

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1425 OF 2002

1. Digambar S/o Namdeo Suryawanshi,
Age-36 years, Occu-Nil,
R/o Kiran Society, 7-B, Nakane Road,
Deopur. -- PETITIONER

VERSUS

1. Jay Hind Shikshnik Sanstha,
Dhule, District : Dhule,
Through its Chairman/Secretary,
2. The Principal,
Jay Hind Education Society's
Jay Hind High School and
Junior College, Deopur, Dhule,
3. The Deputy Director of Education,
Nashik Division, Nashik,
4. Durga d/o Dattatraya Bhandari
(Joshi), Age-36 years, Occu-Service,
R/o Jay Hind Colony, Plot No.72,
C/o Shri Kamlakar Joshi, Deopur,
Dhule,
5. Shri N.Z.Patil,
Age-50 years, Occu-Service,
R/o Pramod Nagar, Sector No.2,
Plot No.21-A, Nakane Road,
Deopur, Dhule, Dist.Dhule -- RESPONDENTS

Mr.S.R.Barlinge, Advocate for the petitioner.
Mr.S.D.Kaldate, AGP for the respondent No.3.
Mr.M.S.Kulkarni, Advocate for respondent No.2.
Respondent Nos. 1 and 4 served.
Mr.P.B.Patil, Advocate for respondent No.5.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/09/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment dated 12/04/2001 by which his Appeal No.DHL-27/1997 has been dismissed.

2. Mr.Barlinge alongwith Mr.Patil, learned Advocates for the petitioner has strenuously criticized the impugned judgment. Contention is that there was an advertisement published on 15/09/1994 in 'Daily Aapla Maharashtra'. Applications were invited for one post on Part Time Clock Hour Basis in Economics and one post on Clock Hour Basis in Political Science. It is stated that the petitioner had applied pursuant to the said advertisement. The interviews were posted on 26/09/1994. By appointment order dated 10/11/1994, the petitioner was appointed on Part Time Clock Hour Basis from the date he joins and for the academic year 1994-95. As such, the petitioner has worked for 5½ months in the academic year 1994-95. The appointment order also indicates that the appointment is purely temporary and the petitioner would stand disengaged without prior notice or intimation after the end of the academic year 1994-95.

3. It is further strenuously submitted that the Management has issued a service certificate dated 19/06/1996 indicating that the petitioner was working from 17/11/1994 till 13/06/1996 on Part Time Clock Hour Basis.

4. Mr.Barlinge, therefore, submits that having worked for 2 years and since there was a permanent vacant post available, he has attained the deemed status of a permanent employee u/s 5 of the MEPS Act. His disengagement on 13/06/1996 is in violation of the MEPS Act and the Rules. His request for regularization has been disregarded by the Management. The Management has deliberately shown that the petitioner has worked on Part Time Clock Hour Basis, when in fact he was working Full Time.

5. Mr.Barlinge further submits that by an interim order dated 10/02/2003, the petitioner was granted reinstatement in service by way of interim relief in terms of prayer clause "D" and the petition was admitted. He, however, clarifies that this order was set aside by the learned Appeal Bench of this Court in LPA No. 217/2003 filed by the respondent / Management.

6. Mr.Kulkarni, learned Advocate appearing on behalf of the Management has supported the impugned order. He submits that the advertisement itself indicates that the post in Economics was not a permanent vacant post. It was a Part Time Clock Hour Basis engagement for which applications were invited. The petitioner had worked for about 6 months in the academic year 1994-1995 and then for the academic year 1995-1996 purely on temporary Part Time Clock Hour Basis. He further submits that the petitioner has been out of employment for 20 years.

7. Mr.Patil, learned Advocate for respondent No.5 submits that the grievance of the petitioner was that he should have been appointed in place of respondent No.5. No such orders were passed in his favour. Respondent No.5 was a permanent teacher and has superannuated during the pendency of this petition.

8. Learned AGP appearing on behalf of the Education Department relies on the affidavit in reply dated 05/02/2003 and contends that the petitioner was engaged on Part Time Clock Hour Basis. Approval was also for the said purpose.

9. I have considered the arguments of the learned Advocates.

10. It is trite law that in matters of appointments of teachers, the advertisement must indicate the position for which applications are invited. Appointments made pursuant to such advertisements are to be considered under the MEPS Act when it comes to granting service benefits to such appointees. There is no dispute that the petitioner was engaged on Part Time Clock Hour Basis as per the advertisement. Section 5 of the MEPS Act, therefore, cannot be pressed into service in order to arrive at a conclusion that the petitioner has attained the deemed status of a permanent teacher.

11. I, therefore, do not find that the impugned judgment of the Tribunal, dismissing the petitioner's appeal, could be termed as being perverse and erroneous. This petition, being devoid of merit, is therefore dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)