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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.2557/1995

Someshwar S/o Gundappa Randale,
Age 22 years, Occu.Service,
R/o Randale Niwas, Majage Nagar,
Latur, Dist. Latur.

...Petitioner...

Versus

1 The State of Maharashtra.

2 Lal Bahadur Shastri Shikshan
Sanstha, Dattanagar, Latur.
Through its Secretary,
District Latur.

...Respondents...

.....

Shri B.M. Dhanure, Advocate for petitioner.

Shri V.G. Shelke, AGP for respondent no.1.

Shri V.G. Sakolkar, Advocate for respondent no.2.

.....

CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.03.2016

ORAL JUDGMENT :

1] This petition was admitted by order dated
10.2.1998. No interim relief was granted to the
petitioner.

2] The petitioner was appointed by an order of

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appointment dated 11.6.1990. Clause (1) of the appointment order indicates that he would be on probation for the academic year 1990-91. By appointment order dated 1.6.1991, his appointment on probation was continued for the academic year 1991-92 and 1992-93.

3] The petitioner had contended that he was orally terminated by the respondent and hence he preferred Appeal No.163/1992 u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977, before the School Tribunal at Aurangabad. It was specifically contended that he was orally terminated on 10.9.1992 with effect from 11.9.1992.

4] The respondent – management appeared before the Tribunal and has taken a stand that the management has not terminated the services of the petitioner. He had abandoned employment by remaining unauthorizedly absent for seven consecutive days. In the light of Rule 16 (2) of the MEPS Rules, 1981, he stood automatically relieved on the ground that he has abandoned his service considering the fact that he is not a permanent employee. The appeal filed by the petitioner was, therefore, dismissed by order dated 5.4.1995.

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5] The learned Advocate for the petitioner has strenuously submitted that the impugned judgment is unsustainable and deserves to be quashed and set aside. He submits that he is covered by Rule 16(3) of the MEPS Rules. He was appointed by following the due procedure. He was orally terminated with effect from 11.9.1992. He had, therefore, attained the deemed status of a permanent employee.

6] The petitioner has relied upon the judgment of this Court in the matter of *Santoshi Mahila Mandal & another v. Presiding Officer & others* (2011 (6) BCR 9) to contend that the plea of abandonment of service is to be proved and if the charge of abandonment is not proved, the petitioner would be entitled for reinstatement.

7] The petitioner further relies upon the judgment of this Court in the matter of *Bhadravati Shikshan Sanstha v. Hashib Pasha* (2014 (2) Mh.L.J. 652) to contend that even if there is abandonment of service, six months wages have to be paid by the management to the employee in the light of the said judgment.

8] Shri Dhanure, learned Advocate for the petitioner, therefore, submits that this petition

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deserves to be allowed and the petitioner deserves to be reinstated in service with continuity and full back wages since he has been terminated illegally by the management and for no fault on his part.

9] Shri Sakolkar, learned Advocate appearing on behalf of the management, has supported the impugned judgment. He submits that the petitioner is covered by Rule 16(2) of the 1981 Rules. There was no procedure followed by the management while issuing the appointment order to the petitioner. The Head Master in his individual capacity had issued orders of appointment.

10] Rules 16 (2) and 16 (3) of the 1981 Rules read as under:-

“(2) An application for leave other than casual leave or extension of leave or to proceed on leave after vacation shall ordinarily be made in good time before the date from which the leave or its extension is sought. Even in exceptional cases where it is not possible to apply beforehand because of circumstances beyond the control of the employee, the application shall be made within 7 days from the date of absence. A non-permanent employee shall be deemed to have abandoned his service if he fails to apply for leave within seven days from the date of absence.

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(3) In the case of a permanent employee who, without sufficient cause, fails to apply for leave within 7 days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due inquiry. A permanent employee who is absent from duty (without leave continuously for a period exceeding three years), shall be deemed to have voluntarily abandoned his Services."

11] There can be no debate that Rule 16(2) is applicable to non-permanent employees and Rule 16(3) is applicable to permanent employees. The petitioner had not attained the deemed status of a permanent employee as is defined u/s 5(2) of the MEPS Act, 1977. He, therefore, was a non-permanent employee.

12] In the light of the above, the petitioner could not establish before the School Tribunal that he was orally terminated from 11.9.1992. The petitioner did not make efforts to call for the attendance record available with the management so as to indicate the actual date till which he had marked his presence on the Attendance Roll and had discharged his duties as a Clerk.

13] In the absence of the record and in the absence of the petitioner having made any effort to seek

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direction from the Tribunal in order to compel the management to produce the record, the School Tribunal did not have any material before it to arrive at a conclusion that the respondent – management had orally refused work to the petitioner and he was, therefore, orally terminated. The Tribunal concluded that the petitioner had failed to prove his termination and the management had established that he was unauthorizedly absent for more than 7 days without leave.

14] The view taken by this Court in *Santoshi Mahila Mandal* (supra) is not applicable to the case in hand since the employee in the said case was working from 1.1.1979 till 3rd of December, 1993, as a permanent teacher. Being a permanent teacher, he was covered by Rule 16(3), which mandated the management to initiate steps in the event the said teacher was unauthorizedly absent. It is in that backdrop that this Court partly allowed the appeal filed by the management only to the extent of back wages and confirmed the order of reinstatement.

15] The petitioner has cited the judgment of this Court in the case of *Bhadrawati Shikshan Sanstha* (supra)

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to contend that while terminating the service of an employee, even if he is a non-permanent employee, compensation equivalent to the salary of six months needs to be paid to the employee.

16] The said judgment is also not applicable to this case for the reason that this Court has specifically observed in paragraph no.8 of the judgment that the management had issued an advertisement for the post of Peon and had appointed the employee on the said post. He acted bona-fide in pursuance to the advertisement and offered his candidature for the post. He was misled by the management on account of mis-representation that the post on which he was appointed was a clear and permanent post and in that backdrop, he was terminated on the ground that it is not a permanent vacant post. This Court granted compensation of six months salary for this act of mis-representation.

17] In the instant case, the appointment of the petitioner indicates that he was appointed for one year. The second appointment order indicates that he was being continued for another two years. The fact remains that the petitioner has not been able to prove that he was

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orally terminated from service.

18] In the light of the above, this petition being devoid of merit is, therefore, dismissed. Rule is discharged. No order as to costs.

(RAVINDRA V. GHUGE, J.)