIN S. DESHMUKH]
JUDGE

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