

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12568 OF 2015

1. The Secretary,
Jan Seva Bhavi Sanstha,
Ghatsavali, Tal. and Dist. Beed,
2. The President,
Jan Seva Bhavi Sanstha,
Ghatsavali, Tal. and Dist. Beed -- PETITIONERS

VERSUS

1. Shankar Nivrutti Tambade,
Age-39 years, Occu-Nil,
R/o C/o B.G.Tambade,
Near Canada Bank, Dhanora Road,
Beed, Tal. and Dist. Beed,
2. The Head Mistress,
Late Lala Patil Phad Madhyamik Vidyalaya,
Ghatsavali, Tal. and Dist. Beed,
3. The Education Officer (Secondary),
Zilla Parishad, Beed. -- RESPONDENTS

WITH
WRIT PETITION NO.2775 OF 2016

1. The Secretary,
Jan Seva Bhavi Sanstha,
Ghatsavali, Tal. and Dist. Beed,
2. The President,
Jan Seva Bhavi Sanstha,
Ghatsavali, Tal. and Dist. Beed -- PETITIONERS

VERSUS

1. Dhananjay Dhondiram Phad,
Age-35 years, Occu-Nil,

R/o Ghatsavali, Taluka
and District Beed,

2. The Head Mistress,
Late Lala Patil Phad Madhyamik Vidyalaya,
Ghatsavali, Tal. and Dist. Beed,

3. The Education Officer (Secondary),
Zilla Parishad, Beed.

– RESPONDENTS

Mr.S.S.Jadhavar, Advocate for the petitioners.

Mr.R.I.Wakade, Advocate for respondent No.1 in both petitions.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 03/08/2016

ORAL JUDGMENT :

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

2. In both these petitions, the Management is the petitioner. Respondent No.1/Employees in both the matters are identically placed. The management has challenged identical judgments both dated 24/04/2015, by which Appeal No.26/2012 and 27/2012 filed by the respondents/employees have been allowed.

3. Mr.Jadhavar, learned Advocate for the Management has strenuously criticized the impugned judgments. His basic submission

is that though both the respondents/employees have been working for 11 years and 6 years respectively, none of them were appointed by following the due procedure laid down in Law. There was no advertisement, no interviews and no selection process. Though the Management operates the late Lala Patil-Phad Madhyamik Vidhyalaya, Ghat Savali, Tal. and Dist. Beed on 'no grant' basis, it has to maintain a proper teacher-student ratio. Merely because the respondents worked for about 6 to 11 years, would not render them permanent employees of these establishments.

4. He further submits that both the respondents were engaged only because they desired to acquire experience and qualifications. In 2012, their services were dispensed with because the earlier Secretary, who was also the Head Mistress had illegally issued appointment orders on 15/06/2010 thereby creating a picture that these respondents are appointed on probation. In fact, the appointment orders are not signed by the School Committee.

5. It is further submitted that merely because the respondents were given an opportunity to gather experience and the Management had the bonafide intention of permitting them to work only for gathering experience, the respondents have mustered the support of

the earlier Secretary and she has issued the appointment orders in her capacity as a Secretary, though no authorized representative of the Management had issued any appointment orders to the respondents. Reliance is placed upon the judgment in the case of Priyadarshini Education Trust and Others Vs. Ratis (Rafia) Bano Abdul Rasheed and others, 2007(6) All MR 238 so as to contend that unless the appointment orders are legal and proper, no employee can be retained in employment, much less be reinstated.

6. Learned Advocate for the respondents/employees submits that the employee in the first case had worked for 11 years and the employee in the second case had worked for 6 years. The first employee namely Mr.Tambade was not qualified when he was engaged in 2000 as an "Assistant Teacher". He gathered qualification on 10/05/2011 while being in the service of the petitioner. The second employee namely Mr.Dhananjay Phad was actually qualified when he was appointed for the first time in 2006. He has worked for about 6 years.

7. It is further submitted that the school at issue is a non grant-in-aid school. In 2002, there was a staffing pattern, by which the Head Mistress and Mr.Tambade were accommodated against two

vacant posts. Thereafter by natural growth, since the number of students and divisions increased, Mr.Phad was appointed against a permanent vacant post as he was qualified for the same.

8. He further submits that none of the respondents were paid their monthly salary from the date of their appointments. They have been exploited by the petitioner. Only after they started demanding their salary and there was a possibility that the Management would acquire grants-in-aid, that the respondents were orally terminated on 10/08/2012.

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

10. There is no dispute about three aspects. Firstly, that Mr.Tambade and Mr.Phad have been working for 11 years and 6 years respectively in the said school. Secondly, the Management has not paid them their salary on the ground that they were allowed to work only to gather an experience so as to improve their service prospectus elsewhere. It is also undisputed that none of the respondents were appointed by virtue of any appointment order.

11. It is apparent from the fact situation as above, that the

petitioner/Management permitted the respondents to work as teachers without issuing any appointment order and without payment of salary. The Management submits that the teachers were engaged for their own benefit of gaining experience. The respondents/teachers contend that they were orally appointed but have actually worked.

12. The School Tribunal has taken into account that the Education Officer used to conduct inspection of the school and it was noticed that these two employees were regularly working with the School. They have also performed their duties during the examinations conducted in the School. For the entire duration for which these respondents were working, the Management has not raised any protest or objection with regard to their working, though it is strenuously submitted before the Court that the Head Mistress surreptitiously appointed the respondents.

13. I find it quite conspicuous that the Management did not raise any objection to the presence of the respondents as teachers in its school. There was no objection when these two teachers discharged their duties of imparting education. It was in 2012 that suddenly it dawned upon the Management after a passage of 11 and 6 years

respectively that these respondents were not legally appointed.

14. I find from a number of cases dealt with by me that the teachers are employed for years together and when the relation between the teachers and the Management sours, the Management puts forth the plea that the very appointment of the teacher is illegal. I have noticed in a number of cases that the Management, who appoints such teachers without following the due procedure, takes undue advantage of its own wrong by orally terminating the teachers and then putting forth a stand before the Tribunal that their very engagement was illegal.

15. I have delivered a judgment in practically similar facts in WP No.9329/2015 in between Trimurti Balak Mandir Shikshan Sanstha Through its Secretary and another Vs Vithabai Bhikan Desale and others, wherein the Management had taken a similar stand that the teacher was working for years together, since the Management allowed the teacher to gather experience without any lawful appointment. By judgment dated 22/03/2016 delivered by this Court, the claim of the Management has been rejected and the reinstatement of the teachers has been sustained. It is informed that the Hon'ble Supreme Court, by its order dated 15/07/2016, has

dismissed SLP (Civil) No.15420/2016 of the Management.

16. In the instant case, it is quite surprising that the Management allowed the employees to work for several years without salary. The moment the teachers prayed for their salary, the Management has disengaged them on the plea that their induction in service itself is illegal.

17. I have gone through the impugned judgment of the School Tribunal, which has considered the above position and has also taken into account that the Education Officer has noted that these respondents were working despite their temporary engagement, for years. The staffing pattern indicates that both these respondents can be accommodated against vacant posts. The seniority list indicates that the respondent in the first petition was constantly at Sr.No.2 and the respondent in the second petition was at Sr.No.4. Both of them have worked for 11 years and 6 years respectively.

18. Considering the above, I find it appropriate to conclude that the Management, in such circumstances, cannot be permitted and is estopped from taking advantage of its own wrong and thereby exploit the teachers. The impugned judgments, therefore, do not appear to

be perverse or erroneous.

19. Consequently, both these petitions are dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)