

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

WRIT PETITION NO. 6475 OF 1999

Smt.Vandana Ramchandra Kulkarni
C/o 957, Main Road, Sangli, Dist.Sangli. ... Petitioner
v/s

1. The Head Mistress,
Rani Saraswatidevi Kanyashala,
Higher Secondary, Sangli;
2. The Chairman,
Wiman's Education Society, Sangli.

3. The Director of Education,
Kolhapur Region, Kolhapur.

4. Smt.Swati Baban Mali,
R/o Krishna Kunj, Sangli, Dist.Sangli. ... Respondents

Ms.Anjali Helekar for the petitioner.

Mr.A.D. Kango, A.G.P. for Resp. No.3.

Mr.S.M.Katkar i/by S.S. Pakale for Resp. No.4.

CORAM: N.M. JAMDAR, J.

DATED : 20 NOVEMBER 2015

ORAL JUDGMENT:

By this petition, the Petitioner challenges the order passed by the School Tribunal, Kolhapur, dated 30 October 1999, dismissing her appeal and issuing certain directions to the Respondent management in respect of absorption of Respondent No.4.

2. The Petitioner was working as a Junior Lecturer in the Respondent management. She filed an appeal bearing No.50 of 1999 praying that her order of termination dated 1 April 1999 be set aside and the Respondent management be directed to reinstate her in service with full back wages and continuity of service. According to the Petitioner, she was initially appointed as Junior College Lecturer on 20 July 1993 in R.S.Kanyashala (Higher Secondary) on clock hour basis. Thereafter she was appointed as a Junior Lecturer on 13 June 1994. According to her, her appointment was in a clear permanent vacancy and on probation. She was working continuously as a part-time lecturer without any break in service. According to her, her appointment was as per Section 5(2) of the Maharashtra Employees of Private School (Conditions of Services) Regulation Act, 1977. Her services were satisfactory and she became permanent in the year 1995-96 and according to the Petitioner, without any enquiry, her services were terminated. Hence, she was entitled to reinstatement with full back wages and continuity of service.

3. The appeal was opposed by the Respondent management. The Respondent management contended that the Petitioner was not appointed on probationary basis but she was appointed on purely temporary basis and the notice dated 1 April 1999 was not a termination notice but a communication stating that her services had come to an end after the period of temporary appointment

and, therefore, no enquiry was necessary. The School Tribunal considered the appointment orders and came to the conclusion that the Petitioner was appointed on temporary basis and merely because she was appointed on vacant post it cannot be presumed that her appointment was on probationary basis. The School Tribunal thereafter proceeded to consider the claim of Respondent No.4 and issued certain directions in her favour.

4. This order is impugned by the Petitioner in the present petition.

5. Learned counsel for the Petitioner submitted that the appointment orders show that the appointment of the Petitioner was on clear and vacant post and therefore after completing the period of probation, the Petitioner could not have been terminated from service. She submitted that a direction in respect of Respondent No.4 was not warranted as she had not filed any substantive appeal.

6. A Full Bench of this Court, in the case of ***Ramkrishna Chauhan v/s Seth D.M.High School & ors.***, reported in **2013 (2) Mh.L.J. 713**, has held that it is not open to the School Tribunal to assume as of fact that the appointment made against a clear and permanent vacancy is deemed to be on probation. The full bench has held that the School Tribunal cannot disregard the terms and conditions of the letter of appointment, if it expressly provides that

the appointment was on purely temporary basis. In the present case also the appointment orders have clearly stipulated that the appointment was on temporary basis. The Petitioner accepted these appointments with full knowledge of the terms and conditions. Having accepted the appointments on temporary basis with a clear stipulation in that regard, it was not open to the Petitioner to assume that she was appointed on probation nor it was open to the Tribunal to draw such presumption. In the present case, the Tribunal has given effect to the law laid down by the Full Bench of this Court and has not drawn a presumption that the appointment of the Petitioner was on probation. No fault therefore can be found with the approach of the School Tribunal, so as to warrant interference in the impugned order.

7. As far as the direction in respect of Respondent No.4 is concerned, the same is not of any consequence for deciding the present petition as the Petitioner is not entitled to claim any relief in her appeal.

8. Accordingly, the petition fails and is dismissed. Rule discharged.

(N. M. JAMDAR, J.)