

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

WRIT PETITION NO.6715 OF 2013

The President,
Laxmikant Education Society
(Old name),
Laxmikant Bahu-Uddeshiya
Seva-Bhavi Sanstha (new name),
Datta Nagar, Nanded,
Taluka and District Nanded
At present Bharisar Chowk,
Aniketnagar, Nanded

.. Petitioner

Versus

1. Manohar s/o Govindrao Thote,
Age 37 years, Occu.Unemployed,
R/o Kurula, Taluka Kandhar,
District Nanded

.. (Orig.Appellant
before Tribunal)

2. The Secretary,
Laxmikant Education Society
(Old name),
Laxmikant Bahu-Uddeshiya
Seva-Bhavi Sanstha (new name),
Datta Nagar, Nanded,
Taluka and District Nanded
At present Bharisar Chowk,
Aniketnagar, Nanded

3. The Head Master,
Laxmikant Primary Vidyalaya,
Datta Nagar, Nanded,
Taluka and District Nanded

4. The Education Officer (Primary),
Zilla Parishad, Nanded
District Nanded

.. Respondents
(2 to 4 – Original
Respondents before
the Tribunal)

Mr S.R.Choukidar, Advocate for petitioner

Mrs B.B.Gunjel, A.G.P. for State

Mr Ashwin Sakolkar, Advocate h/f Mr V.G.Sakolkar, Advocate for
respondent No.1

Mr V.S.Panpatte, Advocate for respondent No.4

CORAM : N.W. SAMBRE, J.

DATE : 4th March 2015

PER COURT

1. This petition is by Management which takes exception to the order dated 11th July 2013 passed by Presiding Officer, School Tribunal, Latur in Appeal No.67 of 2011.

2. The School Tribunal has passed the following order while allowing the appeal :

ORDER

1. Appeal is partly allowed.
2. The respondent Nos.1 & 2 are directed to reinstate the appellant forthwith on the post of Assistant Teacher in the respondent school and pay him regular salary from their own funds.
3. The prayer of appellant for quashing the oral otherwise termination dated 15.06.2007 is dismissed.
4. No order as to costs.

3. Mr Choukidar, learned Counsel for the petitioner-Management would urge that in view of the fact that few office bearers acting qua hand in glove with the respondent - employee has resulted in issuing two appointment orders to the respondent - employee. He claims that in fact, the respondent - employee was appointed for a short period from 11th November 2002 to 30th April 2003, whereas the

respondent – employee claims that he was appointed on the post of Shikshan Sevak from 11th November 2002 to 11th November 2005.

4. It is not in dispute that the appointment of the respondent is in response to an advertisement issued by the petitioner-Management for filling up posts of Shikshan Sevak which are shown to have been on 100% grants.

5. Learned Counsel for the petitioner-Management while questioning the legality of the order impugned urged that having regard to the fact that the appointment of the respondent-employee was for a limited period of six months, the permanency ordered to be conferred on the respondent-employee goes contrary to the Full Bench judgment of this Court in the matter of **Ramkrishna Chauhan Vs. Seth D.M.High School and ors in Writ Petition (OS) No.315 of 2006** and other connected petitions, delivered on 12th March 2013. Mr Choukidar, learned Counsel for the petitioner urged that even if the vacancy is permanent, still it is open for the petitioner-Management to appoint a person for a temporary period. He would further urge that the Tribunal has committed error of law by observing that as the respondent-employee was appointed on a permanent basis after having completed his probation, if the said employee has remained absent, there are appropriate avenues available to the Management to take recourse to against such employee not to order his termination. According to him, at no point of time the permanency was conferred on the respondent – employee.

6. In support of above contentions, the learned Counsel for the petitioner has placed reliance upon the communication issued by the Education Officer which is at page 46 of the petition. Said communication dated 23th July 2007 which is based on the communication dated 16th April 2007 issued by Head Master of the school whereby it was brought to the notice of Education Officer that before recruiting the respondent-employee, no permission from the Education Officer was obtained.

7. While countering the above referred submissions, learned Counsel for the Education Officer would urge that at the relevant time, the scheme in relation to appointment of Shikshan Sevak was in existence. He submits that it is an admitted position on record that no permission from Education Officer was obtained prior to the appointment of the respondent-employee. According to him, no liability can be fastened on the Education Officer to grant such permission or approval to the appointment.

8. In support of his contentions, Mr Sakolkar, learned Counsel for respondent No.1-employee would urge that the respondent No.1 was appointed pursuant to an advertisement at page 106-A of the petition wherein it is specifically mentioned that the posts of Assistant Teacher (Shikshan Sevak) are to be filled in on 100% grant basis. The said advertisement was issued in the newspaper on 7th October 2002 under the name of President and Secretary of the respondent No.2-Trust. The respondent No.1 thereafter was issued with an appointment

order dated 11th November 2002 appointing him for a period from 11th November 2002 to 11th November 2005 as Shikshan Sevak on monthly remuneration of Rs.3,000/-.

9. According to learned Counsel for respondent No.1-employee, once the appointment of respondent No.1-employee is on a clear vacancy as Shikshan Sevak for a period of three years, upon completion of same, the scheme of Shikshan Sevak confers permanency. He would urge that since the services of the respondent No.1 were terminated without conducting inquiry, he being a permanent employee, by an oral termination, appeal of the respondent No.1 was rightly allowed. As such, he has prayed for dismissal of the present petition.

10. Perusal of the record reflects that the President and Secretary of the respondent No.2-Trust have issued an advertisement for filling up posts of Assistant Teacher (Shikshan Sevak) on 7th October 2002 pursuant to which the respondent No.1 was given appointment order on 11th November 2002 as Shikshan Sevak for a period from 11th November 2002 to 11th November 2005. The respondent No.1 was thereafter continued in service.

11. Though at Page 49 of the petition, another appointment order for a period from 11th November 2002 to 30th April 2003 is placed on record, appointing the respondent No.1 as Shikshan Sevak, in my opinion, once the appointment of the respondent No.1 is against a

permanent vacancy as a Shikshan Sevak, same is rightly inferred by the Tribunal as for a period of three years, based on the appointment order for period from 11th November 2002 to 11th November 2005.

12. The present petition is preferred by the President of the Trust, wherein the Secretary and Head Master of the Trust are impleaded as party-respondents and allegations are made against them. So far as the said aspect of the matter is concerned, the competency of the present petitioner to prefer the instant petition in accordance with the bye-laws/Constitution of the Trust is also required to be looked into, as there is no authorisation in favour of the present petitioner to file such petition, at least no such pleadings are part and parcel of the present petition.

13. The Tribunal, while allowing the appeal which order is subject-matter of the present petition, has noticed that the Secretary of the Trust has consented the claim of the respondent No.1-employee whereas the present petitioner has opposed the same. The Tribunal, then noted that the appellant-respondent No.1 herein has produced the advertisement Exh.4/1, the appointment order dated 11th November 2002 Exh.4/4 appointing him from 11th November 2002 to 11th November 2005, the resolution of the Petitioner-Management dated 1st November 2002 Exh.4/3 appointing the respondent No.1 as Shikshan Sevak, which has prompted the Tribunal to take view that the appointment of the appellant-respondent No.1 herein was on the post of Shikshan Sevak. The opportunity given by the Tribunal to the

petitioner herein to produce on record the contrary evidence, has not led to any fruitful outcome, as the petitioner herein has itself come out with a case that the respondent No.1, without any intimation remained absent from the duties from 24th December 2006 which has prompted the Tribunal to presuppose that the appellant-respondent No.1 herein was in service till 24th December 2006. The Tribunal has noted that the respondents before the Tribunal-petitioner herein have come out with a case, as the appellant-respondent No.1 herein remained absent without any leave application, his services were terminated. The respondent No.1-employee returned for joining his duties from 15th June 2007, when he was not allowed to resume his duty, whereas it is his case that he had tendered medical leave application on 23rd December 2006 and the said application was very much brought on record vide Exh.4/31.

14. The above referred stand of the petitioner-Management has prompted the Tribunal to take a view that the appellant-respondent No.1 herein was in employment for more than period of three years, as his appointment was permanent.

15. So far as the contention of Mr Choukidar, learned Counsel for the petitioner-Management that the judgment of this Court in the matter of **Ramkrishna Chauhan Vs. Seth D.M.High School and ors** (cited supra) supports the case of the petitioner that an appointment against a clear vacancy can be for a temporary period is concerned, it is required to be noted that in the said case, the larger

Bench was considering the issue which was reproduced therein, which reads thus :

“ Would it be open to the School Tribunal to hold that an employee would be deemed to be on probation within the meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 on the ground that the appointment was made in a clear and permanent vacancy, notwithstanding the fact that the letter of appointment specifically stipulated that the appointment has been made in a temporary capacity ?”

16. The larger Bench in the said matter while concluding the said issue has held that it is not open for the School Tribunal to assume as of fact that the appointment made against a clear and permanent vacancy is deemed to be on probation within the meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. If we apply the view taken by the larger Bench to the facts of the present case, it is required to be noted that the Tribunal has not presumed that the appointment of the respondent No.1-employee was on permanent basis but based on the factual matrix and the submissions made by the petitioner, has drawn conclusion that the appointment of the respondent No.1 on the post of Shikshan Sevak was for a period of three years and he has completed the probation and as such, his services were orally terminated.

17. In view thereof, the applicability of the proposition of law in the matter of **Ramkrishna Chauhan Vs. Seth D.M.High School and ors** (cited supra), will be of hardly any assistance to the petitioner.

18. As a consequence thereof, the petition fails and stands rejected.

(N.W. SAMBRE, J.)

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