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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1026 OF 2015

Mrudula Martand Palashikar,
Age : 57 years, Occ. At present nil,
R/o. Durgawadi, Gadkariwada,
Gazipura, Tq. Paithan,
Dist. Aurangabad.

...Petitioner...

Versus

1 Jijamata Primary School,
Bhagwat Galli, Paithan,
Taluka Paithan,
Dist. Aurangabad.
Through the Head Master.

2 Jijamata Mahila Mandal,
Bhagwat Galli, Paithan,
Taluka Paithan,
Dist. Aurangabad.
Through the Head Master.

3 The Education Officer (Primary),
Zilla Parishad, Aurangabad,
Aurangabad

...Respondents...

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Shri S. T. Shelke, Advocate for petitioner.

Shri A. B. Kadethankar, Advocate for respondent Nos.1 &
2.

Shri D. K. Rajput, Advocate for respondent No.3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 15.12.2015

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] The contention of the petitioner in challenging the impugned judgment of the School Tribunal dated 19.8.2014, by which her appeal was dismissed, is that despite having worked for almost 13 years from 11.6.1999 till 18.6.2012, the respondent – management has taken a stand that her service deserved to be terminated since the Education Department has refused approval to her appointment as an Assistant Teacher.

3] Shri S.T. Shelke, learned Advocate for the petitioner, submits that the approval to the services of the petitioner was rejected in 2003. The respondent – management is aware of the said rejection. Despite the same, the petitioner was continued in employment till 18.6.2012.

4] He further submits that the Education Officer, by his communication dated 10.5.2011, informed the respondent – management that the petitioner, who is in employment and continued by the management, has suffered

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an order of rejection of approval. The proposal of the management dated 27.3.2003 had been returned on 29.9.2003 only on the ground that since a service dispute of an Assistant Teacher Shri P.H. Patil was subjudice, the petitioner cannot be granted approval. The other ground for refusal to grant approval was that the petitioner was age barred when she was appointed by the respondent – management.

5] Shri Shelke informs that subsequently the claim of Shri P.H. Patil was rejected and his appeal was dismissed.

6] He further submits that the petitioner was working in a different educational institution prior to her joining the respondent – management. She had put in about 10 years of service as an Assistant Teacher at Vadgaon Pan, Ahmednagar, and her services were approved by the Education Officer, Ahmednagar, and the same was subsequently communicated to the said management on 27.3.2005. Consequentially, by effect of her earlier appointment, she was eligible for relaxation of age limit under the proviso to Rule 9(4)(a) of the Maharashtra Employees of Private Schools (Conditions of

Service) Rules, 1981.

7] He further submits that the primary reason for termination of services of the petitioner by the management has been on account of the Education Officer having returned the proposal of the petitioner for grant of approval. He, therefore, places reliance upon the Full Bench judgment of this Court in the matter of *St. Ulai High School & another v. Devendraprasad Jagannath & another* (2007(1) **Mh.L.J.**, 597). He adds that the decisions of the learned Single Judge of this Court in the matter of *Janata Janardhan Shikshan Sanstha v. Vasant P. Satpute* (1986 **Mh.L.J.**, 260) and in the case of *Rasta Peth Education Society v. Petkar Udhao Bhimashankar* (1994 **Mh.L.J.**, 725) alongwith several other matters decided by this Court, were considered by the Full Bench.

8] Shri Shelke further placed reliance upon the judgment of the Apex Court in the matter of *Sushila Bhikaji Sawant v. State of Maharashtra & others* (2006 (2) **Mh.L.J.**, 841) wherein the Apex Court while noting that the appointment of the concerned petitioner was never approved by the Education Officer, concluded that since he has been continued in service, the employer is liable

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to pay the salary and all other emoluments payable to the said petitioner.

9] Shri Shelke then draws my attention to the impugned judgment of the School Tribunal, which is solely based on the aspect of lack of approval. He submits that the School Tribunal has dismissed the appeal of the petitioner only on the ground that her service was not approved and, therefore, she had no right to continue in employment. The issue as regards her previous experience of 10 years with the school at Vadgaon Pan despite approval having been granted by the Education Officer, was disregarded. He, therefore, prays for setting aside the impugned judgment. He informs that the petitioner has attained the age of superannuation on 7.5.2015 in view of her date of birth being 8.5.1957.

10] The learned Advocate appearing on behalf of the Education Officer submits that the proposal for approving the services of the petitioner was returned only on the ground that a service dispute of another Assistant Teacher Shri P.H. Patil was subjudice and the petitioner was age barred.

11] It was further stated that the petitioner was

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occupying a position, which was vacant, but reserved for other backward classes. He, therefore, submits that the Education Officer had never directed the management to terminate the services of the petitioner. It was only informed to the management that the payment of salary shall be the sole responsibility of the management as the proposal for approval was returned. He confirms that this communication dates back to the year 2003 and the letter dated 10.5.2011 was merely aimed at pointing out the said aspect to the management.

12] Shri Kadethankar, learned Advocate appearing on behalf of the respondent nos.1 & 2, submits that the representative of the management is present in the Court. He submits that the management terminated the services of the petitioner on 18.6.2012 since there was no approval to her appointment. The management was aware that the petitioner was working with Swami Vivekanand English Medium School, Vadgaon Pan Tq.Sangamner Dist.Ahmednagar, which was recognized school from 1.6.1989 till 28.2.1998 as an untrained teacher and as a trained teacher from 1.3.1998 till 31.5.1999. This aspect was brought to the notice of the Education Officer by communication dated

12.6.2007.

13] Shri Kadethankar submits that the management has no oblique or ulterior motive in terminating the services of the petitioner. Since she was being continued without an approval, the management had no option but to terminate her services as an Assistant Teacher and she should not have been continued in employment in the absence of an approval. He adds that the management had no objection for relaxing the condition of age in the light of the proviso below Rule 9(4)(a) of the MEPS Rules, 1981.

14] He further submits that the School Tribunal has considered the above aspects and was convinced that the petitioner was rightly terminated. There is no perversity in the conclusion of the School Tribunal and hence this petition be dismissed with costs.

15] I have considered the submissions of the learned Advocates as have been recorded hereinabove.

16] It is no longer *res integra* that lack of approval for the services of an employee is not a ground for terminating the services, inasmuch as it is not a condition warranting termination. The Full Bench of

this Court in *St.Ulai High School* judgment (supra) has concluded in paragraph no.13 (iii) as follows:-

“ The Legislature has constituted the Tribunal as an Appellate Tribunal over decisions of the managements in respect of actions falling within the purview of Clauses (a) and (b) of Sub-section (1) of Section 9. The first round of litigation which would take place in the Trial Court is sought to be eliminated by conferring full appellate powers upon the Tribunal. Under Sub-section (1) of Section 10, the Tribunal is vested with all the powers of an Appellate Court under the Code of Civil Procedure, 1908. The Tribunal is vested with the complete freedom to decide upon its procedure for the disposal of its business including the places at which and the hours during which the Tribunal will conduct hearing. Under Sub-section (3) of Section 10, an appeal has to be decided as expeditiously as possible, an endeavour being required to dispose of the appeal within three months of the receipt of the appeal. The provision that requires the Tribunal to record reasons for not being able to dispose of an appeal within a period of three months emphasises the weight ascribed by the Legislature to the expeditious disposal of appeals. Section 14 of the Act which excludes legal practitioners from appearing before the Tribunal save and except with the special permission of the Tribunal aims at reducing the period for the disposal of an appeal which is entertained by the Tribunal.”

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17] The Full Bench had framed an issue below paragraph no.3.1(C), which reads thus:-

"The question of approval and the maintainability of an appeal under Section 9"

After considering the scheme of the MEPS Act, 1977, the intent and object behind introduction of the said Act, the Full Bench concluded in paragraph no.13(iii), as above. It is thus settled that want of approval will not invalidate an order of appointment.

18] From the facts emerging from this case, I do not find that the respondent – management had any other reason to terminate the services of the petitioner. There was no grievance about her performance as an Assistant Teacher. There was no grievance about her conduct. There were no charges leveled upon her.

19] I, therefore, find that the management has put forth a feeble ground that approval of the petitioner has not been granted in 2003, for facilitating the termination of her service on 16.6.2012, which was practically after nine years. The motive behind such termination is probably only within the knowledge of the respondent – management. However, in law, such

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termination cannot be sustained, lest it would embolden such managements to exploit services of teachers and terminate them on such feeble grounds.

20] I also find that in the face of an admitted position that the petitioner had put in 10 years with another school prior to joining the respondents. This was a valid ground for extending the benefit of the proviso below Rule 9(4)(a) of the 1981 Rules to the petitioner.

21] Rule 9(4)(a) and the proviso thereunder reads thus:

“For an appointment to be made to any post in a primary school, a candidate shall not be less than 18 years of age and more than 28 years of age, and in the case of candidate belonging to the Backward Classes he shall not be more than 33 years of age.

Provided that, upper age-limit may be relaxed in case of women, ex-servicemen, and persons having previous experience with the previous permission of the Deputy Director.”

22] The ten years put in by the petitioner prior to joining the respondent – management, which had selected her on the basis of her earlier experience, cannot be

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ignored. Nevertheless, this Court is not dealing with the issue as to why the Education Officer refused approval to the services of the petitioner. It is informed that the order of refusal to grant approval is subjudice before the learned Division Bench of this Court in Writ Petition No.6301/2012.

23] The Apex Court in the case of *Sushila Bhikaji Sawant* (supra) has noted the submissions of the litigating sides and has allowed the appeal. It would be apposite to reproduce paragraph nos.4 to 8 as under:

"4. The contention of the learned counsel for the State of Maharashtra is that the appointment of the petitioner herein was never approved by the Education Officer as required under the rules. He also contends that the appointment is contrary to the rules prescribed by the State of Maharashtra and, hence, not admissible for grant-in-aid.

5. It is not in dispute that the appointment of petitioner had never been approved by the Education Officer. It is also not in dispute that the petitioner actually worked from 11th June, 1995 to 20th August, 2002 as a Junior Clerk in the service of the respondents 3 and 4.

6. in the circumstances, we are not able to accept the contention of the learned counsel for

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respondents 3 and 4 that they are not liable for the salary and other emoluments of the petitioner for the aforesaid period. In our view, the respondents 3 and 4 had taken the service of the petitioner during the period from 11th June, 1995 to 20th August, 2002 and, therefore, as employers, they are liable for payment of salary and other emoluments payable to the petitioner. There is no other point involved in this appeal.

7. Accordingly, with a direction to the respondents 3 and 4 that they shall make payment of all salary, allowances and other emoluments to the petitioners for the period from 11th June, 1995 to 20th August, 2002, this appeal is allowed in part.

8. At the request of the learned counsel for the State of Maharashtra, we clarify that the amount payable shall be the sole responsibility of respondents 3 and 4. The respondent Institution is at liberty to collect the aforesaid amount from any person, who may be found to have wrongly appointed the petitioner, by adopting any proceeding available in law."

24] In the light of the fact situation, as above, I find that the School Tribunal has resorted to a pedantic approach. The School Tribunal has failed to consider the fact about the petitioner being experienced and having

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put in 10 years in another school prior to joining the respondent – school. The School Tribunal lost sight of the fact that return of the proposal in 2003 cannot be a ground for the management to terminate the services of the petitioner in 2012 after 9 years. In my view, the impugned judgment of the School Tribunal is, therefore, perverse and unsustainable.

25] In the light of the above, this petition is allowed. The impugned judgment and order dated 19.8.2014 delivered by the School Tribunal is quashed and set aside. The Appeal No.14/2012 filed by the petitioner stands allowed. The impugned order of termination dated 18.6.2012 is set aside.

26] The petitioner having attained superannuation on 7.5.2015 shall, therefore, be entitled for full back wages from 11.6.1999 till 7.5.2015, which shall be paid by the respondent – management to the petitioner within a period of 12 weeks from today, in the light of the statement of the petitioner that the salary was not paid ever since she joined the employment. In the event the said amount is not paid, as directed above, within the time frame, the petitioner will be entitled for simple

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interest at the rate of 6% p.a. from 11.6.1999 till the date of termination, which is 18.6.2012. For the remainder amount from 18.6.2012 to 7.5.2015, interest at the rate of 3% p.a. from the date of retirement. So also the Education Officer in such a situation shall recover the said amount with interest from the grants of the respondent nos.1 & 2 – educational institution.

27] Rule is made absolute in the above terms. There shall be no order as to costs.

(RAVINDRA V. GHUGE, J.)