

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

WRIT PETITION NO. 1434 OF 1999

S.T.Joseph Convent High School,
Behind M.J.College, Jalgaon.
Through its Principal,
Sister Natalia, Age : 35,
Occupation : Service,
R/o Jalgaon.

...PETITIONER

-VERSUS-

Anand Kabshiram Sapkale,
Age : Major,
Occupation
R/o C/o Plot No.6, G.No.62,
Electricity Board Colony,
Jalgaon, District Jalgaon.

...RESPONDENT

...

Advocate for Petitioner : Shri G.V.Wani.
Advocate for Respondent : Shri A G Talhar.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th August, 2016

Oral Judgment :

1 The Petitioner/ Management is aggrieved by the judgment and order dated 16.01.1999 by which Appeal No.JAL-48/1996 has been partly allowed and the Respondent/ Employee is granted reinstatement in service without continuity and without back-wages. There is no dispute

that the Respondent/ Employee has not challenged the judgment of the School Tribunal denying him continuity and back-wages.

2 This petition was admitted on 30.03.1999 and interim relief in terms of prayer clause (c) was granted. Consequentially, the judgment of the School Tribunal was stayed and the Respondent was kept out of employment. Needless to state, the Respondent is not in employment for the past 20 years.

3 I have considered the strenuous submissions of Shri Wani, learned Advocate for the Petitioner / Institution and Shri Talhar, learned Advocate for the Respondent/ Employee. With their assistance I have gone through the petition paper book.

4 The undisputed factors in this case are as under:-

- (a) The Respondent was appointed as an Assistant Teacher for one academic year by appointment order dated 11.06.1994.
- (b) The Respondent tendered his resignation on 16.01.1995 and which was accepted pursuant to his request that he desired to contest the State Assembly Elections from Jalgaon Constituency.
- (c) The Respondent lost the elections.

- (d) The Respondent once again approached the Petitioner by application dated 15.06.1995 for seeking an appointment as an Assistant Teacher.
- (e) By appointment order dated 17.08.1995, the Petitioner appointed the Respondent purely on temporary basis for an academic year and his services were to be terminated without notice after the conclusion of the academic year.
- (f) Notice dated 30.03.1996 was issued by the Petitioner intimating the Respondent that his services would automatically come to an end as per Rule 28(1) of the MEPS Rules, 1981 after completion of one month's notice period.
- (g) The Respondent preferred an appeal under Section 9 of the MEPS Act, 1977 before the School Tribunal alleging that he was allowed to work from 17.06.1996 and was orally disengaged from 11.07.1996.
- (h) The Respondent did not challenge the notice of termination dated 30.03.1996 as well as his disengagement pursuant to the notice of termination w.e.f. 30.04.1996.
- (i) The Respondent succeeded before the School Tribunal which concluded that though he was not duly qualified to be appointed to the post of Assistant Teacher, he shall be reinstated without continuity in service and back-wages..

- (j) By virtue of the interim order passed by this Court dated 30.03.1999, the Respondent is out of employment.
- (k) On 01.01.2002, the Respondent was appointed in another educational institution, namely, Erandol Education Society's School at Erandol, District Jalgaon.
- (l) Presently, the Respondent is a confirmed and approved teacher in the said school.

5 There is no dispute that the Respondent was appointed w.e.f. 14.06.1994 by virtue of the order dated 11.06.1994 pursuant to his application dated 03.05.1994. Clause 2 of the appointment order indicates that the Respondent was appointed for a period of one academic year from 1994-1995 purely on temporary basis and after the expiry of the said period, his service was to stand terminated without notice. It also appears from the appointment order that the clause as regards the appointment on probation for a period of two years was not scored out.

6 It is also undisputed that the Respondent desired to contest the State Assembly Elections in 1995 and therefore, resigned from his service by letter dated 16.01.1995. The same was accepted forthwith and the Respondent was relieved from service. There is no grievance about the said resignation and its acceptance. In this backdrop, the Respondent

brought his service to an end on 16.01.1995. He severed his relationship with the Petitioner Institution so as to contest the State Assembly Elections.

7 It is also not disputed that the Respondent made an application on 15.06.1995 seeking re-appointment and the Petitioner, by order dated 17.08.1995, engaged him on purely temporary basis. He was issued with the notice of termination dated 30.03.1996 which was to be effective after expiry of one month's notice period. It is stated that thereafter, the Respondent temporarily worked from 17.06.1996 to 08.07.1996.

8 In the light of the above factors, I do not find that the Respondent could be said to be entitled for the deemed status of a confirmed employee under Section 5 of the MEPS Act, 1977.

9 Shri Talhar has strenuously submitted that under Rule 59 of the Secondary School Code, once an employee is appointed as an Assistant Teacher, he would be entitled to acquire the qualification as is required for confirmation in service, within a period of five years from the date of his appointment. He has also contended that his resignation deserves to be ignored since the Petitioner Institution once again engaged him from

19.06.1996.

10 I am unable to accept the said submissions of Shri Talhar for the reason that once the resignation is accepted and the employee is relieved from service, his service comes to an end unless the employer specifically appoints him in continuity with his earlier appointment and waives the non-employment in the interregnum. The appointment of the Respondent, therefore, will have to be considered to be effective only from 19.06.1995.

11 Shri Talhar has placed reliance on the judgment of this Court in *Rehana Begum Shaikh Safdar vs. Khwaja Baba Urdu Education Society*, **2009(3) Mh.L.J. 665**.

12 The School Tribunal has concluded in paragraph 4 of the impugned judgment that the Respondent was not duly qualified for the post of Assistant Teacher and therefore, he was not entitled for continuity and for back-wages. It is beyond comprehension that as to how could the School Tribunal grant reinstatement to the employee who was deprived of continuity in service and back-wages since the Tribunal was convinced that he was not duly qualified to be appointed to the said post. If the candidate was not qualified to be appointed for the said post and if he has

served with the Employer only for one year, the direction to reinstate such a candidate is unsustainable in law. It would have been a different case altogether if the Respondent was continued for several years and after a passage of a long tenure in employment, the Employer was to take a stand that he was not duly qualified for appointment. Then such an Employer would have been estopped from taking such a stand after continuing an employee for several years.

13 Shri Talhar has submitted that because the Petitioner allowed the Respondent to work from 17.06.1996 till 08.07.1996 for a period of 20 days, unless Rule 28(1) of the MEPS Rules, 1981 was followed, his termination is to be held unsustainable in law. Said submission deserves no consideration.

14 I do find from the peculiar facts of this case that after the Petitioner issued one months notice of termination to the Respondent. He has not challenged either the said notice or his termination pursuant to expiry of the notice period. A stand was taken in the Written Statement that because the Respondent had not passed his B.Ed. and was not duly qualified to be continued in employment, he was terminated. The fact remains that the Respondent on the date of dis-engagement was not duly qualified.

15 Insofar as the contention of Shri Talhar is concerned that Rule
59 of the Secondary School Code permits an employee to acquire the
qualifications and do away with the deficiencies in qualifications within a
period of five years of his appointment, the said rule can be said to be
applicable only to such appointments which have been made by following
the due procedure of law.

16 In the instant case, after losing the State Assembly Elections,
the Respondent moved an application praying for an appointment and the
Petitioner, accordingly, issued the appointment order on 17.08.1995 which
was given effect to from 19.06.1995. Considering the short tenure of
employment and the manner in which the Respondent was engaged by the
Petitioner, I do not find that Rule 59 of the Secondary School Code and
Rule 28(1) of the MEPS Rules, 1981 would be of any assistance keeping in
view that the Respondent was already served with the notice of
termination of service and the same has not been challenged by the
Respondent.

17 In these circumstances, the view taken by this Court in
Rehana Begum Shaikh (supra) would be of no assistance to the
Respondent. Nevertheless, considering that the Petitioner, by its own

conduct had allowed the Respondent to work temporarily for 20 days after terminating his service w.e.f. 30.04.1996, could be directed to pay one months salary to the Respondent/ Employee only to balance the equities.

18 In the light of the above, this Writ Petition is allowed. The impugned judgment of the School Tribunal dated 16.01.1999 is quashed and set aside. The Petitioner/ Institution shall pay one month's salary to the Respondent for having allowed the Respondent/ Employee to work for 20 days temporarily. The said amount shall be paid to the Respondent / Employee within a period of EIGHT WEEKS from today, failing which the same shall carry interest at the rate of 6% per annum from the date of the judgment of the School Tribunal.

19 Rule is made absolute in the above terms.