



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14883 OF 2023

District : Ahmednagar

Sachin Arun Bhingardive
Age : 38 years, Occ: Nil,
R/o : Nityaseva Society, Vasant Tekadi,
Ahmednagar, Ta. And District Ahmednagar

...PETITIONER

VERSUS

1. The Secretary,
Dr. N. J. Paulbudhe Institute of Technology (Polytechnic),
Survey No.479/2, At post Narayandoh,
Taluka and District Ahmednagar
2. The Head Master/Principal,
Dr. N.J. Paulbudhe Institute of Technology (Polytechnic),
Survey No.479/2, At post Narayandoh,
Taluka and District Ahmednagar

...RESPONDENTS

Mr. Santosh S. Jadhavar, Advocate for the Petitioner
Mr. V. N. Upadhye, Advocate for Respondent Nos.1 and 2

CORAM : AJIT B. KADETHANKAR, J.

RESERVED DATE : 13.08.2026

PRONOUNCED DATE: 17.08.2026

JUDGMENT :-

. The petitioner has filed this writ petition with following prayers :

“B) By issuing appropriate writ order or direction, the Judgment and Order dated 17.08.2023 passed by the learned Member, Industrial Court, Ahmednagar, in Complaint (ULP) No.38/2017, may kindly be quashed

and set aside to the extent of operative order clause No.3 and 4 with further direction to the respondents to grant permanency to the petitioner in service from the date of initial appointment i.e. from 11.08.2010.

C) By issuing appropriate writ order or direction, the Complaint (ULP) No.38/2017 filed before the Industrial Court Ahmednagar may kindly be allowed.

D) By issuing appropriate writ, order or direction, the respondents may kindly be directed to grant permanency to the petitioner in service on the post of Peon in respondent No.2 insinuate.

E) By issuing appropriate writ, order or direction, the respondents may kindly be directed to pay salary to the petitioner as per the pay scale applicable for the post of Peon as per the provisions of Maharashtra Employees of Private Schools (Conditions of Services) Rules, 1981 with grant of revision in the pay scale as per the 5th Pay Commission and 6th Pay Commission and to pay arrears of salary accordingly.”

2. Rule. Rule made returnable forthwith. At the instance of the parties, the writ petition is heard for final disposal.

3. **Subject matter :**

a) The Petitioner was working with the Respondent – Management as a Peon on a clear and vacant post. Despite the terms and conditions of the appointment and his continuity in service for at least 7 years, the Petitioner was neither conferred permanency nor was given remuneration in pay scale. Hence he has filed a complaint under Section 28(1) of the Maharashtra

Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for brevity “the Act”) before the learned Member of the Industrial Court, Ahmednagar. During the pendency of the complaint, the Management terminated the Petitioner. The Petitioner assailed his termination before the School Tribunal, where the appeal is under adjudication.

b) After hearing the parties, learned Member of the Industrial Court Ahmednagar partly allowed Petitioner’s complaint. It was observed that the Respondent–Management is engaged in unfair labour practices under Item Nos.6, 9 and 10 of Schedule IV of the Act. Directions were given to the Respondents to pay minimum wages to the complainant for a period of three years preceding the date of filing of the complaint.

Subject matter of the writ petition is “the refusal by the learned Member of the Industrial Court to grant the relief of permanency.”

4. **Brief facts :**

a) It is not a fact disputed by any party that, after following due procedure the Respondent–Management appointed the Petitioner on ad-hoc basis on the post of Peon vide appointment order dated 11.08.2010. The Petitioner served the Respondent–Management continuously under the said appointment order.

- b) The petitioner neither received remuneration in pay scale nor benefit of permanency was conferred upon the Petitioner despite having continuously served for years together.
- c) Therefore, the Petitioner filed Complaint (ULP) No.38 of 2017 before the learned Member of the Industrial Court, Ahmednagar, under Section 28(1) read with Item Nos.5, 6, 9 and 10 of Schedule IV of the Act. In the complaint, the Petitioner sought a declaration that the Respondent – Management is indulged in unfair labour practices. It was also prayed that the Respondent–Management be directed to confer permanency upon the Petitioner in view of the fact that he had long back completed service of 240 days.
- d) Directions were sought to the respondent management to pay the difference between the consolidated amount and the applicable pay scale was also prayed for.
- e) The Respondent – Management appeared before the Industrial Court and submitted its defense thereby denying the averments and the prayers made by the Petitioner in his complaint.
- f) During the course of hearing of the complaint, the Respondent – Management even terminated the Petitioner. Hence the Petitioner filed an appeal under Section 9 of the Maharashtra Employees of Private Schools

(Conditions of Service) Regulation Act, 1977 (for brevity “the MEPS Act) before the School Tribunal.

g) The learned Member of the Industrial Court heard the parties and partly allowed Petitioner’s complaint. It was declared that the Respondents are indulged in unfair labour practices. The relief of permanency was rejected. As regards service remuneration, the Petitioner was held entitled only for minimum wages, that too, for the last three years preceding the date of filing the complaint.

Hence, this petition.

5. **Submissions :**

a) Mr. Santosh Jadhavar, learned Advocate for the Petitioner submits that the learned Member of the Industrial Court failed to consider that the Petitioner has made out a case of permanency. That, the terms of appointment itself show that the Respondent – Management has agreed to pay the Petitioner such remuneration which is in terms of pay scale.

b) Mr. Jadhavar’s further contention is that the impugned judgment and order is half-hearted one. Mere declaration that the Respondent – Management has indulged into unfair labour practices cannot be said to be

justice. He would submit that while the Petitioner was appointed on pay scale, the Industrial Court is not justified in directing minimum wages to the Petitioner, that too, only for last preceding three years before the date of filing the complaint. It is lastly submitted by Mr. Jadhavar that closure of his service during pendency of his complaint can not be a ground to deny him the benefit of permanency. With these submissions, Mr. Jadhavar prays to allow the writ petition.

c) Mr. V. N. Upadhye, learned Advocate for the Respondent – Management would submit that there is no error or infirmity in the impugned judgment and order passed by the Industrial Court.

d) He would submit that the findings recorded by the learned Member of the Industrial Court are well reasoned. Insofar as remuneration issue is concerned, he would submit that the grant of minimum wages to the complainant is perfectly as per the law and considering the nature of the services.

e) On the crucial point of permanency, Mr. Upadhye submits that the Industrial Court has rightly observed that due to retrenchment, permanency could not be conferred upon the Petitioner. He would dispute that the Petitioner was terminated. According to Mr. Upadhye, evidently the petitioner

was retrenched. He would submit that termination and retrenchment are different concepts and methods to close down services of an employee. However, effect in each case drastically differs from the other. With such submissions, Mr. Upadhye, learned Advocate for the Respondent – Management concludes his arguments.

6. **Considerations :**

a) I have heard both the learned Advocates for the respective parties at length. Perused the pleadings of both the sides. Considering the controversy which is narrowed down in the light of submissions, I framed following moot points to be adjudicated :

(i) “While relief of permanency is to be adjudicated on the basis of the situation existing on the date of filing the complaint, whether subsequent termination/retrenchment can be a ground to deny the permanency?”

(ii) While admittedly Petitioner’s services are governed by the provisions under the MEPS Act and the Rules of 1981 thereunder, whether minimum wages act would be applicable to him?

b) It is not in dispute that the Petitioner was appointed on 11.08.2010 as a Peon, may be shown as on an ad-hoc basis. There is nothing on record to show that the appointment was for a specific period or on contract; meaning thereby Petitioner's appointment as a Peon was on clear and vacant post. The argument advanced by Mr. Santosh Jadhavar, learned Advocate for the Petitioner on the point of nature of appointment is acceptable.

c) Learned Member of the Industrial Court has already observed in so many words that the Respondent – Management is indulged in unfair labour practices under Item Nos.5, 6 and 9 of Schedule IV of the Act against the Petitioner. There is no challenge from the side the Respondent – Management against these findings.

d) As regards refusal to direct permanency is concerned, I do have serious reservations on the reasoning rendered by the learned Member of the Industrial Court whereby the said relief is refused. It is a matter of record that on the date of filing of the complaint the Petitioner was very much in service on the basis of the appointment order (supra). The petition itself was filed for grant of permanency. Although the Respondent – Management has come up with a case that it has lawfully retrenched the Petitioner from the post. May it be a retrenchment or a termination according to the Management and the

Petitioner respectfully, the fact remains that the claim for permanency has to be adjudicated on the basis of the fact and situation as they existed on the date of filing of the complaint.

e) It is an undisputed fact that the Respondent – Management has brought Petitioner’s services to an end during the pendency of hearing of the complaint. In my considered view, the termination/retranchment shall not relate back to the date of filing of the complaint to decide the issue of permanency. Obviously, the Petitioner has approached to the School Tribunal alleging that he is terminated by the Respondent – Management. The Management may defend the appeal on the grounds available to it. The fate of Petitioner’s discontinuation shall be decided by the Tribunal on its own merit. However, findings rendered by this Court on ‘permanency status’ shall prevail for the purpose of service benefits. It was for the Industrial Court to define the “status” of the Petitioner as a permanent employee based on the facts and record existed on the date of filing of the complaint.

f) In view of this, I do not subscribe to the reasoning and observation recorded by the learned Member of the Industrial Court that due to subsequent development of retranchment, relief of permanency could not be granted. Suffice it to say that the Industrial Court has descriptively observed

about unfair labour practices at the behest of the Respondent – Management.

In view of this, I find that the Petitioner has made out a case for relief of permanency status. I answer the moot question holding that, “claim for permanency has to be adjudicated on the basis of the facts and situation holding field on the date of claim; and subsequent termination/retrenchment can not be a ground to deny the claim for permanency.’

g) Insofar as the remuneration issue is concerned, learned Member of the Industrial Court ought to have appreciated that the Petitioner was appointed as a Peon in a private educational institute. The service terms and condition of an employee working in a private educational institute are governed by the provisions of M.E.P.S. Act and the Rules of 1981 thereunder. The Act and the Rules provide for the remuneration that is pay scale to be paid to an employee of a private school. In view of this, the Industrial Court is not justified in granting minimum wages to the Petitioner as is ordered in paragraph 3 of the operative order in the impugned judgment and order dated 17.08.2023.

h) For the reasons recorded above, the petition must succeed. The Petitioner has made out a successful case for causing interference of this Court under Article 227 of the Constitution of India. In view of this, I pass following order :

ORDER

- I. Writ Petition stands allowed.
- II. Impugned judgment and order dated 17.08.2023 passed by the learned Member Industrial Court, Ahmednagar in Complaint (ULP) No.38 of 2017 is quashed and set aside to the extent of clause Nos.3 and 4 of the operative order.
- III. It is declared that the Petitioner is entitled for the benefits of permanency in service on the basis of initial appointment order dated 11.08.2010 within the meaning of provisions of the MEPS Act and the Rules of 1981 thereunder. Legality of Petitioner's termination/retrenchment shall be subject to the decision of the School Tribunal. The status of permanency shall be for the purpose of service benefits.
- IV. The Petitioner is entitled for salary in the applicable pay scale as per the provisions of the MEPS Act and the Rules of 1981 thereunder from the date of his initial appointment till the date of his termination/retrenchment.
- V. The Respondent – Management, within four (4) months from today, shall pay such due amount to the Petitioner. Any payment made earlier shall be adjusted.
- VI. Rule is made absolute in above terms.

[AJIT B. KADETHANKAR, J.]