

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10093 OF 2015

1. Chatrapati Shikshan Sanstha,
Bhavaninagar, Tal. Indapur, Dist.Pune
through the Secretary.

2. Chatrapati High School,
At Paritwadi, Post. Lasurne,
Tal. Indapur, Dist. Pune,
through its Head Master.

... Petitioners

v/s

1. Shri Karande Dilip Laxman
R/o. Bharnewadi, Post – Anthurne,
Tal. Indapur, Dist. Pune.

2. Education Officer (Secondary),
Zilla Parishad, Pune.

... Respondents

Mr.Vivek Salunke for the petitioners.

Mr.N.V.Bandiwadekar for Resp. No.1.

Mr.A.D.Kango, A.G.P. for Resp. No.2.

CORAM: N.M. JAMDAR, J.

DATED : 20 NOVEMBER 2015

ORAL JUDGMENT:

Rule. Rule made returnable forthwith. By consent of parties,
taken up for final disposal. Respondents waive service.

2. The Petitioner Management challenges the order passed by the School Tribunal, Pune, dated 21 February 2014, allowing the appeal filed by the Respondent No.1, and holding that the Respondent No.1 has become permanent in service upon satisfactory completion of his probation period and that his termination was bad-in-law and consequent direction to the Petitioner to reinstate him with full back wages.

3. The Respondent No.1 filed Appeal No.1 of 2013 in the School Tribunal, Pune. According to him, by following due process, he was appointed as Shikshan Sevak from 16 June 2008 and he had become deemed permanent on 16 June 2011, however, he was prevented from signing the muster from 15 December 2012. The appeal was resisted by the Petitioner management *inter alia* on the ground that the appointment of the Respondent No.1 was not by following due procedure and no advertisement neither any selection process was carried out and, therefore, the Respondent No.1 could not be termed as deemed permanent in service. The School Tribunal came to the conclusion that the Respondent was appointed on clear and permanent vacancy, he had become deemed permanent, his services were wrongly terminated and he was therefore entitled to reinstatement with back wages. This order is impugned by the Petitioner management in this petition.

4. Heard learned counsel for the Petitioner and the learned

counsel for the Respondents.

5. The School Tribunal has observed that there was a resolution passed for appointment of the Respondent No.1 and there was also an appointment order and the appointment of the Respondent No.1 was on clear, vacant and permanent vacancy. Learned counsel for the Petitioner however submits that the School Tribunal has not considered various documents produced on record by the Petitioner management and the law laid down by the Division Benches of this Court in the case of *Priyadarshini Education Trust & ors. v/s Ratis (Rafia) Bano*, reported in *2007(6) Mah.L.J. 667*, and *Chandramani Devraj Tiwari v/s Secretary, Smr.R.B.Tiwari Sanskrutik Kendra & ors.*, reported in *2008 (3) Mh.L.J. 274*. He submitted that the Respondent No.1 was not appointed by following the selection procedure as envisaged under the Act and Rules and as emphasized by the Division Bench. Learned counsel for the Respondent No.1 supported the impugned order and submitted that the conduct of the Petitioner management is not bonafide.

6. In the case of *Priyadarshini* (supra), the Division Bench, after taking summary of various decisions and the position of law, has drawn the following conclusions :

“(i) 'duly appointed, in the manner prescribed' would be an appointment of a person who is eligible (qualified for the post) for appointment, who is selected by due process of selection i.e. by competition amongst all eligible and desirous candidates, and who is appointed on a permanent

vacant post. In other words, inviting applications, as also holding of screening tests, enabling all eligible and desirous candidates to compete for selection and appointment, is a must.

(ii) Once an eligible candidate (duly qualified as required) is selected by selection process as above, for filling in a permanent vacancy, there is no option for the management and it is obligatory on it to appoint such person on probation for a period of two years. It is neither open for the management to appoint him for one academic year or any period shorter than two years probation period, nor it is open for Education Officer to grant approval for such shorter period. (In fact, in view of requirement as in clause (I) above, the process of grant of approval by Education Officer should begin with examination of selection process and its validity).

(iii) The candidate thus selected with due process and appointed on probation shall enjoy status of deemed permanency on completion of two years, unless extension of probation is informed, or termination is ordered.

(iv) The appointment of a person not belonging to reserved category, in a post reserved for a particular category, because the candidate of that category is not available, shall be absolutely temporary and on an year to year basis, governed by sub-rule (9) of rule (9), although in a permanent vacancy.'

This decision is also followed in the case of *Chandramani Tiwari* (supra), wherein the Division Bench has observed as under :

'12. Moreover, to claim benefits of deemed permanency under section 5(2) of MEPS Act, 1997, it was necessary for the appellant to prove before the learned Presiding Officer that he was duly selected in the manner prescribed. There

was nothing on record before the learned Presiding Officer to show that there was an advertisement inviting applications to which the petitioner had responded and he was subjected to selection process by competition amongst all eligible and desirous candidates. Assuming for the sake of argument that some illegality was committed by mutual consent, that could not in itself confer any legal sanction to the appointment of the appellant.'

7. In view of the above stated position of law, it was incumbent upon the Tribunal to examine the issue of the appropriate procedure being followed in the case of appointment of the Respondent No.1 in greater depth. The Division Bench has emphasized that, if the methodology of appointments in private school, without any advertisement, is encouraged, it will lead to appointment of only kith and kin of those who are in contact with the management and staff members and will deprive the other meritorious candidates who may not be aware of the vacancies. Thus, the question of following the procedure assumes importance.

8. In the impugned order, there is no discussion on the factual aspect of appropriate procedure being followed. It will be thus necessary to set aside the impugned order and restore the appeal and to direct the School Tribunal to decide the same in the light of the dicta of the Division Bench. Learned counsel for the parties agree that they will proceed on the basis of pleadings already filed before the School Tribunal and will not seek amendment of the pleadings. This, however, will not preclude the School Tribunal if it finds it necessary to call for additional documents either from the

parties or from the Education Department for effective adjudication.

9. Accordingly, the writ petition is disposed of by the following order :

(a) The impugned order passed by the School Tribunal, Pune, dated 21 February 2014 is quashed and set aside. Appeal No.1 of 2013 is restored to file.

(b) The School Tribunal will dispose of the appeal in the light of what is stated above, preferably within a period of six months from the date parties appear before it, subject to earlier time bound directions issued by this Court.

(c) All the contentions of parties regarding the procedure adopted by appointing the Respondent are kept open.

10. Parties shall appear before the School Tribunal, Pune, on 4 December 2015.

11. Rule is made absolute in above terms. No costs.

(N. M. JAMDAR, J.)