

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

WRIT PETITION NO.2061 OF 2000

Dattatraya s/o Tulsidas Bhutte,
Age : 35 years, Occupation : Service,
R/o Niture Niwas,
Behind Hawagi Swami College,
Udgir, District Latur.

...PETITIONER.

-VERSUS-

- 1 The Secretary,
Shyamlal Memorial Education Society,
Udgir, Taluka Udgir,
District Latur.
- 2 The Head Master,
Shyamlal Memorial Higher Secondary
School, Udgir, Taluka Udgir,
District Latur.
- 3 The Head Mistress,
Shamaraya Kanya Vidyalaya,
Udgir, Taluka Udgir,
District Latur.
- 4 The Deputy Director of Education,
Aurangabad Region, Aurangabad.
- 5 The Education Officer (Secondary),
Zilla Parishad, Latur.
- 6 Laxman P. Ugile,
Age : Major, Occupation : Service
as Assistant Teacher in Shyamlal
Memorial High School, Udgir,
Taluka Udgir, District Latur.
- 7 The State of Maharashtra.

...RESPONDENTS

**WITH
WRIT PETITION NO.2062 OF 2000**

Dattatraya s/o Tulsidas Bhutte,
Age : 35 years, Occupation : Service,
R/o Niture Niwas,
Behind Hawagi Swami College,
Udgir, District Latur.

...PETITIONER.

-VERSUS-

- 1 The Secretary,
 Shyamlal Memorial Education Society,
 Udgir, Taluka Udgir,
 District Latur.
- 2 The Head Master,
 Shyamlal Memorial Higher Secondary
 School, Udgir, Taluka Udgir,
 District Latur.
- 3 The Head Mistress,
 Shamaraya Kanya Vidyalaya,
 Udgir, Taluka Udgir,
 District Latur.
- 4 The Deputy Director of Education,
 Aurangabad Region, Aurangabad.
- 5 The Education Officer (Secondary),
 Zilla Parishad, Latur.
- 6 VN.Golampalle,
 Age : 48 years, Occupation : Service
 as Assistant Teacher in Shyamlal
 Memorial Junior College, Udgir,
 Taluka Udgir, District Latur.
- 7 The State of Maharashtra.

...RESPONDENTS

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Advocate for Petitioner : Shri V.G.Sakolkar.

Advocate for Respondents 1 to 3 : Ms.Jayshree Gude h/f Shri S.S.Arya.

AGP for Respondents 4, 5 and 7/ State : Shri P.N.Kutti.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th August, 2016

Oral Judgment :

1 The Petitioner/ Employee is aggrieved by the dismissal of his appeals by the impugned judgments delivered by the School Tribunal dated 24.02.2000.

2 These petitions have been admitted by this Court. While considering the request of the Employee for interim relief, this Court, by its order dated 29.09.2000 has observed as under:-

“Rule.

2. *The learned counsel for the petitioner states that during the pendency of the petition, the petitioner would be willing to work on any post which will be available in the first respondent school where he was employed. The first respondent will duly consider the request made by the petitioner for being assigned work, in case any is available, during the pendency of the petition.*
3. *As and by way of an interim arrangement, the petitioner submits that in terms of Rule 26(4) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, if the post from which the petitioner has been retrenched is revived or*

if additional posts are created, a fresh opportunity should be given to the petitioner for being engaged. The claim of the petitioner at the present stage is that he should be treated as a full time employee, though the appointment order was to the effect that he was a part time employee. In that view of the matter, a direction in terms of Rule 26 of the Rules of 1981 would not be appropriate at the present stage. However, the first respondent shall give an opportunity to the petitioner to work, if any work is available. It is common ground between the parties that the order of termination dated 31st July, 1996, came to be stayed by the Tribunal. The petitioner has since worked but has not been paid his salary. The first respondent may apply to the Education Officer for the release of the grant towards the salary of the petitioner for the period during which the petitioner has worked in pursuance of the interim order passed by the Tribunal. Any such application made by the management shall be duly considered by the Education Officer within a period of two weeks from today. However, it is made clear that the liability of management to pay the salary to the petitioner for the period during which he has worked, shall not be conditional upon the grant being sanctioned by the Education Officer.”

3 The contentions of Shri Sakolkar, learned Advocate for the Petitioner/ Employee, can be summarized, in brief, as under:-

- (a) The Petitioner was B.Com., M.P.Ed. in 1990 and therefore, qualified to be appointed as an Assistant Teacher.
- (b) An advertisement was published by Respondent No.1/ Educational Institution inviting applications from candidates who were qualified for appointment as Part Time Teachers

(Clock Hour Basis).

- (c) The qualifications held by the Petitioner made him eligible for applying for the said post.
- (d) By order dated 01.09.1990, the Petitioner was appointed pursuant to the advertisement.
- (e) The appointment order indicated that he was appointed purely on temporary basis for one academic year.
- (f) By another appointment order dated 18.06.1991, the Petitioner was again continued for the next academic year.
- (g) By order dated 01.06.1992, he was again continued for one academic year.
- (h) By a similar order dated 11.06.1993, he was continued for another academic year.
- (i) It is stated that the Petitioner was continued in service by further orders for each academic year.
- (j) By order dated 20.06.1995, he was converted from part-time teacher to a Full Time Teacher and transferred to Shamarya Kanya Vidyalaya, Udgir from his earlier place of work in Shyamlal Memorial High School, Udgir.
- (k) By order dated 31.07.1996, his service was brought to an end with immediate effect from 01.08.1996 on the ground that the strength of students has fallen in Shamarya Kanya

Vidyalaya.

- (l) The Petitioner filed his Appeal No.258/1996 before the School Tribunal at Aurangabad alleging that one person, namely, Shri L.P.Ugile, who is Respondent No.6 in Writ Petition No.2061/2000, was junior to him in the same Physical Education faculty and yet, was retained in service.
- (m) By interim order passed by the School Tribunal on 19.08.1996, he continued in employment and pursuant to the dismissal of his appeal, he was terminated.
- (n) By impugned judgment dated 24.02.2000, the appeal filed by the Petitioner was dismissed.
- (o) The Management has deliberately not maintained the record of seniority and has not rendered any assistance to the School Tribunal.
- (p) The seniority of the Petitioner was deliberately suppressed on the ground that he was a part time teacher and therefore, his name was not included in the seniority list.
- (q) Reliance is placed upon the affidavit in reply dated 04.08.2016 filed by Dr.Ganpat More, Education Officer (Secondary), Zilla Parishad, Latur to indicate that the Management is not supplying enough material and details of the teaching and non-teaching staff under Schedule-F of the

MEPS Rules, 1981 for preparation of the seniority and as a consequence, the Education Officer is unable to prepare the seniority list. The Education Officer further indicates that the name of the Petitioner was not included in the seniority list at the time of his termination on the ground that he was a temporary teacher.

- (r) In paragraph 6(B) of the said affidavit, the Education Officer further submits that though the Respondent/ Management is operating three institutions, namely, (1) Shyamlal Memorial High School, Udgir, (2) Shamarya Kanya Vidyalaya, Udgir and (3) Shivaji Vidyalaya, Rohina, Tq.Udgir, District Latur, because of paucity of detailed records, the work-load cannot be assessed as on date.
- (s) It is prayed that the Petitioner be reinstated in service and in the event, there is no work-load, he may be entered in the list of surplus employees so as to give him an opportunity to be absorbed in any other school.
- (t) The Petitioner reluctantly agrees to waive the back-wages from February, 2000 when he was ultimately terminated so as to ensure that he would get notional continuity of service and it would improve his chances to enter in the list of surplus teachers considering that he is presently 51 years of age and

his retirement would be at the age of 60 years.

4 The learned Advocate for the Educational Institution has vehemently opposed the petitions and has supported the impugned judgments. The contention is that the Petitioner was appointed pursuant to an advertisement for engaging part-time teachers. His subsequent transition from part time to a full time teacher has not been accepted by the Education Officer. Since the Education Officer did not grant approval, the Management terminated his services when the strength of students fell and there was reduction in the staff.

5 It is submitted that the work-load available in the said three schools is not sufficient and hence, the Petitioner cannot be accommodated.

6 Reliance is placed upon the following judgments by the Respondent/ Management :-

- (a) Priyadarshini Education Trust vs. Ratis (Rafia) Bano d/o Abdul Rasheed, 2007(6) Mh.L.J. 667.
- (b) Shaikh Jamalchand vs. Maharashtra Seva Sangh, LPA No.178/2009 in Writ Petition No.5556/1999 dated 20.08.2009 (Bombay High Court).

(c) Vidya Bharti Shikshan Sanstha vs. Presiding Officer, Additional School Tribunal, Writ Petition No.399/2001 dated 08.04.2010 (Nagpur Bench).

7 The learned AGP relies upon the first affidavit filed on 15.06.2016 and the second affidavit dated 04.08.2016. He submits that the Education Officer has categorically stated that the Petitioner's name is not found in the seniority list as the Management submitted the seniority list that was prepared after the termination of the Petitioner. There has been no cooperation from the Management. As per the staffing pattern of the three schools of the Management, their total strength of students is more than 2500 for conducting classes from 5th to 10th standards. He relies upon the details of the staffing pattern of the said three schools which is placed on record in support of the affidavit filed by the Education Officer.

8 The learned AGP further submits, on the basis of the second affidavit, that the present Management is not rendering any assistance to the Education Officer. It is the duty of the Management to prepare the seniority list of the teaching and non-teaching staff under Rule 12 of the MEPS Rules, 1981 and submit the same to the Education Officer. The Management has not complied with the said provision and has not submitted such details. Had the details about the number of students,

number of divisions and seniority been submitted to the Education Officer, he would have been in position to make a specific statement with regard to the status of the Petitioner who has been working from 1990 till 1996.

9 Having considered the submissions of the learned Advocates as above, it is apparent that the Management is not rendering assistance to the Education Department for preparation of the staffing pattern and the seniority list. A document prepared by the Management on 29.07.2016 which is submitted to the Education Department indicates that the Petitioner is kept out of the seniority list on the pretext that he is a part-time employee. Respondent No.6 (Mr.Ugile) herein, who also has the qualification of M.P.Ed., had joined on 01.09.1993 when the Petitioner had joined on 01.09.1990. He was, therefore, three years ahead of Respondent No.6. The defence taken by the Management is that Respondent No.6 (Mr.Ugile) was appointed as a full time teacher and the Petitioner was appointed as a part time teacher.

10 The impugned judgment of the School Tribunal indicates that it has accepted the defence of the Management without verifying the records. The Petitioner had made a specific averment that there were total 55 divisions of the 5th to 10th standards in the said three schools. There were 31 divisions in Shyamlal Memorial High School, Udgir, 18 divisions

in Shamarya Kanya Vidyalaya and 06 divisions in Shivaji Vidyalaya, Rohina. There were 11 Physical Training Instructors posts and only 07 posts were filled in. There was no Physical Education Teacher at Shivaji Vidyalaya, Rohina. Firstly, the School Tribunal should have gone into these aspects and should have ensured that the details in connection with the service of the Employee were placed before it. Despite the fact that the Management is not putting forth adequate details so as to suppress the seniority list and in order to justify the termination of the Petitioner, the School Tribunal failed to draw an adverse inference.

11 Even during the course of the hearing of these petitions, the learned Advocate for the Management, besides pointing out certain portions of the Written Statement filed before the School Tribunal, has been unable to state as to whether, the entire seniority list of the teaching and non-teaching staff of these three high schools was prepared or not. Nevertheless, the statement made by the Education Officer on oath is a sufficient indicator of the Management having suppressed the material information and details from the Education Officer.

12 Considering the number of teaching hours put in by the Petitioner which is about 22 periods per week, 18 periods in Shyamlal Memorial High School and 04 periods in Shamarya Kanya Vidyalaya, the

School Tribunal ought not to have dismissed the appeal, when the Management failed to prove to the contrary.

13 Considering the above, reliance placed on the judgments cited by the Management would be of no assistance since they pertain to the issue of deemed permanency under Section 5 of the MEPS Act, 1977.

14 It is undisputed that after the termination of the Petitioner, he was granted interim relief by the School Tribunal and he continued in employment till February, 2000 thereby, putting in 10 years in service. It also appears from the record that the Management tried to ensure that sufficient information was not placed before the School Tribunal as well as before this Court, which was aimed at truncating the claim put forth by the Petitioner. In this backdrop, in my view, ends of justice would be met by partly allowing this petition and by giving notional reinstatement with continuity in service and directing the Education Officer to enter the name of the Petitioner in the list of surplus teachers in the event there is no work-load available to engage the Petitioner with any of the three schools of the Management.

15 In the light of the above, the first petition is partly allowed. The order of termination is set aside and the Petitioner is granted notional

reinstatement with continuity of service. However, he would not be entitled for back-wages from the date of termination till the date of this order.

16 The Education Officer shall, accordingly, investigate by directing the Management to submit the entire details about it's number of students, number of divisions and number of teaching staff especially in the Physical Education faculty within a period of SIX WEEKS from today and accordingly, assess the work-load available. In the event, there is work-load to accommodate the Petitioner, the direction to that effect shall be issued so as to allot duties to the Petitioner in any of the three schools run by the Management. He shall be entitled to wages on parity with similarly placed employees which shall be paid by the Management.

17 In the event, no work-load is available, the name of the Petitioner shall be entered in the list of surplus employees and he shall be absorbed wherever it is possible to do so in accordance with the Rules. Needless to state, in the event the work-load is created or found in future in any of the schools operated by the Management and by that time, the Petitioner is still not absorbed, the Education Officer shall direct his absorption in any of the schools run by the Respondent/ Management.

18 Rule is made partly absolute in the above terms.

19 The second petition is, therefore, rendered infructuous and is disposed of. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)