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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.5836 OF 2012

Shankar Bhanudas Lawate,
Age : 36 years, Occ : Nil,
R/o Anandgaon, Taluka Kaij,
District Beed.

...PETITIONER

-VERSUS-

- 1 Shri Chhatrapati Shivaji Vidyalaya
Jadhavjawala, Taluka Kaij,
District Beed.
Through it's Headmaster.
- 2 Uttareshwar Shikshan Prasarak Sanstha,
Hanumant Pimpri, Taluka Kaij,
District Beed.
Through it's Secretary.
- 3 The Education Officer (Primary),
Zilla Parishad, Beed.

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Shri Santosh S. Jadhavar, Advocate for the Petitioner.

Shri V.D.Kadam, Advocate for Respondent Nos.1 and 2.

Shri U.B.Bondar, Advocate for Respondent No.3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 07th September, 2015

Oral Judgment:

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 The Petitioner is aggrieved by the judgment and order dated 21.12.2011 delivered by the School Tribunal, Aurangabad in Appeal No.8/2009. By the impugned judgment, the School Tribunal has dismissed the Appeal preferred by the Petitioner under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “the MEPS Act”) for challenging his oral termination dated 02.03.2009.

3 I have heard the learned Advocates for the respective sides at length.

4 In the light of the order that I propose to pass, I am not required to advert to all the submissions put forth by the learned Advocates.

5 The Petitioner has alleged oral termination dated 02.03.2009 by Respondent No.1/ Headmaster at the behest of Respondent No.2/ Management.

6 The Petitioner had claimed that there was an advertisement

published by Respondent No.2/ Management calling for applications for a clear, vacant and sanctioned post of an Assistant Teacher. The competent selection committee interviewed the Petitioner and after following the due procedure laid down in law, Respondent No.2/ Management appointed the Petitioner on the post of Assistant Teacher by the order dated 16.06.2003 w.e.f. 20.06.2003.

7 The Petitioner contends that though the initial order dated 16.06.2003 appointed the Petitioner for only one year, the Management issued the order dated 11.06.2004 by which the Petitioner was appointed on probation for a period of two years. By virtue of Section 5(2) of the MEPS Act, the Petitioner has attained the deemed status of a permanent employee as he has worked for six years with Respondent Nos.1 and 2. By an oral order dated 02.03.2009, the Petitioner has been terminated.

8 Shri Jadhavar, learned Advocate for the Petitioner, has seriously canvassed that an oral order is non-est in the eyes of law since it is no order. Consequentially, the Management cannot put forth reasons for terminating the services of the Petitioner. He, therefore, submits that all the reasons that may have been put forth by the Management in it's Written Statement to the Appeal, deserve to be discarded since an oral order presupposes that the Management has not taken any stand in the

matter. It is, therefore, submitted that the Petitioner be reinstated in employment with continuity and full back-wages.

9 Respondent Nos.1 and 2 have stated in their reply dated 22.03.2010 filed before the School Tribunal that the appointment of the Petitioner was not made in accordance with the procedure laid down in law. No advertisement for the post as is claimed by the Petitioner was ever published. The Petitioner was appointed by the Headmaster for one year only within his powers as there was no sanctioned post. It is further contended that the Petitioner was never appointed, was never allotted work, he has never taught in the school and therefore, no salary was paid to him.

10 The Management has also taken a stand that the order dated 11.06.2004 by which the Petitioner claims to have been appointed on probation for a period of two years, is a forged document. The same is a 'nonexistent' order purportedly issued by the former Secretary of the Management who was not authorized to issue the said order.

11 The Petitioner has contended that he could not place the advertisement on record before the School Tribunal which would have clearly indicated that the Petitioner was appointed after following the due

procedure of law. It is further submitted that apparently on account of the non production of the advertisement, the School Tribunal has concluded that it cannot be ascertained whether, the Petitioner was appointed as an Assistant Teacher pursuant to an advertisement.

12 It is canvassed that the School Tribunal has considered the fact that there was no vacant post of an Assistant Teacher. The Petitioner could have only been appointed as a Drawing Teacher considering his qualifications of M.A., C.T.C.. The CTC does not have the equivalence of D.Ed.. Considering the qualification of the Petitioner especially CTC (Handicraft), the Petitioner would also not be entitled to be appointed as an Arts Teacher.

13 The Management, therefore, submits that the School Tribunal has rightly dismissed the appeal and no interference is called for as the impugned judgment is neither perverse nor erroneous.

14 I have considered the submissions of the learned Advocates as have been recorded herein above.

15 The Petitioner is struggling for the restoration of his employment. It is urged by the Petitioner that if an opportunity to place

the advertisement on record is made available, the School Tribunal would be assisted in coming to a conclusion that the Petitioner was appointed only against a permanent vacant post.

16 The grievance of the Petitioner is that there is no conclusion of the School Tribunal on the aspect of whether the probation order is an act of forgery and a bogus order. Though the Management has so contended, the School Tribunal has failed to deal with the said issue. In the absence of any adverse verdict on the genuineness of the probation order, the School Tribunal was obliged to consider the order of probation which would bring the Petitioner within the ambit of Section 5(2) of the MEPS Act.

17 It is apparent that an oral termination order is nonexistent in law. This Court has come across several cases wherein the Management orally prevents an employee from performing duties. Having been driven out, such teachers/ employees approach the School Tribunal. Once an appeal is lodged under Section 9 of the MEPS Act, the Management through its written statement, puts forth a host of reasons for substantiating the 'oral order' of termination.

18 In the instant case, the Respondent/ Management has taken a

stand that there was no advertisement, contrary to the vehement contention of the Petitioner. The Management has also taken a stand that the order of probation is bogus. If the order of appointment on probation turns out to be genuine, the contention of the Petitioner would stand fortified that he is entitled for the benefits of Section 5(2) of the MEPS Act. Neither has the Respondent/ Management pointed out from the impugned order, nor do I find from the same that the School Tribunal has dealt with the contention of the Management that the order of probation is false and bogus.

19 In the light of the above, this Writ Petition is partly allowed. The impugned judgment and order dated 21.12.2011 delivered by the School Tribunal in Appeal No.8/2009 is quashed and set aside.

20 Appeal No.8/2009 is remitted back to the School Tribunal, Aurangabad with the following directions:-

- (a) The litigating sides shall appear before the School Tribunal on 09.10.2015 at 11:00 am. Formal notices need not be issued to the litigating sides by the School Tribunal.
- (b) The Petitioner is at liberty to place on record the copy of the advertisement at issue.
- (c) Both the litigating sides are at liberty to place additional

documents as they may deem appropriate so as to assist the Tribunal in deciding the appeal afresh.

- (d) All the contentions of the litigating sides are kept open including the contention of the Petitioner that an oral order is non-est and nonexistent in the eyes of law and the contention of the Management that the probation order of the Petitioner is a bogus and false document.
- (e) The School Tribunal shall decide the appeal afresh and on its own merits after considering all the contentions of the litigating sides and without being influenced by the impugned order dated 21.12.2011, which has been quashed and set aside.
- (f) Since the appeal is of the year 2009 and the termination of the Petitioner is dated 02.03.2009, the School Tribunal shall endeavour to decide the appeal as expeditiously as possible and preferably on or before 29.02.2016.

21 Rule is made partly absolute in the aforesaid terms.

(RAVINDRA V. GHUGE, J.)