



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

4 WRIT PETITION NO. 14560 OF 2017

VISHWAKARMA SHIKSHAN PRASARAK AND GRAM VIKAS MANDAL
AURANGABAD THROUGH PRESIDENT P S WADJE AND ORS

VERSUS

BABURAO ANANDA RAHATE AND ANOTHER

...

Mr. S. S. Kazi, Advocate for the Petitioners.

Mr. Shrimant R. Kedar, Advocate for Respondent No.1.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 4th MARCH 2026

PC.:-

1. Heard learned Advocates for the respective parties.
2. By the present petition, the Petitioner is aggrieved by the order dated 03.03.2017, passed by the learned School Tribunal, Aurangabad Division, Aurangabad in Appeal No.3 of 2016, whereby appeal filed by the Respondent No.1-Employee came to be allowed.
3. Mr. S. S. Kazi, learned Advocate for the petitioner submits that Petitioner No.1 is an Education Society registered under the Maharashtra Public Trust Act, 1950 as well as under the Societies Registration Act. Petitioner No.2 is the Secretary and Petitioner No.3 is the Chief Executive Officer of Petitioner No.1 and Petitioner No.4 is the Headmaster.
4. Mr. S. S. Kazi, learned Advocate for the Petitioners submits

that the Petitioners appointed Respondent No.1 from 01.09.2006 purely on temporary basis and more particularly, he submits that no any appointment order came to be issued as per Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 (for short "MEPS Act"). He further submits that Respondent No.1 is having qualification of B.PEd. and he was asked to work as a Headmaster. Though his services were approved, but because of non-sanctioning of the post and staffing pattern, his services were terminated w.e.f. 15.12.2014. As he was a temporary employee not possessing qualification of D.Ed., which is an essential requirement to be appointed as the Assistant Teacher of Primary School, the services of Respondent No.1 were rightly terminated.

5. In support of his contention, he relied upon the law laid down by Full Bench of this Court, in the matter of ***Jayashree Sunil Chavan Vs. State of Maharashtra & Ors., reported in 2000 SCC OnLine Bom 302*** and also upon the order passed by this Court in the matter of ***Milansar Shikshan Prasarak Mandal & Anr. Vs. Rizwana Parveen Sayed Ahamad & Anr. In Writ Petition No.11951 of 2015***, by contending that though Respondent No. 1-Employee was appointed on the year-to-year basis and though his services were approved, he was having qualification of B.PEd only and he was not having qualification of D.Ed. As he was a temporary employee, it was not necessary to hold

the inquiry under the MEPS Act and, therefore, by giving one month notice, his services were terminated. But the learned School Tribunal committed error while allowing the appeal.

6. Per contra, Mr. S. R. Kedar, learned Advocate for the Respondent No.1 supports the order passed by the learned School Tribunal. He pointed out that since 2006 till 2014, Respondent No. 1 had worked continuously. Only after considering his qualification of B.P.Ed., his services were duly approved by the Education Officer.

7. He further submits as per Section 5(2) of the MEPS Act, completion of two years of probation, he acquired permanency. As his services were terminated by giving one month's notice without conducting an inquiry, the learned School Tribunal has rightly allowed the appeal.

8. Having heard learned Advocates for the respective parties and after going through the order passed by the School Tribunal. There is no dispute about the fact that Respondent No.1 was appointed in the year 2006, he was having B.P.Ed. qualification and his services were also approved by the Education Officer from time to time. He continuously worked from 01.09.2006 till the year 2014. To considering the issue involved, it is useful to refer Section 5(2) of the MEPS Act, which reads as under:-

“5(2) Every person appointed to fill a permanent vacancy [except shikshan sevak] shall be on probation for a period of two years. Subject to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

Provided that, every person appointed as shikshan sevak shall be on probation for a period of three years.

(2A) Subject to the provisions of sub-sections (3) and (4), shikshan sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.”

9. Considering Section 5(2) of the MEPS Act, it reveals that an employee can be appointed on probation for a period of two years and on completion of the said probation period, acquires permanency in service. Admittedly, even as per the contention of the management, Respondent No.1 continued in service beyond the probation period. Therefore, merely because a termination order was subsequently issued against Respondent No.1, his services could not have been terminated in such a manner. Further it is required to be considered the Rule 36 and 37 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “MEPS Rules”), which reads as under:-

“Rule - 36. Inquiry Committee.

(1) If an employee is allegedly found to be guilty on [any of the grounds specified in sub-rule (5) of rule 28] and the Management decides to hold an inquiry, it shall do so through a properly constituted Inquiry Committee. Such a committee shall conduct an inquiry only in such cases where major penalties are to be inflicted. The Chief Executive Officer authorised by the Management in this behalf (and in the case of an inquiry against the Head who is also the Chief Executive Officer, the President of the Management) shall communicate to the employee or the Head

concerned by registered post acknowledgement due the allegations and demand from him a written explanation within seven days from the date of receipt of the statement of allegations.

2) [If the Chief Executive Officer or the President, as the case may be, finds that the explanation submitted by the employee or the Head referred to in sub-rule (1) is not satisfactory, he shall place it before the Management within fifteen days from the date of receipt of the explanation. The Management shall in turn decide' within fifteen days whether an inquiry be conducted against the employee and if it decides to conduct the inquiry, the inquiry shall be conducted by an Inquiry Committee constituted in the following manner, that is to say, -

(a) in the case of an employee -

(i) one member from amongst the members of the Management to be nominated by the Management, or by the President of the Management if so authorised by the Management, whose name shall be communicated to the Chief Executive Officer within 15 days from the date of the decision of the Management;

(ii) one member to be nominated by the employee from amongst the employees of any private school;

(iii) one member chosen by the Chief Executive Officer from the panel of teachers on whom State/National Award has been conferred;

(b) in the case of the Head referred to in sub-rule (1)

(i) one member who shall be the President of the Management;

(ii) one member to be nominated by the Head from amongst the employees of any private school;

(iii) one member chosen by the President from the panel of Head Masters on whom State/National Award has been conferred.]

(3) The Chief Executive Officer or, as the case may be, the President shall communicate the names of members nominated under sub-rule (2) by registered post acknowledgement due to the employee or the Head referred to in sub-rule (1), as the case may be, directing him to nominate a person on his behalf on the proposed Inquiry Committee and to forward the name alongwith the written consent of the person so nominated to the Chief Executive Officer or to the President, as the case may be, within

fifteen days of the receipt of the communication to that effect.

(4) If the employee or the Head, as the case may be, communicates the name of the person nominated by him the Inquiry Committee of three members shall be deemed to have been constituted on the date of receipt of such communication by the Chief Executive Officer or the President, as the case may be. If the employee or such Head fails to communicate the name of his nominee within the stipulated period, the Inquiry Committee shall be deemed to have been constituted on expiry of the stipulated period consisting of only two members as, provided in sub-rule (2).

(5) The Convener of the respective Inquiry Committee shall be the nominee of the President, or as the case may be, the President who shall initiate action pertaining to the conduct of the Inquiry Committee and shall maintain all the relevant record of the inquiry.

Rule - 37. Procedure of inquiry.

(1) The Management shall prepare a charge-sheet containing specific charges and shall hand over the same together with the statement of allegations and the explanation of the employee or the Head as the case may be, to the Convener of the Inquiry Committee and also forward copies thereof to the employee or the Head concerned by registered post acknowledgement due, within 7 days from the date on which the Inquiry Committee is deemed to have been constituted.

(2) (a) Within 10 days of the receipt of the copies of charge-sheet and the statement of allegations by the employee or the Head, as the case may be,-

(i) If the employee or the Head, as the case may be, desires to tender any written explanation to the charge-sheet, he shall submit the same to the Convenor of the Inquiry Committee in person or send it to him by the registered post acknowledgement due.

(ii) If the Management and the employee or the Head, as the case may be, desire to examine any witnesses they shall communicate in writing to the Convenor of the Inquiry Committee the names of witnesses whom they propose to so examine, and

(iii) If the Management desires to tender any documents by way of evidence before the Inquiry Committee, it shall supply true copies of all such documents to the employee or the Head, as the case may be. If the document relied upon by the Management is a

register or record of the school it shall permit the employee or the Head as the case may be, to take out relevant extracts from such register or record. The employee or the Head as the case may be, shall supply to the Management true copies of all the documents to be produced by him in evidence.

(b) Within 3 days after the expiry of the period of 10 days specified in clause (a), the Inquiry Committee shall meet to proceed with the inquiry and give 10 days notice by registered post acknowledgement due to the Management and the employee or the Head, as the case may be, to appear for producing evidence, examining witnesses etc., if any.

(c) The Inquiry Committee shall see that every reasonable opportunity is extended to the employee for defence of his case.

(d) (i) The Management shall have the right to lead evidence and the right to cross-examine the witnesses examined on behalf of the employee.

(ii) The employee shall have the right to be heard in person and lead evidence. He shall also have the right to cross-examine the witnesses examined on behalf of the Management.

(iii) Sufficient opportunities shall be given to examine all witnesses notified by both the parties.

(e) All the proceedings of the Inquiry Committee shall be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token or authenticity thereof. The refusal to endorse the same by either of the parties shall be recorded by the Convener.

(f) The inquiry shall ordinarily be completed within a period 120 days from the date of first meeting of the Inquiry Committee or from the date of suspension of the employee, whichever is earlier, unless the Inquiry Committee has, in the special circumstances of the case under inquiry, extended the period of completion of the inquiry with the prior approval of the Deputy Director. In case the inquiry is to be completed within the period of 120 days or within the extended period, if any, the employee shall cease to be under suspension and shall be deemed to have rejoined duties, without prejudice to continuance of the inquiry.

(3) The Management and the employee or the Head, as the case may be shall be responsible to see that their nominees and the witnesses, if any, are present during the inquiry. However, if the Inquiry Committee is convinced about the absence of either of the parties to the dispute or any of the members of the Inquiry

Committee on any valid ground, the Inquiry Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of person concerned if he fails to remain present for the said adjourned meeting.

(4) The Convener of the Inquiry Committee shall forward to the employee or the Head, as the case may be a summary of the proceedings and copies of statements of witnesses, if any, by registered post acknowledgement due within four days of completion of the above steps and allow him a time of seven days to offer his further explanation, if any.

(5) The employee or the Head as the case may be shall submit his further explanation to the Convener of the Inquiry Committee within a period of seven days from the date of receipt of the summary of proceedings etc., either personally or by registered post acknowledgement due.

(6) On receipt of such further explanation or if no explanation is offered within the aforesaid time the Inquiry Committee shall complete the inquiry and communicate its findings on the charges against the employee and its decision on the basis of these findings to the Management for specific action to be taken against the employee or the Head, as the case may be, within ten days after the date fixed for receipt of further explanation. It shall also forward a copy of the same by registered post acknowledgement due to the employee or the Head, as the case may be. A copy of the findings and decision shall also be endorsed to the Education Officer or the Deputy Director, as the case may be, by registered post acknowledgement due. Thereafter, the decision of the Inquiry Committee shall be implemented by the Management which shall issue necessary orders within seven days from the date of receipt of decision of the Inquiry Committee, by registered post acknowledgement due. The Management shall also endorse a copy of its order to the Education Officer or the Deputy Director as the case may be."

10. Admittedly, Respondent No.1-Employee acquired permanency and even if it is considered that there was no order of permanency, but fact remain that after 2006 to 2014, Respondent-Employee had continuously worked with the management and, therefore, it was incumbent on the part of the management to conduct

an inquiry, but admittedly, no such inquiry was conducted and by giving one month notice, his services were terminated. As regards the judgment of the Full Bench in the case of *Jayashree (supra)* which was referred by Mr. Kazi, the same does not apply to the present set of facts. Here, in this case, Respondent No.1, though having qualification of B.PEd, but in addition to that, he was imparting teaching of other subjects as well and, therefore, only because he was not having a D.Ed qualification, the contention of the Petitioners cannot be accepted. Admittedly, no inquiry was conducted under Rule 36 and 37 and, therefore, Respondent No.1 being a permanent employee, the Petitioner-management was duty bound to conduct an inquiry, if they wanted to inflict the major punishment of termination. By way of simple notice, the services of the permanent employee cannot be terminated.

11. In view thereof, I find that the learned School Tribunal has rightly considered the matter and I do not find any perversity in the order dated 03.03.2017 passed by the learned School Tribunal.

12. Hence, the present petition is dismissed. No order as to costs.

(SIDDHESHWAR S. THOMBRE, J.)