

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

WRIT PETITION NO.10556 OF 2012

1. Sharda Bhavan Education Society, Nanded
registered Public Trust, Through its Secretary
Shri Dattatrya Pandurang Savant,
Age 50 yrs. Occ: Business & Social service,
r/o Nanded.
2. Indira Gandhi High School and Junior
College, CIDCO, Nanded, Through its
Head Master / Principal.

...PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary,
Education Department, Mantralaya,
Mumbai-32.
2. The Deputy Director of Education
Latur.
3. The Superintendent,
Pay and Pension Unit,
(Secondary and Higher Secondary),
Zilla Parishad, Nanded.
4. Smt.Zakas Sudhakar Fazge,
Age 33 yrs. Occ: Not known,
R/o. ND-4/5, W/17/2, Ramnagar,
CIDCO, Nanded.

...RESPONDENTS

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WITH

WRIT PETITION NO.975 of 2013

1. Smt.Zakas Sudhakarrao Fajge,
Age 35 years, Occ. Assistant Teacher
(Junior Lecturer)
R/o. N.D.4-5, W-17/2,
Ram Nagar, CIDCO, Nanded.

...PETITIONER

VERSUS

1. The State of Maharashtra,
Through it's Principal Secretary,
Department of Education,
Mantralaya, Mumbai - 400 032
2. The Deputy Director of Education,
Latur Region, Gandhi Chowk, Latur.
3. Head Master / Principal,
Indira Gandhi High School (Jr.College)
CIDCO, Nanded.
4. Secretary,
Shri Sharda Bhuwan Education Society,
Nanded.
5. The Superintendent,
Pay & Provident Fund Unit
(Secondary & Higher Secondary)
Zilla Parishad,
Nanded.
6. The Education Officer (Secondary),
Nanded.

...RESPONDENTS

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Shri S.R.Barlinge, Advocate, h/f Shri
M.D.Narwadkar, Advocate for petitioner in WP
No.975/2013 and for respondent no.4 in WP
No.10556/2012.
Shri D.V.Tele, AGP for the State in both the writ

petitions.

Shri R.R.Mantri, Advocate, for respondent nos. 3 and 4 in Writ Petition No.975/2013 and for petitioner in WP No.10556/2012.

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CORAM: S.S.SHINDE

AND

P.R.BORA, JJ.

Date of reserving the
order: **27/4/2015**

Date of pronouncing
the order: 26.08.2015

JUDGMENT : (Per P.R.Bora, J.)

1. Heard. Rule. Rule is made returnable and heard forthwith with the consent of learned Counsel for the parties.

Since parties and some of the issues involved in both the petitions are common, we deem it appropriate to decide both these petitions by this common order. Petitioner in W.P.No.10556/2012 is hereinafter referred to as 'the management' and the petitioner in W.P. No. 975/2013 is referred to as 'the employee'.

2. In Writ Petition No.10556/2012, the management has challenged the judgment and order passed by the School Tribunal, Latur, in Appeal No.54/2011 decided on 12.10.2012 and has prayed for setting aside the order passed by the School

Tribunal and thereby to dismiss the appeal filed by the employee, whereas the employee has filed Writ Petition No.975/2013, seeking release of her salary for the period from 1st July, 2009, to 9th August, 2011, and necessary directions therefor against the respondents in the said writ petition.

3. As is revealing from the pleadings of both the petitions, the employee was appointed in Indira Gandhi High School and Junior College, CIDCO, Nanded, run by Indira Gandhi Sharada Bhavan Education Society, Nanded, firstly, in the year 2003-2004, on honorarium basis to teach Sanskrit subject. In the next academic year i.e. 2004-2005, she was appointed on consolidated pay. Thereafter, she was appointed as Part Time Teacher and, lastly, as the Full Time Teacher.

4. It is the case of the employee that her services were orally terminated with effect from 10.8.2011. She, therefore, filed Appeal No.54/2011, before the School Tribunal at Latur, seeking reinstatement with continuity of service and the salary of the relevant period. It was the contention of the employee before the School Tribunal that since July, 2009, the management started maintaining a separate muster for her and she was prevented from signing regular common muster

maintained for all other employees of the school and the junior college. It was her further contention that she was not paid the salary from July, 2009. It was also contended by her that the Deputy Director of Education, Latur Region, Latur, vide its letter dated 18.3.2011, had directed the management to forward proposal for her continuation but the management did not forward the same. It was nextly contended by her that the management was annoyed by the direction received to it from the Deputy Director of Education and resultantly the management terminated her services on 10.8.2011 by oral orders.

5. The contentions so raised by the employee before the School Tribunal were strongly opposed by the management. It was the contention of the management that the employee was never appointed on clear permanent sanctioned post and was, therefore, not vested with any right to seek continuation and / or other reliefs claimed by her. The management also contended that the appointment orders issued in favour of the employee were issued by the concerned Headmaster without any authority and resolution of the management or the School Committee and, therefore, were not possessing any legal value. It was also contended that in the year 2003-2004 there was no

post of Sanskrut Teacher sanctioned on the establishment but considering demand of the students, the management started the classes of Sanskrut and the employee was appointed as the Guest Lecturer on period basis. It was also alleged by the management that the grant of approval to the employee was also a collusive act of the employee and the then Headmaster. The management had also contended that the employee did never turn to the school in the academic year 2009-2010 and since the strength of the students had reduced in the said period, the management was no more in need of the services of the said employee. It was also the submission made on behalf of the management that since the employee was never appointed by following due process of law, she was not having any right to claim any relief by filing an appeal before the School Tribunal. The dismissal of the appeal was sought by the management on the ground of limitation also claiming that the appeal filed by the employee was barred by limitation.

6. The learned School Tribunal, after having considered the submissions made before it on behalf of the parties, partly allowed the appeal. The School Tribunal held that the termination of the services of the employee by oral orders was illegal and, therefore, quashed it. The School

Tribunal also directed the management to reinstate the employee forthwith on the same post and pay her backwages from 10.8.2011 till her reinstatement. The School Tribunal directed the Deputy Director of Education to withhold the non salary grants of respondent management in case it fails to make payment of backwages to the employee. The relief in respect of recovery of salary for the period from July, 2009, to the date of termination i.e. 10.8.2011 was, however, rejected by the Tribunal.

7. Learned Counsel appearing for the management assailed the judgment of the School Tribunal on various grounds. Learned Counsel submitted that the School Tribunal has failed in appreciating that there was no legal and valid appointment order in favour of the concerned employee and as such, she was not vested with any right to seek her continuation in the employment. Learned Counsel further submitted that the allegation made by the management that the employee had filed on record forged orders of appointment, has not been properly dealt with by the School Tribunal. The learned Counsel further submitted that the Tribunal also erred in not appreciating that the appointment orders allegedly issued in favour of the concerned employee since were not backed by

any resolution of the management or since were not made by following due process of law, were patently illegal and could not have provided any right in favour of the said employee. Learned Counsel further submitted that the learned Tribunal also did not appreciate that in the year 2009-2010, the strength of the students for the subject of Sanskrit was considerably reduced and realizing that because of reduction in strength of the students, the sanction may not be accorded for the subject of Sanskrit, the employee concerned, at her own, stopped coming to the school and, thereafter, falsely alleged that she was orally terminated.

As against this, the learned Counsel for the employee submitted that all the appointments issued in favour of the employee were valid and legal appointments. It is also contended that the management itself has forwarded the proposal seeking approval to the appointment of the employee firstly in the year 2005-2006 and accordingly the Deputy Director of Education, Latur, had approved the said appointment as Part Time Teacher w.e.f. 1.7.2005 for the period of probation. It was also submitted that the Deputy Director of Education has approved the appointment of the employee vide its order dated 11.1.2008 as the Full Time Teacher for Sanskrit w.e.f. 1.7.2008 for the period of

probation. It was further argued that since the employee has put in continuous service w.e.f. 2004-2005, she was deemed to have been permanent and her services could not have been terminated without following due process of law.

8. We have carefully considered the submissions made by the Counsel for the respective parties. We have also gone through the documents placed on record by the parties. We have perused the judgment delivered by the School Tribunal in Appeal No.54/2011. It appears to us that the reply filed on behalf of the Deputy Director of Education, Latur, in Writ Petition No.10556/2012 is of crucial importance for deciding the controversy raised in the matter. One shri Kashinath Ramrao Shinde, the then Education Inspector in the Office of the Deputy Director of Education, Latur, has filed the said affidavit in reply. In paragraph no.3 of the said reply, it is stated that the Office of the Deputy Director of Education, Latur, has accorded approval for the post of Sanskrut subject in Indira Gandhi School and College since 2007-2008 and has shown the same in the Staffing Pattern. In paragraph no.4 of the reply, it is stated that there was a clear vacancy in the Indira Gandhi School and Junior College for the subject of Sanskrut. It is further, in clear terms, stated that the Office of the Deputy

Director of Education, Latur, has granted approval to the appointment of the employee since 2007-2008 as a Full Time Post. It is stated in paragraph no.9 of the reply that the Office of the Deputy Director of Education, Latur, had accorded approval to the post of Full Time Teacher for Sanskrit subject as per the proposal sent by the management and before granting such approval, the Office has verified the concerned record. In paragraph no.10 of the reply it is stated that the allegations made in the rejoinder of the management are malicious and without any iota of truth and that the Deputy Director's Office had never shown any undue interest in the proposal of the employee.

The allegations made by the management that there was no valid and legal appointment in favour of the employee, that forged appointment orders were placed on record by the employee, that the approval was obtained by the concerned employee in connivance with the Office of the Deputy Director of Education and the Headmaster of the School need to be considered in the backdrop of the affidavit in reply filed on behalf of the Deputy Director of Education. The material placed on record transpires that the orders of approval dated 25.1.2007 and 11.1.2008 were duly communicated to the management. Admittedly, the management did not challenge

the legality of the said orders before any forum. As rightly observed by the learned School Tribunal, had there been the case that the concerned approval orders were obtained by the employee in collusion with the then Headmaster and the Office of the Deputy Director of Education, the management would have definitely challenged the said orders. Since the management did not challenge the same, it is estopped from raising any objection to the approval so granted. On the contrary, the approval orders are acted upon by the management. Further, as has been rightly observed by the School Tribunal, the management has not produced on record the proposals of approval which were forwarded to the Office of the Deputy Director of Education seeking approval to the appointment of the concerned employee to prove that the approval orders were not in consonance with the proposal forwarded by the management. In the circumstances, as rightly held by the School Tribunal, the management is precluded from denying the order of approval and consequently the nature of appointment of the employee for the period of probation. As has come on record through the affidavit in reply filed on behalf of the Deputy Director of Education, the concerned employee has successfully completed the period of probation and, in the circumstances, her services could not

have been terminated without following due process of law. We do not find that the School Tribunal has committed any error in holding the alleged oral termination of the services of the concerned employee as illegal.

9. The issue of limitation was also raised. We do not find any substance in the objection so raised in view of the fact that alleging oral termination of services w.e.f. 10.8.2011, the employee preferred an appeal before the School Tribunal on 17.8.2011 i.e. well within the period of limitation. The material on record, which has also been taken into account by the School Tribunal, shows that the employee concerned has placed on record certain documents evincing that she was discharging her duties in the school till the date of her oral termination. Nothing has been pointed out to us to demonstrate that prima facie evidence so produced by the employee before the School Tribunal could not have been relied upon by the School Tribunal. The Tribunal has further recorded that the prospectus for the year 2011-2012 produced on record by the appellant reflects her name as a Lecturer. This fact has not been denied or disputed by the management. As such, we do not find any force in the submission made by the management that the theory of oral termination put forth by

the concerned employee is unbelievable. The contention of the management that the appointment orders relied upon by the concerned employee were obtained by the employee in connivance with the then Headmaster and were not backed by any resolution of the management and, therefore, were not legal and valid appointments, also cannot be accepted in view of the fact that nothing has been placed on record by the management to show that it has proceeded against the then Headmaster for issuance of such orders of appointment in favour of the concerned employee, keeping the management in dark. We have already discussed that the orders of approvals have also not been challenged by the management before any forum. In such circumstances, the argument in this regard that the orders issued in favour of the concerned employee were not valid and legal appointments, must be rejected.

Since we do not find any error in the judgment and order passed by the learned School Tribunal in Appeal No.54/2011, the Writ Petition No.10556/2012 fails and is accordingly dismissed. Rule discharged.

In so far as Writ Petition No.975/2013 is concerned, ample material has come on record, prima facie, showing that the petitioner employee had worked with the respondent management in the period between 1st July, 2009, to 9th

August, 2011. The order of approval dated 11.1.2008 issued by the Deputy Director of Education, Latur, demonstrates that the approval of the petitioner employee was granted w.e.f. 2007-2008 for the period of probation. The petitioner employee has also placed on record copy of the letter dated 18th March, 2011, issued by the Deputy Director of Education, Latur, to the Principal of Indira Gandhi School and Junior College (respondent no.3 in the petition) thereby directing the management to forward the proposal for continuation of the services of the petitioner employee. The School Tribunal, in paragraph no.18 of its judgment has elaborately dealt with the controversy whether or not the employee was in the services of the management in the relevant period and it has recorded a positive finding that in the relevant period the employee was in the employment of the respondent management.

In view of the above, we find it appropriate to direct the petitioner employee to prefer a representation with the Deputy Director of Education, Latur, in respect of her claim of arrears of salary for the period between 1st July, 2009 to 9th August, 2011, within a period of four weeks from the date of this order. If such representation is received within the period stipulated, the Deputy Director of Education, Latur, shall make an enquiry, verify the record, and shall issue necessary directions to the

respondent management in respect of payment of arrears of salary to the petitioner. Rule made absolute in Writ Petition No.975/2013 in aforesaid terms.

(P . R . BORA)
JUDGE

(S . S . SHINDE)
JUDGE

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