

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1736 OF 2013

PREMALA DATTATRAYA AVDHANE

PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

RESPONDENTS

Mr.V.G.Salgare, Advocate for the petitioner.
Mr.D.R.Korde, AGP for respondent Nos. 1 to 4.
Respondent Nos. 5 and 6 are served.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 30/11/2015

PER COURT :

1. I have heard the learned Advocate for the petitioner and the learned AGP on behalf of respondent Nos.1 to 4. Despite service on respondent Nos. 5 and 6, they have not chosen to enter an appearance either through an advocate or in person. By order dated 04/09/2015, respondent Nos. 5 and 6 were put to notice that if they chose to remain absent, this petition would be heard without their assistance.

2. Since none has appeared for respondent Nos. 5 and 6, I have heard the learned Advocate for the petitioner and the learned AGP.

3. The petitioner is aggrieved by the judgment and order dated 14/11/2008 delivered by the School Tribunal, Latur in Appeal No.64/2007 (Old No.82/2002). By the impugned judgment, the appeal of the petitioner challenging her termination dated 17/06/2002 has been dismissed.

4. Mr.Salgare, learned Advocate for the petitioner has strenuously criticized the impugned judgment. Submission is that the petitioner was appointed as a "Probationer" by order dated 29/09/1994. She has worked continuously and has been eventually terminated on 17/06/2002. She preferred the above referred appeal and has challenged the orders dated 19/04/2002, 04/05/2002 and 11/06/2002 and has further prayed for being continued as an "Assistant Teacher" with respondent No.6 / School.

5. The petitioner points out her appointment order dated 29/09/1994 by which she was specifically appointed as an "Assistant Teacher" on probation for a period of two years. Mr.Salgare, therefore, submits that upon completion of 2 years period of probation, the petitioner attained the deemed status of a confirmed teacher u/s 5(2) of The M.E.P.S. Act, 1977. Her termination on 17/06/2002, which is practically after a period of 7 years and 9

months amounts to an illegal termination of a permanent teacher. He, therefore, submits that the approval granted by the Education Officer dated 30/11/1994 would confirm that the petitioner has attained the deemed status of a confirmed teacher.

6. He further submits that the School Tribunal has lost sight of the fact that once the petitioner was appointed as a “probationer” and having continued till the date of termination dtd.17/06/2002, the School Tribunal should have concluded that the termination is bad in law. He, therefore, prays for allowing of this petition and for reinstatement with continuity and full back wages.

7. The learned AGP relies upon the affidavit in reply filed by the Education Officer dated 15/07/2015. On the one hand, the learned AGP confirms the order of approval dtd. 30/11/1994. On the other hand, it is pointed out that the fourth division for standard 9 in the concerned school was reduced on account of fall in the number of students. The petitioner was rendered surplus in 1995. Thereafter, the petitioner was disengaged and then was appointed in the place of Smt.M.R. Deshmukh, who was sent on deputation and a temporary vacancy arose on account of her deputation.

8. He further submits that since the fourth division in Standard 9 was reduced, the petitioner prayed for being appointed in place of Smt.M.R.Deshmukh by her application dated 25/01/1996. The appointment of the petitioner was cancelled owing to the reduction in one division and she was appointed temporarily in place of Smt.Deshmukh, who was appointed as a “Senior Lecturer” on deputation with D.I.E.T. Parbhani. The petitioner continued in place of Smt.Deshmukh, who rejoined in 2002. Consequentially, under the directions of the Deputy Director of Education, the petitioner was disengaged as the occupant of the said post Smt.Deshmukh had returned back from deputation. He, therefore, submits that no fault can be found with the impugned judgment.

9. I have considered the submissions of the learned Advocates for the petitioner and respondent Nos. 1 to 4, as have been recorded above.

10. During the course of his submissions, learned Counsel for the petitioner confirmed that the reduction in the fourth division of standard 9 led to the discontinuance of the petitioner prior to the completion of her probation period. She prayed for an engagement in place of Smt.Deshmukh due to the temporary vacancy created by

Smt.Deshmukh's deputation.

11. It is, therefore, apparent that before the petitioner completed her probation period, her engagement as a probationer was discontinued owing to the reduction in the fourth division of standard 9. Her temporary engagement thereafter in place of Smt.Deshmukh can only be said to be an ad-hoc appointment which vests no right in the petitioner in seeking regularization of her services.

12. I, therefore, do not find any error committed by the School Tribunal in delivering the impugned judgment.

13. This petition, being devoid of merit, is therefore dismissed.

(RAVINDRA V. GHUGE, J.)