

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1593 OF 2002

Vilas Jijabrao Chavan,
Age-40 years, Occu-Service,
R/o Gujar Ali, Chopda,
Tal.Chopda, Dist.Jalgaon

-- PETITIONER

VERSUS

1. Grushneshwar Shikshan Sanstha,
Yesgaon No.1, Taluka Khultabad,
Dist.Aurangabad, through its
Secretary,
2. The Head Master, Grushneshwar
Shikshan Sanstha, Yesgaon No.1,
Kailas Vidyalaya, Bodkha,
Taluka Khultabad, Dist. Aurangabad,
3. The Education Officer (Secondary),
Zilla Parishad, Aurangabad

-- RESPONDENTS

Mr.R.M.Deshmukh, Advocate for the petitioner.
Mr.S.D.Kaldate, AGP for the respondent/State.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 25/08/2016

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment and the order dated 30/03/2002 delivered by the School Tribunal, Aurangabad by which Appeal No.319/1996, filed by the petitioner, has been dismissed.

2. It is the contention of the petitioner that he was appointed as

an “Assistant Teacher” on 08/07/1992. He was granted the charge of “Head Master” in January 1993. He was granted approval by the Education Officer by letter dated 12/03/1996 w.e.f. 12/08/1994.

3. It is further submitted that in the academic year 1996-1997, the respondent / Educational Institution received 100% grant-in-aid from the State Government and as a consequence of which, the petitioner was terminated orally on 17/09/1996. Subsequently, he was temporarily taken in employment from 05/12/2001 till 06/04/2002. His appeal was dismissed by the Tribunal on 30/03/2002 and immediately the Management terminated the service of the petitioner w.e.f. 06/04/2002.

4. Mr.Deshmukh, learned Advocate for the petitioner/employee has strenuously submitted that earlier his appeal was allowed and the Management had approached this court. By order dated 13/12/2001, this Court allowed WP No.4829/2001 and remitted the appeal to the Tribunal. 20% of the back wages were directed by this Court to be deposited in the Tribunal as a pre-condition for remanding the matter to the Tribunal.

5. Mr.Deshmukh further submits that since he has worked for

more than 3½ years, he is a deemed permanent employee. Rule 28 of the MEPS Rules, 1981 ought to be followed by the Management while terminating his services. An oral termination does not exist in the eyes of law and as such, the said termination deserves to be set aside.

6. He relies upon the judgment of the Hon'ble Supreme Court in the matter of Progressive Education Society and another Vs Rajendra and another, AIR 2008 SC 1442 and the order of this Court in the matter of Anoop Ganpatrao Bobde Vs.Dnyansagar Bahuuddeshiya Shaikshanik Sanstha, Yeotmal, 2015(6) ALL MR 28.

7. Mr.Bhavthankar, learned Advocate for respondent Nos. 1 and 2 has strenuously supported the impugned judgment. He submits that there was no advertisement published while inducting the petitioner in employment. He was appointed to work casually since the Management offered him the work. There were no grants sanctioned by the Government. The petitioner himself stopped reporting for duties and the Management informed the Education Officer by letter dated 29/11/1996 that the petitioner has himself stopped reporting for duties.

8. Mr.Bhavthankar further submits that after the grants were sanctioned, the Management was duty bound to comply with the stringent provisions of the MEPS Act and the Rules and unless the due procedure was not followed, the grants would not be sanctioned towards the payment of salary of the employees.

9. Placing reliance upon the affidavit in reply dated 05/11/2009, he submits that the Management thereafter published an advertisement in "Daily Marathwada". The petitioner could have applied and could have participated in the recruitment process. After following the due procedure, another employee namely Mr.Shirsath has been appointed and he is a permanent employee of the Management for the past about 18 years.

10. I have considered the submissions of the learned Advocates.

11. There is no dispute that the petitioner was orally inducted as an "Assistant Teacher" without any advertisement being published, without undertaking a Selection Process and without properly selecting the petitioner. It is contended by the petitioner that his services have been approved by order dated 12/03/1996 w.e.f. 12/08/1994. The petitioner is now out of employment for about 20

years. In the absence of any appointment order and in the above backdrop, it cannot be assumed that the petitioner was appointed on probation.

12. In the judgments cited by the petitioner, both the employees namely Mr.Rajendra and Mr.Anoop Bobde were appointed on probation for a period of two years. Their order of termination was in violation of the MEPS Rules which mandate that the performance of a probationer must be assessed periodically and if there are any shortcomings, he should be apprised of the same so as to enable him to improve himself.

13. These facts in the instant case are different in the light of the petitioner having not been issued with an appointment order as noted above. As such, it is not possible to presume that the petitioner has attained the deemed status of a “permanent employee”.

14. The petitioner has been granted 20% back wages under the orders of this Court since the matter had been remanded to the Tribunal in an earlier order.

15. Though the respondent/Management has boldly contended

that no procedure was followed while selecting the petitioner and that there was no advertisement and no appointment order was issued, it cannot be ignored that the Management is guilty of these acts. It is the obligation cast on the Management under Section 5 of the MEPS Act that it would follow the due procedure laid down for selecting an employee. The Management has to get prior permission from the Education Officer for recruiting employees, the Management is to get the advertisement published and the Management is bound to conduct the selection process for appointing a candidate.

16. This Court has come across hundreds of matters in which the facts reveal that the Management do not follow these rules and procedure and after a passage of few years, they indulge in oral termination of an employee on the pretext that his very appointment was illegal. I, therefore, deem it proper to penalize this Management for having committed a wrong in the first place and for having attempted to take advantage of its own wrong.

17. In the light of the above, I am directing the Management to pay 6 months salary to the petitioner at the rate at which it is payable as on date u/s 11(2)(e) which is inclusive of allowances, considering the fact that the petitioner had worked for about 4 years with the

respondent/Management.

18. This petition is, therefore, partly allowed by modifying the impugned order by directing the payment of lumpsum compensation as set out in the foregoing paragraphs.

19. Rule is, therefore, made partly absolute in the above terms.

20. Respondent Nos. 1 and 2 Management shall accordingly calculate the wages of an Assistant Teacher, as directed above, for a period of 6 months and pay the said amount to the petitioner within a period of 12 (twelve) weeks from today.

21. Mr.Bhavthankar submits on instructions that as the appeal was dismissed, the amount of Rs.50,000/- towards the 20% back wages as directed by this Court and which was deposited, has been withdrawn by the Management. To show its bonafides, the Management is willing to pay the said amount of Rs.50,000/- pertaining to the order of this Court notwithstanding the direction of payment of 6 months salary u/s 11(2)(e) of the MEPS Act.

(RAVINDRA V. GHUGE, J.)