

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 727 OF 1997
WITH
CIVIL APPLICATION NO. 451 OF 2008

Smt. Shailaja Gangadhar Khairnar
Age 41 years, Occ. Asstt. Teacher
R/o Jahagirdar Wadi, Bhalchandra
Sadan, Chalisgaon, Dist. Jalgaon.

..Petitioner

Versus

1. The Secretary,
Girna Vidya Prasarak Mandal,
Mehunbare, Tq. Chalisgaon,
District Jalgaon.

2. The Head Master,
Girna Vidya Prasarak Mandal's
High School, Khadkisim,
Taluka Chalisgaon,
District Jalgaon.

3. Smt. Nanda Laxman Chavan,
Girna Vidya Prasarak Mandal,
Tq. Chalisgaon,
District Jalgaon (424106).

..Respondents

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Advocate for Petitioner : Shri Pradip Deshmukh
h/f Smt. Smita Deshpande
Advocate for Respondents 1 and 2 : Shri V.Y.Patil

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 17, 2016

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ORAL JUDGMENT :-

1. The petitioner is aggrieved by the judgment and order dated 9.12.1996, by which, her Appeal No.3 of 1990 has been dismissed and

her termination w.e.f. 31.3.1989 has been sustained.

2. This petition was admitted on 25.2.1997 and the learned Division Bench of this Court did not grant interim relief to the petitioner.

3. I have considered the strenuous submissions of Shri Deshmukh on behalf of the petitioner and Shri Patil, learned Advocate on behalf of respondents 1 and 2. None has appeared on behalf of respondent No.3.

4. There is no dispute that the petitioner was appointed purely on temporary basis for one academic year w.e.f. 1.8.1986 to 30.4.1987 as against a leave vacancy. She was similarly appointed by order dated 2.5.1987 for one more academic year and which was followed by a similar order dated 13.6.1988 for one academic year.

5. The petitioner approached the School Tribunal contending that she was orally terminated w.e.f. 17.6.1989. Her appeal was initially allowed by judgment dated 30.8.1993. By the order of this Court dated 6.12.1993, the said judgment was quashed and set aside as it was an ex-parte judgment and the matter was remitted back again to the School Tribunal for a decision afresh. By the impugned judgment, the Appeal has been dismissed.

6. The respondent / management had pleaded before the Tribunal that the order of termination dated 23.3.1989 was served upon the petitioner under Certificate of Posting (“UCP”). There is no evidence to indicate the service of the termination order. So also, service by UCP leaves no evidence and as such there cannot be a presumption that the purported service by UCP would tantamount to proper service. The management has further pleaded that they served the order by UCP because the petitioner refused to accept the termination order. This contention is also unacceptable since, the management could have served the termination order by RPAD in the backdrop of an alleged refusal to accept by the petitioner. In this backdrop, the termination is presumed to be dated 17.6.1989.

7. The petitioner has vehemently contended that she has attained the deemed status of a permanent employee since she has worked for more than two years as an Assistant Teacher, under Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (“the MEPS Act” for short). It is, therefore, contended that the termination without an opportunity of hearing cannot be inflicted upon a deemed permanent employee. The Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 mandate that a permanent employee is required to be heard prior to termination and dismissal requires a

departmental enquiry to be conducted.

8. In the backdrop of the above contention, I have scrutinized the appointment orders issued to the petitioner. It was on her application that she was appointed as a temporary employee for one academic year each by three appointment orders. The petitioner has not pleaded in the memo of the Appeal that there was an advertisement published by the management and pursuant to the said advertisement, she had appeared for the interviews and was selected by the competent selection committee.

9. Though Shri Deshmukh has strenuously contended that approval as a temporary employee for one year would presuppose that the procedure for appointment has been followed, I am not impressed by the said submission for the reason that the Education Officer has granted approval only for her temporary engagement. Upon each appointment of the petitioner, the Education Officer has granted approval for the temporary engagement of the petitioner. Nevertheless, it appears that the management has continued the petitioner on temporary basis despite the undisputed position with regard to her qualifications that she was B.A., B.Ed. qualified and had the requisite qualifications for being appointed as an Assistant Teacher at the relevant time.

10. Considering the fact that the petitioner is out of employment from June 1989 for more than 27 years, though there cannot be a reinstatement in service with continuity after such a long duration of unemployment, the management deserves to be penalised under Section 11(2)(e) of the Act of 1971.

11. Shri Deshmukh has pointed out that the petitioner was treated as a surplus teacher by the Education Officer, Zilla Parishad, Jalgaon. This is evident by the fact that the Education Officer had issued a letter dated 11.6.1990, which is at page 209 of the petition paper book, whereby, the Edalabad Taluka Education Society, Edalabad was directed to absorb the petitioner in place of one Shri M.M.Patil. Copy of the said letter was addressed to the petitioner on her residence address as is evident from the said communication. It is unknown as to why the petitioner has not joined the Edalabad Taluka Education Society, Edalabad in June 1990.

12. At this juncture, Shri Deshmukh submits that though the petitioner has not stated in her rejoinder dated 5.7.2015, the order of the learned Division Bench dated 6.12.1993 directing the reinstatement of the petitioner from 30.8.1993 was complied with and the petitioner was once again terminated after her Appeal was dismissed by the School Tribunal on 9.12.1996. She has thus worked for three more years, pursuant to the directions of this Court.

13. Though Shri Deshmukh has made the above statement, it is beyond comprehension as to why the petitioner, who has filed a rejoinder as recently as on 5.7.2015, has not stated therein that she was reinstated on a particular date and after the dismissal of her Appeal, she was terminated from service on a particular date. In the light of the above, even if it is assumed that the petitioner worked from 1994 till 1996, she is out of employment for more than 20 years.

14. In the light of the above, this petition is partly allowed by modifying the impugned order to the extent of directing the respondent / management to pay six months' wages including allowances under Section 11(2)(e) of the MEPS Rules from the date of the judgment of the School Tribunal, along with 3% p.a. interest on the said amount, till it is actually paid. The respondent shall pay the said amount within a period of twelve weeks from today.

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

16. Pending Civil Application stands disposed off.

(RAVINDRA V. GHUGE, J.)

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