



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10305 OF 2024

District : Nanded

1. Dr. Zakirhusain Shikshan Prasarak Mandal
Atkali, Ta.: Biloli, Dist.: Nanded
Through its Secretary.
2. Haji Mohd. Magdum Urdu Primary School
Degloor, Dist.: Nanded
Through its Head Master.

...PETITIONERS

VERSUS

1. Maimunabegum Shaikh Ahmad
Age: 59 yrs. Occu.: Retired,
R/o: Bahegaon Road, Degloor
Ta.: Degloor, Dist.: Nanded.
2. The Education Officer (Primary)
Zilla Parishad, Nanded
Dist.: Nanded

...RESPONDENTS

Mr. Krishna Pratap Rodge, Advocate for the Petitioners
Mr. S. B. Pulkundwar, Advocate for Respondent No.2
Mr. Amol N. Kakade, Advocate for Respondent No.1

CORAM : AJIT B. KADETHANKAR, J.
RESERVED DATE : 21.08.2026
PRONOUNCED DATE: 25.08.2026

JUDGMENT :-

1. **Preface**

. At the outset this Court is constrained to express serious disappointment to see the anarchic and disorderly conduct of the Petitioner showing how casually and adamantly the order passed and finding recorded by the High Court are flouted the Petitioner. A permanent Assistant Teacher on a fully aided school whose services are approved by the Education Officer, was terminated without holding enquiry for objecting illegal and forceful monthly recovery by the Management from each employee's salary. The termination was struck down by the School Tribunal in an appeal filed by the employee. The challenge raised by the Petitioner was rejected by this Court observing that employee's appointment was absolutely legal. The employee was re-instated. Again the Petitioner Management terminated the said employee on the same count that her appointment was not lawful. No enquiry was conducted. Employee again rushed to the School Tribunal in an Appeal. The Appeal was allowed setting aside termination. In the meantime, the employee superannuated. Now the Management is again before this court on the same count which is disapproved by this Court. Pertinent to note, the order passed by this Court in earlier Writ Petition is suppressed in this round of litigation. The employee exposed it.

2. **Subject-matter** : Feeling aggrieved by the Judgment and Order dated 29-02-2024 passed by the Learned Presiding Officer of the School Tribunal,

Latur in Appeal No.09 of 2020, the School Management and the Head master of the School have filed this Writ Petition. The Tribunal has set aside the termination of the school employee i.e. the Respondent no.1, and the said order is under challenge.

3. The Petitioners have put forth following substantive prayers in the Writ Petition.

*“C. The impugned judgment and order dated 29.02.2024 passed by the Ld. Presiding Officer, School Tribunal Latur in Appeal No. 9/2020, may kindly be quashed and/or set aside and for that purpose, necessary orders be passed;
D. Pending hearing and final disposal of this writ petition, the effect, execution, operation and implementation of the impugned judgment and order dated 29.02.2024 passed by the Ld. Presiding Officer, School Tribunal Latur in Appeal No. 9/2020, be stayed and for that purpose, necessary orders be passed.”*

4. **Facts in brief :**

a) This is third round of litigation between the Petitioners and the Respondent no.1. The case in hand is of termination of a permanent Assistant Teacher without taking recourse to the disciplinary proceedings under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977.

b) The Respondent no.1 held qualification of H.S.C., D.Ed.(Urdu Medium). On 16-06-1997 and was lawfully appointed on the post of Assistant Teacher from general category. Her services were approved. Everything was going

smoothly until 2000 when dispute between the school employees and the Management started on account of withdrawal of employees' pay by forging the signatures.

c) The Petitioner Management developed grudge against the Respondent no.1, and her salary was stopped. The Respondent no.1 approached this court vide Writ Petition No.494 of 2010. On indulgence of this Court, salary was continued.

d) Then on 16-04-2013, a notice was issued to the Respondent no.1 by the Petitioner Management calling upon her to submit her caste certificate. It was alleged that the Respondent no.1 sought appointment on a post reserved for Other Backward Class category, and yet submitted a bogus caste certificate.

e) Respondent no.1 replied the notice denying such allegations. It was contended that she was appointed on a post meant for General Category, and there is no occasion and no reason to submit any bogus certificate.

f) On 27-04-2013, the Petitioner school Management terminated the Respondent no.1. This was obviously without conducting any enquiry. An appeal No.28 of 2013 was filed by the Respondent no.1 before the School Tribunal. After hearing the parties and observing that the termination was illegal, the School Tribunal allowed the appeal on 25-08-2016. The Tribunal expressed that it was open for the Management to conduct an enquiry as per the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 (for brevity "the Rules of 1981").

g) The Petitioner assailed the decision of the School Tribunal in this Court vide Writ Petition No.10477 of 2016. This Court disallowed the Writ Petition, and affirmed the Judgment and Order passed by the School Tribunal. The sole objection of the Petitioner Management that the Respondent no.1 was not lawfully appointed was struck down, and it was observed that she was appointed on general seat. It was also observed that the 1st respondent was not responsible for category shown in the approval for which the Management had filed proposal showing the appointment on reserved category behind the back of the 1st respondent.

h) Later, the Respondent no. 1 was re-instated. The Management could not tolerate 1st respondent's existence in the School. This resulted into re-termination of the Respondent no.1 on 21-01-2020. This was again on same count of lawfulness of the appointment.

i) Respondent no.1 assailed the termination before the School Tribunal vide appeal No.09 of 2020. After hearing the parties, the Tribunal allowed the appeal No.09 of 2020 vide Judgment and Order dated 29-02-2024. Hence, the Petitioners are before this Court.

j) Suffice to note, during the pendency of the appeal, the Respondent no.1 stood superannuated.

5. Submissions :

a) Mr. Krishna Rodge, learned advocate for the Petitioners assails all the observations recorded by the Tribunal. His predominant contention is that the

Respondent no.1 belonged to Other Backward Class category, and she did not produce her caste certificate and its validation before the Management.

b) It is further submitted that rather it was discovered that the certificate which the Respondent no.1 submitted, was not at all issued from the Government office.

c) As such, it is contended that the Respondent no.1 played fraud on the Management while obtaining appointment. It is further contended that the Respondent no.1 was indulged in a number of illegal activities.

d) That, the Tribunal did not consider that the Respondent no.1 could not establish that she was not gainfully employed while being out of service. The power of the Tribunal to grant pensionary benefits is also challenged.

With these submissions, Mr. Rodge, learned advocate for the Petitioners prays to set aside the Judgment and Order passed by the Tribunal.

e) Mr. Amol Kakade, learned advocate for Respondent no.1 supports the findings recorded by the Tribunal. He submits that the Tribunal has rightly observed that the Respondent no.1 was lawfully appointed on her post. He would invite my attention to the finding of the Tribunal wherein it is clearly observed that the Respondent no.1 was appointed through general category and that she has not created any fraud.

f) Mr. Kakade further submits that Respondent no.1's services were duly approved by the Education Officer. The said approval was neither revoked nor was cancelled at any point of time. He would submit that out of personal

grudge, the members of the Management body twice terminated the Respondent no.1. Mr. Kakade was at pains to express that the Petitioners had absolutely no regards to the orders passed by the Tribunal and the observations recorded by this Court.

g) He would further submit that the Petitioners although referred to earlier Writ Petition, they conveniently avoided to produce the copy of the order before this court. His last submission is that neither the Petitioners have any case on merit nor they have approached this Court with clean hands. With this, Mr. Kakade prays to dismiss the petition.

h) Learned advocate Mr. Pulkundwar for the Education Officer does not dispute the findings of the Tribunal and the findings of this Court in Writ Petition No.10477 of 2016. He restricts his submissions to the extent of payment of arrears and backwages. He would submit that the termination was without permission from the Education Officer, and hence the Management is responsible for the backwages and arrears. On putting a specific query, Mr. Pulkundwar submits that apparently no enquiry is conducted before terminating the Respondent no.1. He accepts that the approval was rightly granted, and was never revoked or cancelled.

6. Discussion and consideration :

a) I heard all the learned advocates at length. I perused the pleadings submitted by both the parties. The finding recorded by the School Tribunal about nature of Respondent no.1's appointment and her qualification are

findings of facts. The Tribunal has upheld that the Respondent no.1 was lawfully appointed and there was no procedural defect nor there was any illegality in her appointment taking to any count. These are not the findings recorded at once, but those are recorded twice.

b) The School Management has nothing to place before the Court to brush aside the findings of the Tribunal.

c) I discard the objection of the Petitioner about Respondent no.1's appointment on a post reserved for Other Backward Class category, and the objection that she played any fraud on the Management. For that, I reproduce the findings of this Court in its order dated 16-11-2016 passed in Writ Petition No.10477 of 2016 filed by the Petitioner against earlier Judgment and Order passed by the Tribunal.

“3. I find from the appointment order that respondent No.1 was never appointed on a post reserved for the OBC. The appointment order dated 02/05/2006 pursuant to a Resolution No.7/2006 passed by the petitioner/Management indicates that the respondent/employee was appointed on a post which was not reserved for any category. Reliance is placed on the approval order to indicate that the appointment of respondent No.1 was approved against the OBC category.

4. The Tribunal, while considering the said aspect, has taken into account the fact that the appointment of the respondent/employee from the Open Category could not have been brought under a reservation through the approval, which was granted by the authorities on a proposal sent by the Management. This would

indicate that the Management has surreptitiously modified the appointment of the respondent/employee (behind her back) and has forwarded the proposal for approval to a post reserved for the OBC. Since this was impermissible and since the petitioner has dismissed respondent No.1 by passing a stigmatic order without conducting any enquiry, the Tribunal has rightly directed the petitioner to conduct an enquiry pursuant to the charges levelled, in the event the Management presses the said charge.

5. In the light of the above, I do not find that the impugned judgment of the Tribunal could be termed as being perverse or erroneous or likely to cause gross injustice (Syed Yakoob Vs.K.S.Radhakrishnan and others, reported at AIR 1964 SC 477 and Surya Dev Rai Vs. Ram Chander Rai, reported at 2003(6) SCC 682)."

d) Suffice to note, the Petitioner Management never challenged this order passed by this court, nor proceeded to conduct enquiry against the Respondent no.1 pursuant to the observations expressed by the School Tribunal.

e) It is an admitted fact that the Respondent no.1 was a permanent employee in the private school having served for 26 years. Her services were approved as a permanent employee. This Court has clearly observed that it is the School Management who obtained Respondent no.1's approval, and that she can not be held to have played any fraud at any point of time. The appointment was on a seat meant for general category.

f) It is a settled principle of service jurisprudence pertaining to employees in private educational institutions that, a permanent employee can not be

terminated without conducting departmental enquiry under the provisions of the Rules of 1981.

g) Mr. Rodge fairly accepts that no such enquiry was ever conducted against the Respondent no.1, either at the earlier time or even after dismissal of the earlier Writ Petition. It is a matter of fact the Petitioner Management did not challenge the order passed by this Court disallowing the Writ Petition and the observations as regards lawfulness of the appointment of Respondent no.1.

h) In view of this, nothing more needs to be added to confirm the findings recorded by the School Tribunal. The Writ Petition is liable to be dismissed on the principle of law that *“A permanent employee cannot be dismissed on any count without conducting an enquiry under the relevant service regulations; and that such dismissal/termination without conducting an enquiry is per-se and abundantly illegal.”*

i) Despite findings of this Court as regards to lawfulness of Respondent no.1's appointment, the Petitioner has continued to harass her on the same count. Again in this round of litigation, the same stand is taken by the Petitioners. The Petitioners have boldly trashed the findings of this Court, which demonstrates complete lawlessness on the part of the Petitioners.

j) Respondent no.1's first termination was set aside by the Tribunal and the said decision was confirmed by this court. Again, when the Petitioners effected the same termination on same count, it is not only illegal, but in fact it is highly contemptuous.

k) There is one more reason indicating mischievous conduct of the Petitioner. In this Writ Petition, the Petitioner conveniently avoided to plead about earlier Writ Petition No.10477 of 2016, and the findings recorded by this court in its order dated 16-11-2016. I have minutely gone through the pleadings in the Writ Petition. At paragraph No.2 of the Writ Petition, it is stated that the Respondent no.1 filed an appeal No.28 of 2013 which was allowed on 25-08-2016. However as observed, the further facts of filing the Writ Petition and its dismissal with the findings (supra), are conveniently suppressed. This is high time to deal with Petitioners sternly by imposing heavy exemplary costs. This is because if not dealt so, the Petitioners shall be encouraged to continue their wrong perception that judicial pronouncements by the Tribunal and a Constitutional Court are worthless, and can be conveniently vanquished at their (petitioners') own.

l) Petitioner's argument about Respondent No.1's entitlement for backwages is liable to be struck down. Petitioner did not prove that the Respondent No. 1 was gainfully employed while she was out of service. Petitioner can not seek burden on the Respondent No. 1 to produce negative evidence to show that she was not gainfully employed during this period. At this juncture, the argument is of no avail to the Petitioner.

m) Lastly, a feeble attempt is made by the Petitioner to throw the burden of salary and arrears of backwages on the Education Officer. At threshold I discard such request. I deem it appropriate to place my hands beneficially on

the law laid down by the Honorable Supreme Court in the case of ***Educational Society, Tumsar and ors. Vs. State and ors.*** reported at **2016 (3) SCC 512.**, For convenience, I reproduced paragraph Nos.12 and 13 of the findings therein :

12. Insofar as present case is concerned, we are of the opinion that it is not necessary to go into the issue as to whether Government Resolution dated 14.03.1978 is no more valid or whether provisions of the Act or Rules are contrary to the aforesaid Resolution and, therefore, would govern the field. For the reasons recorded hereinafter, we find that the manner in which action was taken by the appellants against respondent No. 4 and the findings of the Tribunal thereupon, it is the appellants who are obligated to pay the back wages to respondent No. 4. We find that in the peculiar facts of the present case, the School Tribunal consciously put the burden of paying back wages of respondent No. 4 upon the appellant school authorities.

13. It may be worth noting that an aided school is bound to follow the dictat of the relevant provisions of applicable rules etc. for conduct of Departmental enquiries and termination of services of an employee present thereto. In the instant case, the concerned rules are Maharashtra Employees Private School Rules, 1981 (hereinafter referred to as the Rules) and the concerned provisions applicable were the Act, 1977 (which came into force from 20.03.1978, as noted above). The School Tribunal while holding the termination to be illegal gave a specific finding to the effect that appellant 2, who initiated the enquiry, was not lawfully empowered to do so without the decision of the Enquiry Committee being supported by the Managing Committee. Issues No. 1 and 2 framed in this behalf were specifically decided against the appellants. It was further found that no Enquiry Committee as

per the Rules was constituted. The findings of the School Tribunal are also to the effect that the mandatory provisions of law were not followed. It is, therefore, a case where appellants acted without jurisdiction and without adhering to the provisions of the Act and the Rules. Had the provisions of Rules been followed, that would have initiated participation of the representatives of the Government in the decision-making process right from decision to initiate the enquiry to the dismissal of respondent No. 4. This would have led to a situation where the State Government/Education Officer would have given its imprimatur to the entire proceedings including order of termination of respondent No. 4. Had termination order been set aside under such circumstances, it would have amounted to setting aside the order of the Government making the Government responsible for payment of back wages, as the act of termination, found ultimately illegal, would have been with the blessings of the Government/Education Officer. However, in the present case, what is found is that the State Government/Education Officer had no role to play in passing the order of termination and the school authorities acted without jurisdiction thereby transgressing their powers to terminate. Specific findings to this effect are recorded by the School Tribunal. For these reasons, even when Education Officer was impleaded as a respondent in the appeal filed by respondent No. 4, the School Tribunal consciously did not give any direction for payment of these back wages by the Education Department.

It is an admitted fact that the Respondent No.1 was removed not once, but twice without conducting any enquiry and taking exception to the Rules of 1981. In view of above, I must hold that only Petitioner Management is

responsible for the backwages and the arrears.

n) I am constrained to observe that the writ petition is nothing but an abuse of process. For the reasons recorded above, the Writ Petition stands dismissed with exemplary cost of Rs. 3,00,000/- in view of the clear contemptuous, disorderly and anarchic conduct of the Petitioner.

o) Ordinarily this Court would not issue any more directions as regards to the execution of the order. But the way the orders and observations of this court have been taken for a ride mischievously, it is clear that the Petitioners have utter disregard to the court orders. Hence, it is indispensable to have a check on the Petitioners atleast for once.

p) In view of the exceptional circumstances, I deem it necessary to levy some restrictions on the Petitioners in exercise of the jurisdiction u/a 227 of the Constitution. Hence, I pass following order:

ORDER

- I. The Writ Petition is dismissed with cost of Rs. 3,00,000/-, to be deposited in this Court within a period of Four weeks from today. Upon deposit of the cost, the Respondent no.1 is permitted to withdraw Rs.2,00,000/- out of it. The balance cost amount of Rs.1,00,000/- be transmitted to the **Samagra Shiksha Abhiyan, Zilla Parishad, Nanded**. If the cost is not paid within the given time, the same shall be recovered as land revenue, and a report of compliance shall be submitted to the registry of this Court within Sixteen weeks from today.

- II. Within Four weeks herefrom, the Petitioners shall pay the entire back wages with arrears to the Respondent no.1, and shall submit her pension proposal to the concerned Education Officer(Primary), Zilla Parishad, Nanded.
- III. Until the compliance of above directions, the Petitioners shall not create third party interest on their properties, nor a third party interest shall be created on the personal properties of the management members.
- IV. Upon receipt of the pension proposal, the Education Officer (Primary), Zilla Parishad, Nanded shall release Respondent no.1's pension within four weeks thereafter. If no such proposal is received from the Petitioner Management, the Education Officer shall prepare pension papers from the record, and shall ensure release of the pension within a period of Four weeks from the last date given to the Petitioner Management to submit the pension proposal.
- V. The Education Officer (Primary), Zilla Parishad, Nanded is directed to file proposal to the concerned Deputy Director of Education, to conduct an inquiry of the Petitioners, and to take the inquiry to its logical end, including de-registration if needed. An opportunity of hearing shall be given to the Petitioner Management. This job must be done within a period of Six months from today.

[AJIT B. KADETHANKAR, J.]