

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6416 OF 2013

VIJAYDEEP VISHWANATH PERNE
VERSUS
PRESIDENT, SHRI SHIVAJI SHIKSHAN PRASARAK MANDAL & OTHERS

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Advocate for Petitioner : Shri Shinde Ajay h/f Smt. Kale U.P.
Advocate for Respondents 1 & 2 : None present.
AGP for Respondent 3 : Smt. Shinde V.A.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 10, 2015
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PER COURT :-

1. The petitioner has challenged the judgment of the School Tribunal dated 18.1.2013 delivered in Appeal No.96 of 2011, which was filed by the petitioner, challenging his termination dated 2.9.2011. The said appeal has been dismissed.

2. The petitioner has strenuously contended that he has been working regularly and continuously with respondent No.2 - School, as an Assistant Teacher. His first appointment order is dated 20.1.2003. His last appointment order is dated 16.6.2011. An experience certificate was issued to him on 7.5.2011 by the Headmaster of the said school. A permanent vacant post still exists with the respondent / management.

3. He further submits that the School Tribunal has failed to consider

that the petitioner having worked continuously was deemed to have been made permanent under Section 5(2) of the the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977 ("the MEPS Act" for short). The respondent / management has 12 schools and the petitioner can be adjusted in any of the said schools. He, therefore, prays for the setting aside of the impugned judgment and for allowing this petition by issuing necessary directions to the respondents.

4. None for respondent Nos.1 and 2.

5. The learned AGP has relied upon the affidavit-in-reply filed on behalf of respondent No.3 - Education Officer (S), dated 9.1.2015. It is pointed out from paragraph Nos. 3 and 5 that the petitioner was neither selected against a permanent vacant post, nor was he considered pursuant to any advertisement. There were temporary leave vacancies of permanent teachers intermittently and the petitioner was engaged against such leave vacancy. One one occasion, he was engaged for a short duration on a contractual basis.

6. I have considered the submissions of the petitioner and have gone through the petition paper book.

7. By appointment order dated 20.1.2003, the petitioner was appointed from 20.1.2003 to 5.3.2003, during the temporary absence of

the permanent employee, namely, Shri Subhash Chandrabhan Shirsath.

8. By appointment order dated 16.7.2004, he worked from 15.7.2004 till 12.10.2004 on account of the temporary vacancy due to the leave absence of the permanent employee Shri V.T.Khedkar.

9. The certificate dated 7.5.2011 issued by the Headmaster indicates that the petitioner was engaged for the period 20.1.2010 till 1.5.2010 and 1.7.2010 till 18.10.2010, on consolidated wages.

10. By order dated 16.6.2011, he was appointed as a contractual employee for the academic year 2011-12 and he was terminated on 2.9.2011, after working for about two and half months.

11. It is evident that on most of the occasions as noted above, the petitioner was engaged during the temporary leave absence of a permanent employee. Once he was appointed on contractual basis. It is not his case that he had applied pursuant to an advertisement and has undergone a proper selection process and was selected by a duly constituted selection committee.

12. I do not find that any right accrues to the petitioner for seeking reinstatement with continuity and continuous service. The impugned judgment does not appear to be perverse or erroneous.

13. The petition being devoid of merits is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

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akl/d