IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4789 OF 2015

1. Satmala Banjara Shikshan Sanstha,
Hanmantkheda, Tq.Soygaon,
Dist. Aurangabad,
Through its President,
Radhabai w/o Kailashchandra Rathod,
Age-32 years, Occu-Agriculturist and President,
R/o Hanmantkheda, Tq.Soygaon,
Dist.Aurangabad,

2. Rajendra S/o Bhaskarrao Patil,
Age-48 years, Occu-Service,
Head Master, Swatantrya Sainik,
Sarichand Rathod Secondary School,
At Hanmantkheda, Tq.Soygaon,
Dist.Aurangabad. PETITIONERS

VERSUS

1. Prithviraj S/o Devising Pardeshi,
Age-38 years, Occu-NIL,
R/o At Gallan, Tq. Pachora,
Dist. Jalgaon,

2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad RESPONDENTS

Mr.M.S.Taur h/f Mr.A.N.Kakade, Advocate for the petitioners.
Mr.S.R.Kolhare, Advocate for respondent No.1.
Mrs.S.S.Raut, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 25/04/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties

2. The petitioners are aggrieved by the judgment and order dated 13/01/2015 delivered by the School Tribunal, Aurangabad by which Appeal No.164/2012 filed by respondent No.1/employee has been allowed and the petitioner/Management is directed to reinstate him in service with continuity and 40% back wages.

3. This Court had considered the submissions of the learned Advocates in its order dated 11/01/2016 as under :-

> *"1. Contention of the petitioner is that the appointment of respondent No.1 was purely contractual. There was no intention of regularizing his services having been appointed on contractual basis. There was no vacancy available in the light of the following four Peons appointed against four sanctioned permanent vacancies:-*
>
> *(a) Smt. Chandrakalabai S. Rathod - appointed on 14.6.1993,*
> *(b) Shri Shaikh Mehboob - appointed on 14.6.1993,*
> *(c) Shri Devidas Shenfadu Rajput - appointed on 11.6.1998 and*
> *(d) Shri Kishor Patil - appointed on 11.6.1998 (read as 11.6.1997).*
>
> *2. There is no dispute that respondent No.1 was appointed by order dated 5.6.1998, w.e.f. 11.6.1998 and he continued in employment till 24.11.2000. The petitioner contends that respondent No.1 has abandoned service after 24.11.2000.*

3. Since the thrust of the petitioner's contention is based on the ratio laid down by the Full Bench of this Court in the matter of Ramkrushna Chavan Vs. Seth D.M.High School and others [2013 (2) Mah.L.J. 731] that all the above four appointees were appointed by following the due procedure of law, I am inclined to direct the petitioner to substantiate the said contention to the extent of the appointees at Sr. Nos. (c) and (d) set out above.

4. As such, the petitioner is directed to file an additional affidavit along with all such documents, which according to the petitioner would indicate that the appointees at Sr. Nos. (c) and (d) above were appointed by following the due procedure of law.

5. Additional affidavit with documents shall be filed on/or before 22.1.2016.

6. S.O. to 29.1.2016 for further consideration."

4. Pursuant thereto, the petitioner/Management has filed its additional affidavit dated 29/01/2016 and respondent No.1 / employee has filed a rejoinder dated 24/02/2016.

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

6. The issue is with regard to whether the petitioner, who was

appointed temporarily from 11/06/1998 for two academic years ending in April 2000, could be said to have been appointed on probation. So also, the issue raised is whether the petitioner can be presumed to be appointed on probation as a Peon in the non teaching category and whether he could be given the benefit of Section 5 (2) of the MEPS Act and be deemed to be confirmed in employment

7. There is no dispute that the petitioner was appointed on temporary basis w.e.f. 11/06/1998. The other employee at issue namely Devidas Shenfadu Rajput was also appointed on 11/06/1998 and was retained in employment. Mr.Kishor Patil was appointed on 11/06/1997 prior to the petitioner. The Management has placed on record the appointment order of Mr.Devidas Rajput which indicates that he was appointed on “Probation” for a period of 2 years. It is not in dispute that the issue raised by the employee pertains to a period when the petitioner/Management was an unaided Institution.

8. Mr.Kolhare has strenuously supported the impugned judgment and submits that the petitioner has exploited respondent No.1. He has worked continuously for 3 years and since he was orally terminated from service on 13/06/2001, he had preferred his appeal. He further submits that the Management has not paid him his

monthly wages during the said period whenever he has worked. He, therefore, prays that the impugned judgment does not call for any interference and this petition be dismissed with costs.

9. From the record, I find that respondent No.1 / employee has signed the muster roll upto 24/11/2000. His appointment order, however, indicates that he was appointed on temporary basis. The petitioner/Management contended in its reply in Appeal No.164/2002 that the said employee had marked his attendance till 24/11/2000 and thereafter had been remaining absent.

10. The respondent/employee has primarily based his Appeal on 3 grounds :- Firstly ; that he has worked for 3 years, secondly ; he is deemed confirmed and thirdly ; Mr.Devidas Rajput was appointed after him and therefore respondent No.1 deserves to be reinstated in service.

10. I find from the record that respondent No.1 was appointed on contractual basis. The learned Full Bench of this Court in the matter of Ramkrishna Chauhan Vs. Seth D.M.High School and others, 2013(2) Mh.L.J. 713 has concluded that a temporary employee working in the non teaching category and appointed for a

temporary period or for a contractual period cannot be presumed to have been appointed on probation,. Section 5(2) therefore would not be applicable.

12. Considering the view of the learned Full Bench in the matter of Ramkrishna Chauhan (supra) and the fact that Mr.Devidas Rajput cannot be compared and is not comparable with the appointment of respondent No.1, it would not entitle respondent No.1 to any parity with Mr.Rajput.

13. There is no dispute that the posts of peon have not been increased. Four persons named above are presently working as Peons against 4 sanctioned permanent posts. Respondent No.1, being the last amongst these 5 persons and having been appointed on contractual basis, would have no right and the view taken by the Tribunal in the impugned judgment therefore calls for interference.

14. Mr.Kolhare, learned Advocate has raised an issue of the petitioner/Management having not paid the monthly salary of respondent No.1. As such, I deem it appropriate to direct the petitioner/Management to ensure that any unpaid salary of respondent No.1 shall be paid to him within a period of 8 (eight)

weeks from today, failing which the said amount shall attract simple interest @ 3% p.a. from the date of the judgment of the School Tribunal.

15. In the result, this petition is partly allowed. The impugned judgment of the School Tribunal dated 13/01/2015 is quashed and set aside. Appeal No.164/2002 stands dismissed.

16. However, the petitioner shall pay the unpaid salary of respondent No.1, as directed above.

17. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)