



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

WRIT PETITION NO. 7085 OF 2019

Avinash Narayan Joshi

Age: 47 years, Occ: Nil.,

R/o. "Pasayadan" Nagar-Manmad Road,

Rahuri, Tq. Rahuri,

District Ahmednagar.

..Petitioner

VERSUS

1. The Secretary,
Savitribai Phule Shikshan Mandal,
Mahatma Phule Krishi Vidyapith,
Rahuri, Tq. Rahuri,
District Ahmednagar.
2. The Principal,
Savitribai Phule Madhyamik
And Uchha Madhyamaic Vidyalaya,
Mahatma Phule Krishi Vidyapith,
Rahuri, Tq. Rahuri, District Ahmednagar.
3. The Deputy Director of Education
Pune Division Pune
17, Ambedkar Road, Pune-1.
4. Smt. Aglave Dhanshree Bhaskar,
Age: 30 years, Occ: Service,
C/o. Savitribai Phule Madhyamik
And Uchha Madhyamaic Vidyalaya,
Mahatma Phule Krishi Vidyapith,
Rahuri, Tq. Rahuri, District Ahmednagar

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Advocate for Petitioner : Mr. Vikram R. Dhorde

AGP for Respondent/State : Ms. R.R. Tandale

Advocate for Respondent No.1 : Mr. Rajendra K. Temkar

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CORAM : ROHIT W. JOSHI, J.

DATED : OCTOBER 07, 2026

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of parties taken up for final disposal at admission stage.
2. The petitioner, who holds the qualification of M.Sc B.Ed was appointed with respondent no.2 school, which is a private school governed by provisions of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short). The respondent no.2 school is run and managed by respondent no.1 trust. The petitioner was appointed on the post of Shikshan Sevak (Physics) vide appointment order dated 01.07.2014 for a period of 10 months on temporary basis.
3. It is the case of petitioner that the post on which he was appointed had fallen vacant upon superannuation of one Mr. Bargal and as such, the appointment was against a clear vacant and permanent post. The contention of the petitioner is that although the appointment order dated 01.07.2014 states that same was for a period of 10 months and made on temporary basis, in view of Section 5(2) of MEPS Act, the appointment must be deemed to be made on probation, since the post on which the petitioner was appointed was a clear and permanent vacant post. The services of the petitioner were terminated upon completion of tenure of 10 months as specified in the appointment order. However, a separate order of termination was

issued by respondent no.1 on 31.03.2015 apprising the petitioner that his services will come to an end on 30.04.2015. The petitioner challenged the said order of termination by filing appeal before learned School Tribunal under Section 9 of MEPS Act. The appeal came to be registered as Appeal No.33 of 2015. Learned School Tribunal has dismissed the appeal by judgment and order dated 03.11.2018. Perusal of the findings recorded by learned Tribunal will demonstrate that according to learned Tribunal, the appointment of the petitioner was on ad-hoc basis since it was made pursuant to an advertisement which was in fact issued for making appointment on ad-hoc basis and ultimately, after obtaining permission from Deputy Director of Education, the post was filled in by issuing a regular advertisement. Learned Tribunal has found that the post was advertised for candidates belonging to NT (C) category and was filled in by issuing appointment order in favour of respondent no.4.

4. Mr. Vikram Dhorde, learned advocate appearing for petitioner places reliance on the judgment of this Court in the case of ***Jagdamba Education Society Vs. Rajendra Babhurao Golhar and Ors*** reported in ***2009 (2) All MR 613***, to contend that the appointment can be construed as temporary appointment only if it is made against a leave vacancy of a short duration not exceeding three months, or in case where the post is reserved for a particular category and candidates from

said category are not available. The contention is that although the appointment order is issued for a fixed tenure of 10 months, the same will have to be considered as appointment on probation, since the post against which the petitioner was appointed was a clear vacant post.

5. Reliance is also placed on another Single Bench judgment of this Court in case of Headmaster Gurudeo Post Basic Ashram School, Kamalapur, Tal. Aheri Dist. Gadchiroli Vs. Prabhakar Sambhaji Dhalekar, Writ Petition No.5820/2012 decided on 11.02.2014.

6. Per contra, Mr. Rajendra Temkar, learned advocate for respondent nos.1 and 2 states that the appointment of petitioner was made without obtaining permission from the competent authority as is contemplated under Section 5 of MEPS Act. The contention is that after superannuation of Mr. Bargal, the post had fallen vacant and despite correspondence of the office of Deputy Director, permission to issue advertisement for filling up the post on permanent basis was awaited, and that it is in such circumstances respondent nos.1 and 2 were constrained to issue advertisement for making appointment to the post on ad-hoc basis. Attention is also drawn to letter dated 19.04.2012 issued to the Deputy Director of Education seeking permission to fill up the post that was to fall vacant upon superannuation of Mr. Bargal. Perusal of letter will indicate that respondent no.1 had also expressed readiness to accommodate any surplus teacher, if available. Similar

letters were also issued by respondent no.2 on 14.12.2012 and 07.05.2013. It appears that permission to fill up the post was granted by Deputy Director vide letter dated 04.08.2014. Perusal of the said letter will indicate that Deputy Director has directed respondent nos.1 and 2 to make appointment by following the reservation policy. Perusal of the advertisement dated 06.05.2015 issued for filling up the said post on permanent basis will indicate that the post was advertised for candidates belonging to NT (C) category. Pursuant to said advertisement, the respondent no.4 is appointed on the post on substantive basis.

7. Mr. Temkar places reliance on the Full Bench judgment in the case of *Ramkrishna Chauhan Vs. Seth D.M. High School and others* reported in *2013(2) Mh.L.J. 713*. The Full Bench decision specifically holds that terms of appointment order which are accepted by employee cannot be rescinded from and that the employee is bound by the terms of appointment order. It is also held that the School Tribunal cannot assume that the appointment made against clear and permanent post will be deemed to be on probation, contrary to the appointment order issued in favor of the employee.

8. In case of *Jagdamba Educational Society (supra)*, the concerned teacher was appointed as assistant teacher on 28.06.1986. Although the appointment was made for one academic session, the

appointment was continued till academic year 1991-92. The teacher had rendered around six years of service on the post and thereafter the services were terminated. It is in this backdrop of facts that the termination was challenged by the teacher by filing appeal before the School Tribunal, which was allowed. The petition filed by the management was dismissed by this court. Perusal of the judgment does not indicate that proviso to Section 5 (1) of the MEPS Act is considered by this Court in the case of **Jagdamba Educational Society** (*supra*). Apart from this, the case is clearly distinguishable on the facts whether the employee was continued in employment for inordinately longer period of six years without filling up the post on substantial basis and continuing his employment on ad-hoc basis from year to year. In the case at hand, even before issuing appointment order in favour of the petitioner, the management had made correspondence with authorities seeking permission to fill up the post and had also expressed readiness to accommodate any surplus candidate against the post. Since permission was not granted, appointment by way of ad-hoc arrangement was made. This ad-hoc arrangement was made by issuing a specific advertisement stating that the appointment shall be made only on temporary basis. After taking follow-up with the office of Deputy Director, the management has issued a proper advertisement for filling up the post by making substantive appointment. The

advertisement as noticed above is issued on 06.05.2015 and termination order is issued on 31.03.2015 i.e. shortly after tenure of appointment order expired on 30.04.2015.

9. As regards the judgment in the case of **Headmaster Gurudeo Post Basic Ashram School** (*supra*), perusal of para 6 of the judgment will demonstrate that it was not even the case of the management in the said case that appointment of teacher was made against a temporary vacancy and that in written statement the management did not specify any reason for making appointment of teacher on temporary basis. It is in this backdrop, this court has observed that management could not avoid its statutory obligation of making appointment on probation as per mandate of Section 5 (2) of MEPS Act. The said case also turns on its own facts, where reason for making appointment on temporary post was not specified.

10. I am also in agreement with the contention of the learned advocate for respondent nos.1 and 2 that the respondent employee having accepted the order of appointment, which clearly specifies that same is for a period of ten months and cannot turn around to contend that the appointment is in fact an appointment made on probation on regular basis, particularly because the appointment is made pursuant to advertisement which is issued for filling up the post on temporary basis.

11. In the present case, the management has come up with a clear

case from the very beginning that it had intention to fill up the post on temporary basis by following prescribed procedure. The advertisement for making appointment as a stop-gap arrangement was issued at a time when permission to fill up the post was awaited from Education Department. The advertisement clearly put the petitioner to notice that the appointment would be on temporary basis. Steps for seeking permission to fill up the post on regular basis were initiated even before issuance of advertisement for making appointment on temporary post. After obtaining appropriate permission, the post was immediately advertised for filling up the post on regular basis in the month of May itself. The case is not one of victimization of continuing appointment of the employee on ad-hoc basis for years together.

12. Learned School Tribunal has properly taken into consideration all these aspects of the matter while dismissing the appeal. The reasons recorded by learned Tribunal are just and proper and in accordance with the legal provisions of MPES Act, particularly the proviso to Section 5 and legal position as is settled by catena of decisions by this Court, which states that normally, unless the appointment of a teacher in an appropriate school is made in accordance with the provisions of the Act and Rules framed thereunder, the teacher will not have any right against the post.

13. In light of the reasons recorded above, this Court finds no

reason to interfere with the well-reasoned judgment delivered by learned Tribunal. Writ petition is dismissed with no order as to costs.

14. Rule stands discharged.

[ROHIT W. JOSHI J.]