



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

District: Ahmednagar

WRIT PETITION NO.1637 OF 2023

Sopan Namdeo Kale
Age: 49 years, Occu: Nil,
R/o: Dehre, Taluka Nagar,
District: Ahmednagar

.....PETITIONER

VERSUS

1. The Secretary,
Ahmednagar Zilla Maratha Vidya Prasarak Samaj,
Laltaki Road, Ahmednagar.
2. The Principal,
Shri. Mulikadevi Jr. College, Nighoj,
Taluka Parner, District Ahmednagar.
3. The Deputy Director of Education,
Pune Region, Pune

.....RESPONDENTS

Mr. S. S. Jadhavar, Advocate for the petitioner
Mr. V. D. Hon, Sr. Advocate a/w Mr. H. A. Karad i/b Mr. A. V.
Hon, Advocate for respondent nos.1 and 2
Mr. S. P. Sonpawale, AGP for respondent no.3

CORAM : AJIT B. KADETHANKAR, J.
RESERVED ON : 10TH SEPTEMBER, 2026
PRONOUNCED ON : 16TH SEPTEMBER, 2026

JUDGMENT :- (Per Court)

1. Subject-matter : Feeling aggrieved by the Judgment and Order dated 18.07.2022 delivered by the learned Presiding Officer of the School Tribunal, Pune (Solapur Region) in Appeal No.09 of 2019, the employee/appellant has preferred this Writ Petition.

2. Rule. Rule made returnable forthwith. Heard the parties for final disposal at their instance.

3. **Facts in brief:**

a. In the year 2003, the respondent management published an advertisement to fill up some posts of Teachers in its school.

b. By due procedure, the Petitioner came to be appointed on a clear, vacant and permanent post. Initially the appointment was on part time basis which was subsequently made on full time basis.

c. Deputy Director of Education approved Petitioner's appointment and services. Since 2003 the Petitioner continuously served the school and the management.

d. On the other hand, the Management kept on issuing appointment order in the name of the Petitioner on year to year basis, despite the Petitioner having been appointed on clear, vacant and permanent post.

e. In the year 2017, the management didn't allow the Petitioner to join the duty. Hence the Petitioner filed an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for brevity "the act of 1977") before the School Tribunal Pune, Solapur region.

f. The Management defended the appeal disputing that the Petitioner was a permanent employee. It also disputed that the Petitioner was ever terminated orally. With these objections, the management prayed to dismiss the appeal.

g. The School Tribunal heard the parties and pleased to dismiss the appeal accepting Management's aforesaid two objections.

Hence this petition.

4. Submissions:

Mr. S. S. Jadhavar, learned advocate for the Petitioner would submit that,

- a. Admittedly, the Petitioner was appointed by due process of law. The appointment was approved by the competent authority.
- b. On account of continuous service of fifteen years, the Petitioner earned permanency, irrespective of the record prepared by the management to show his appointment on yearly basis.
- c. Despite the record prepared by the management as aforesaid, Petitioner's appointment is governed by Section 5(2) of the Act of 1977.
- d. The Tribunal erred in not correctly appreciating the provisions of law, and the law developed in this field.
- e. There is no reason why a permanent employee who rushes to the School Tribunal would have voluntarily left the job. In fact the management disallowed him from signing the muster and caused otherwise termination.

Learned advocate Mr. V. D. Hon for the respondent management submits that,

f. The Petitioner was appointed on temporary basis and was not amenable to the appellate jurisdiction of the School Tribunal u/s 9 of the Act of 1977.

g. In view of the appointment orders issued from year to year, it is clear that the Petitioner was not at all appointed on permanent basis.

h. The Petitioner has voluntarily waived the job, and later filed the appeal to take undue advantage of his own wrong.

i. The School Tribunal has passed a reasoned judgment which do not call for any interference of this Court in Writ Petition.

5. Issues for consideration:

Considering the pleadings and the rival arguments, I record following core issues for consideration.

i. While a Teacher serving continuously for fifteen years and having been appointed by due process under advertisement on a clear, vacant and permanent post; and while the Deputy Director of Education has approved his

appointment; whether if such teacher could be deprived of the status of permanency only if the Management has kept on issuing appointment orders on year to year basis.

ii. Whether if in above circumstances, an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 can be dismissed observing that the employee was not a permanent employee.

iii. Whether if a permanent teacher having served continuously for fifteen years could be terminated without conducting departmental enquiry under the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981.

Consideration:

1. Petitioner's qualification and the mode of appointment is not in dispute. Petitioner was well qualified for being appointed on the post of Assistant Teacher, and the respondent management appointed the Petitioner on the subject-matter post after conducting due procedure. An advertisement was published inviting applications from the suitable candidates. Selection procedure was conducted, and the Petitioner was appointed.

2. The issue is about nature of Petitioner's appointment and the factum of his discharge from the job.

2.1. While Petitioner submits that he has earned status of a permanent employee, respondent management contends that he was purely on a temporary basis. The School Tribunal negated Petitioner's contention, and upheld management's defense.

2.2. While Petitioner alleges otherwise termination (oral termination) at the hands of the respondent-management, they came up with a case of voluntary absence from duty by the Petitioner. The Tribunal discarded Petitioner's case and accepted managements' defense.

3. I have gone through the sequential appointment orders issued by the Management appointing petitioner on the subject-matter post and continuing him. The appointment orders consistently show appointments on temporary basis on clear, vacant post; however always on annual basis.

4. The non-disputed fact that the Deputy Director of Education, Pune approved Petitioner's appointment and service from time to time also confirms that the Petitioner was

lawfully appointed and was in continuous service on the subject-matter post.

Nature of appointment and status of Petitioner

5. Management's first substantial objection is that the appointment was always on temporary basis and meant for a specified period.

6. Perusal of the appointment orders would clearly show that those were issued by the Management maintaining its own mechanism dehors the law. During 2003 (w.e.f. 09.07.2003) till 2009 (i.e. till 15.06.2009), Petitioner was appointed as a part time teacher on non-grant basis. The appointment orders, as observed supra, are issued on year to year basis.

7. Vide order dated 16.09.2010, the respondent management appointed the Petitioner on Full Time post of Teacher again keeping it for an academic year. This was continued until 2017. Tenure of Petitioner's last service period is seen as 16.06.2017 to 30.04.2018.

8. In all the appointment orders it is mentioned that the appointment was on purely temporary basis and in the mentioned pay scale applicable to the subject-matter post. In no appointment order it is seen that the appointment was against a vacancy meant for any reservation category. All the appointments stood approved by the Deputy Director of Education, Pune from time to time.

9. It is an undisputed fact that the subject-matter post was of a clear, vacant and permanent nature.

10. It is a trite law that every appointment made u/s 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 must be made on probation, and upon completion of probation period such appointee has to be confirmed as a permanent employee.

11. There had been amendments in the year 2007 to the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. A new subsection 2-A was incorporated into Section 5 of the Act. The probation of Two years was extended by additional one year making total Three years for the Shikshan Sevaks.

12. A beneficial reference can be made to a Judgment and Order delivered by this Court in the case of ***New Education Institute Nashik and ors. Vs. Mehajabin Ashfak*** reported at ***2008 (1) AIR Bom.R 256***. Paragraph No.10 of the judgment reads thus:

10. Section 5(2) expressly provides that when any person is appointed to fill a clear permanent vacancy, he shall be appointed on probation for period of two years. Thus, the management ought to have appointed respondent No. 1 for a period of two years and not limited the appointment for a period of one year. Rule 9 is explicit as it indicates the manner in which the vacancy is to be filled. Thus, it was incumbent on the petitioners to appoint respondent No. 1 on probation for 2 years against the permanent clear vacancy.

13. The aforesaid observations are squarely applicable to the present case. While the statute mandates the mode of appointments on probation for clear, vacant and permanent post, the Managements can not venture its own mechanism to keep an employee forever in hanging position.

14. A reply affidavit filed by the management is on record. It is disputed that the subject-matter post was clear and vacant post (paragraph No.9). This statement on oath is absolutely hostile to the terms and conditions spelled out in the appointment orders.

Copies of the appointment orders clearly show that the subject-matter post was a clear and vacant post. Unless it is, the Deputy Director of Education would not have granted approval at the request of the Management.

15. Section 5(2A) is a supplement to Section 5(1) which makes the probation for Shikshan Sevaks for a period of three years. Meaning thereby, a Shikshan Sevak who completes probationary period of Three years stands confirmed as a Teacher/Assistant Teacher.

16. The object behind legislating these two provision is clear. This is to curb the typical management strategy to keep the 'On/Off' switch of its employees' service, always under its thumb.

17. I do not subscribe to the defense raised by the Management that because the Petitioner every time accepted the appointment orders, he is estopped from disputing the mode of appointment nor he can put allegations against the Management. As observed, the law says that every clear, vacant and permanent post must be filled in by appointing a suitable employee on probation. Upon completion of probation, such employee becomes permanent employee.

By accepting to join pursuant to the appointment order, the Petitioner can not be held disqualified to seek permanency. There can not be estoppel against law.

18. The management can not take undue advantage of the needy for a job. A needy person has no wisdom to bargain. Had the Petitioner questioned the nature of the stipulation in the appointment order which is de hors the law, certainly he would have lost the opportunity. The management obviously had options to accommodate the next one who is more needy, and who is ready to bow down and to surrender to the riders.

19. It is rather worrying that a very responsible authority i.e. the Deputy Director of Education, Pune has travelled hand in hand with the Management for carrying and continuing such illegality. It was the duty of the said authority to question the Management since Petitioner's initial appointment. On the other hand, the Deputy Director of Education has irresponsibly issued approval orders on annual basis confirming the illegal mode adopted by the respondent Management. Everything has been done under the nose of this authority. Had the Deputy Director of Education exercised his authority timely and honestly, the management could not have dared to keep its

employees consistently under its thumb. This not only gives birth to the unwarranted litigation, but also adversely affects the performance of the staff due to the constant apprehension of uncertainty to the job security.

20. The record speaks that the Deputy Director of Education Pune was party to the appeal before the School Tribunal, still there also no comment is made by him on the conduct of the respondent management.

21. Reliance placed by the respondent management in case of *Kalpataru Vidya Samasthe Vs. S.B. Gupta and ors.* reported at *(2005) 7 SCC 724* may not be of any avail to the respondent management for substantial difference in facts. In the said case the High Court of Karnataka has exercised revisional jurisdiction u/s 115 of the Civil Procedure Code 1908 to interfere into the order passed by the Tribunal. The Honorable Supreme Court disapproved such interference u/s 115 of the Civil Procedure Code 1908. The case therein was under the provisions of the Karnataka Education Act. The employee therein was relieved while under probation. He again joined the job only for a limited period with a written undertaking that in terms of the invitation to rejoin the duties,

he has joined. Then the employee questioned his release from the service. As such, with due respect I record that this citation is of no avail to the respondent management.

22. Learned advocate for the respondent management also relies upon a view taken by the Honorable Supreme Court in the case of *Hindustan Education Society and anr. Vs. Sk. Kaleem and ors. reported at (1997) 5 SCC 152*. With due respect, I opine that the said citation is also not applicable to the present case. The cited case was of an employee who was only appointed for a period of 11 months. In the case in hand, the subject-matter post is apparently clear, vacant and permanent. Admittedly, the respondent management published an advertisement and then the Petitioner was appointed (emph. Paragraph No.6 of the reply affidavit). It was not an appointment of one specified period. For 15 years the Petitioner was continued in service by issuing appointment orders in continuity, although separately in each year. The Deputy Director of Education has also approved the appointments thereby confirming that the subject-matter post was clear, vacant and permanent.

Hence on account of substantial difference in the facts, this citation is of no avail to the respondent management.

23. Considering that the Petitioner was continuously served for 15 years on the subject-matter post- may be by separate appointment orders, I am of the considered view that such method devised by the management neither can be hostile to the mandate of law nor can defeat the object of the Law. Petitioner's appointment itself was on clear, vacant and permanent post. By virtue of the continuous appointment - although devised by separate appointment orders, the Petitioner earns status of a permanent teacher.

24. Learned Presiding Officer of the School Tribunal ought to have considered the law governing the field. There are absolutely no justifiable reasons from the end of the Management as to what tempted it to take exception to Section 5(2) of the Act of 1977. Merely contending that the appointment was purely on temporary basis and for a specific period does not justify departure to Section 5(2) of the Act of 1977. Meandering the law and procedure must be deprecated.

Another beneficial reference can be made to a Judgment and Order delivered by this Court in the case of *Abdul Rafique Vs. Yavatmal Islamiya Anglo Urdu Education society and ors. reported at 2015 (1) Bom.C.R. 804*

25. Thus, I find that the School Tribunal erred in holding that the Petitioner was not a regular employee and that he could not have maintained the prayers as prayed therein.

Oral termination

26. Now so far second issue of 'oral termination' is concerned, the management has taken a stand that the Petitioner voluntarily left the services. It is also stated that the Petitioner was charged for mass copy and disregard towards duty. That, since the Petitioner was found guilty for the charges, a notice was issued on 18.11.2004 and an action was initiated against the Petitioner as per the directions from the 'Divisional Office'. It is further stated that later in 2017-2018, there were complaints against the Petitioner about misbehavior with female students and the Petitioner was beaten by the parents of the students. It is submitted that the Petitioner left the job voluntarily under apprehension of being beaten by the parents.

27. There is nothing before this Court about the alleged incident of 2004 and action, if any taken to its logical end by the management against the Petitioner. Although the management submits that the Petitioner tendered written assurance not to repeat any ill act, fact remains that the petitioner was continued in his service.

28. So far as the incidences of 2017-2018 are concerned, copy of a letter dated 11.11.2017 written by the Headmaster of the Mulikadevi Secondary School to the Secretary of the Management and a newspaper cutting is filed alongwith reply affidavit in the Writ Petition. Recitals of the first annexures show that the headmaster intimated to the management about complaint by some parents and assault on the Petitioner by the parents. The another annexure i.e. newspaper cutting does not recite Petitioner's name or School name.

29. May it be, fact remains that the respondent management did not initiate any disciplinary proceeding against the Petitioner pursuant to the alleged misconduct. A bare statement that on 18.11.2004, a notice was issued to the Petitioner is not sufficient to take departure from the further disciplinary proceeding. It is vaguely stated that as per

Divisional Office's instructions the notice was issued. Which and whose divisional office, is not clarified. On query, learned advocate could not explain it. Copy of the said notice is not placed before me nor also what happened to its service on the Petitioner, and any response pursuant to this etc. is placed before me.

30. May it be, I refrain myself from commenting upon the nature of the complaint and its genuineness. However for the purpose of present controversy, the management was under obligation to take up disciplinary proceedings against the Petitioner considering the serious complaint. Failure to take up such disciplinary proceedings under the Rules of 1981 strengthens the arguments of the Petitioner for carving out adverse inference against the management.

31. I have rendered my findings on both the issues under debate with elaborate reasoning.

32. Management's defense on both issues i.e. nature of appointment and otherwise termination is hit by the basic principle of *Nullus commodum capere potest de injuria sua propria* (one can not take benefit of his own wrong).

33. The findings recorded by the learned Presiding Officer, School Tribunal are liable to be struck down.

34. Before parting, I must record my findings on one more objection raised by the respondent Management in its reply affidavit filed on date of final hearing.

One additional objection as could be seen in the reply affidavit is referring to Rule 9(a) of Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules 1981 [“1981 Rules” for brevity]. The said provision reads thus:

(9) (a) In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to-year basis by a candidate not belonging to the Backward Classes.

35. I am constrained to observe that this is not only a feeble attempt, but absolutely an absurd defense by the respondent management. There is nothing, absolutely nothing on record showing that the subject-matter post was reserved for ‘X’ category, and for want of availability of suitable candidate

from such category – the Petitioner was appointed for a limited period. Merely reference of Rule 9A of the 1981 Rules in the formatted appointment order neither make appointment temporary and against a reserved vacancy. At no point of time the Deputy Director of Education has observed anything in either of the approval order that the subject-matter post was reserved for 'X' category and that the Petitioner's appointment was a time-gap arrangement on temporary basis.

36. My view and opinion as expressed in forgoing paragraphs goes in tune with the observations made by this Court in the case of *Matoshri Ramabai Ambedkar Vidyarthi Vasatigruh Trust and another Vs. V.Bharat D Hambir and anr.* reported at *2008 SCC OnLine Bom 1234*. This Court observed thus:

5A. Of late, there is a growing tendency of managements of private schools to appoint temporary employees from year to year, even though the vacancy is permanent and an adequate work load is available. This leads to grave uncertainty for teachers and places them at the mercy of the managements. The temporary appointment of a teacher who questions unethical practices of the management is promptly terminated. He or she who questions is cast away. Those who turn a blind eye or

worse, become willing participants in a pattern of exploitation, are retained. This is a perversion of what was intended by the State legislation enacted in 1977. Placing teachers in a state of eternal uncertainty is destructive of the cause of education. In numerous cases before this Court, the grievance is that teachers of aided institutions are being subjected to extortionate demands by unscrupulous managements. Education has become a business and managements of private schools, with notable exceptions, are becoming pirates in the high seas of education. The interpretation of section 5 of the Act must be purposive - one that would attain the statutory object and not lead to a negation of statutory intent. Once a permanent vacancy arises, a management is duty bound statutorily to fill it up by appointing a duly qualified candidate on probation. The vacancy must be advertised to allow equal opportunity to eligible candidates. A regular process of selection must be held. A duly qualified candidate has to be appointed. Temporary appointments can by definition be made when the vacancy is temporary. In such cases, the exigencies of education require that students must be imparted education and a vacancy even for a short period will cause serious hardship. But temporary appointments are an exception. Making temporary appointments the rule is to give a tool of subversion to the hands of unethical managements. Temporary appointments, followed as a practice become a tool of subversion because they perpetuate a regime of uncertainty about service, place the teacher in a position of perpetual fear and deprive the teacher of the stability needed to contribute to the process of moulding young minds. This Court must emphasise with all the authority at its command that a subversion of statutory intent should not be allowed. The Court will not allow itself to be a mute by

stander to the growing trend of a lack of ethics in the management of private schools. Judicial intervention is warranted in order to preserve the statutory intent.

6. The position of the law which I have formulated finds elaboration in Mr. Justice R.M.S. Khandeparkar's judgment in President, Mahila Mandal Sinnar v. Sunita Bansidhar Patole, 2007 (2) Mh.L.J. 105 thus:

“Merely because the management chooses to issue appointment orders every year, the appointment of the respondent ipso facto cannot become a temporary one. The Management is bound by the provisions of law comprised under MEPS Act in relation to the appointments of teachers. Once it is not in dispute that vacancy which was filled by the appointment of the respondent was a permanent vacancy, as such appointment was after following the procedure prescribed for appointing a person in permanent vacancy irrespective of the appointment letters being issued every year, the appointment of the respondent has to be construed as under section 5(1) of the Act.”

7. In the present case, the management cannot take advantage of the fact that it issued a yearly appointment on a temporary basis initially. The appointment was made after following the requisite procedure for selection, namely, after the issuance of an advertisement and holding of interviews. The first respondent was a duly qualified candidate. As already noted earlier, the management itself treated the appointment as one on probation. The services of the first respondent were not discontinued within the period of two years on the ground that they were unsatisfactory. Upon the completion of two years' service, the first respondent became a permanent employee as contemplated by the provisions of section 5(2) of the Act.

8. The second contention that has been urged is that it was not the case of the management at all that the services of the first respondent were terminated and in fact, it was the first respondent who had stopped attending the duties after signing the Muster on 5th September, 2007. The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 make a provision for such an eventuality. Rule 16(3) provides as follows:

“16(3) In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty without leave continuously for a period exceeding three years or more, shall be deemed to have voluntarily abandoned his services.”

9. In the present case, it was the case of the management that the first respondent had without sufficient cause failed to apply for leave and had remained absent. The management was entitled to treat this as a breach of discipline and to hold a disciplinary enquiry to establish the allegation. Until the misconduct was proved, it was only an allegation. Nothing of the kind was done. The School Tribunal has reviewed the material which has come on record in great deal of detail and noted that it is only after the first respondent filed a complaint against the management that it prevented him, with effect from 8th September, 2007, from signing the Muster Roll. The grievance of the first respondent is that the management was resorting to unethical practices by making extortionate demands. The Tribunal has for cogent reasons entered a finding of fact that there is substance in the grievance of the first respondent.

37. Thus, present case is squarely covered by the observations made by this court as above.

38. After the matter was reserved for orders, Mr. Jadhavar – learned advocate for the Petitioner tenders an affidavit to claim back-wages. It is stated on oath that since the date of his termination i.e. w.e.f. 15.06.2018 till 21.06.2023, the Petitioner remained unemployed. Suffering starvation and with sole object to run the livelihood of himself and the family, he joined a job at one Avihas Electricals, a private employer on a very meager amount of Rs. 12,000/- p.m. which is now Rs. 14,000/- p.m. since January 2026. It is submitted that, considering the illegality committed by the management, his prayer for back-wages be accepted.

39. The law on backwages is clear. I am well guided by the law laid down by the Honorable Supreme Court in the case of *Education Society, Tumsar and ors. Vs. State of Maharashtra and ors., 2016 AIR(SC) 1700*. In the light of the observations on the disorderly and arbitrary conduct of the Management and the ‘blind eyes’ policy adopted by the very responsible authority i.e. the Deputy Director of Education, I deem it necessary in the interest of justice to partly allow such prayer.

40. Hence, I pass following order:

ORDER

- I. The Writ Petition stands allowed;
- II. Judgment and Order delivered by the learned Presiding Officer, School Tribunal Pune (Region Solapur) on 18.07.2022 in Appeal No.09 of 2019 and petitioner's termination dated 15.06.2018 are quashed and set aside;
- III. The Petitioner is held entitle for reinstatement on the subject-matter post with benefit of continuity for all service benefits; with 50% back wages from the date of termination i.e. from 15.06.2018.
- IV. The respondent management shall reinstate the Petitioner on the subject-matter post within Two weeks herefrom;
- V. Within Eight weeks from passing of this order, the respondent management shall pay 50% of the back wages to the Petitioner.
- VI. **Rule made absolute in above terms.**

(AJIT B. KADETHANKAR, J.)