

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10029 OF 2015

Suryakant Dnyanoba Bhondave
Age 41 years, Occ. Nil
R/o. Limpangaon, Tq. Shrigonda
District Ahmednagar

= **PETITIONER**
(orig. Appellant)

VERSUS

- 1) Shri Eknath Patil Gramin
Vikas Bahuuddeshiya Sanstha
at Baradgaon Dagadi, Tq. Karjat
Dist. Ahmednagar
Through its president
 - 2) The Head Master
Late Pankuwarbai Tejmal Sharma
Madhyamik Vidyalaya Baradgaon
Dagadi, Tq. Karjat
District Ahmednagar.
 - 3) The Education Officer (Secondary)
Zilla Parishad, Ahmednagar,
District Ahmednagar.
- = **RESPONDENTS**
(Orig. Respondents)
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Mr.Ashvin Hon, Advocate for Petitioner;
Mr.S.T.Shelke, Adv. for Respondent Nos.1 & 2;
Mr.P.G.Borade, AGP for Resp.No.3.

CORAM : P.R.BORA, J.

DATE : 15th June, 2016.

ORAL JUDGMENT:

- 1) Rule. Rule made returnable forthwith
with consent of learned counsel appearing for the

parties.

2) The order passed by the School Tribunal, Pune in Appeal No.54/2013 is challenged in the present petition. The petitioner had filed the aforesaid appeal against his oral termination by the respondents. It was the case of the petitioner before the School Tribunal that he was appointed in Respondent No.2-School w.e.f. 15th June, 2004 and he continued to work with the said school till 19.11.2013, i.e. till the date of his oral termination.

3) The contentions raised by the petitioner before the School Tribunal were strongly opposed by the respondents. It was the contention of the respondents in the appeal before the School Tribunal that the appellant/petitioner was never appointed by following due process of law. It was further contended that the order on which the appellant is placing reliance, was issued under the signature of then President of respondent/institution, but it was not backed by

any resolution of the School. It was also contended that prior to issuing the appointment order in favour of the petitioner/appellant, no advertisement was issued. It was further contended that the petitioner is having qualification of B.Ed. Physical Education. There was only one post in approved staffing pattern for the candidates having such qualification and the teacher, who is working as Head Master of the school, is possessing B.Ed. Physical Education qualification and as such, no other person having the same qualification could have been appointed in the said school. It was also contended that though a proposal was submitted by the management seeking approval to the appointment of the petitioner/appellant, the same was rejected by the Education officer. The appellant/petitioner did not challenge the said rejection before any higher authority or in any court. It was further contended that in view of the fact that no approval could be received to the appointment of the petitioner/appellant, the management was

constrained to terminate the services of the petitioner/appellant.

4) The learned School Tribunal, after having considered the material brought before it by way of oral as well as documentary evidence, reached to the conclusion that the appointment of the petitioner cannot be held to be legal and valid appointment, since his very entry in the service was illegal, no relief can be granted in favour of the petitioner and hence the appeal was dismissed by the School Tribunal.

5) The learned Counsel appearing for the petitioner, placing reliance on the judgment of this court in the case of Balasaheb Chandragupta Burke Vs. The President, Bahujan Samaj Prabodhan Shikshan Sanstha, Kotul and Ors. (WP No.485/2015 with other connected matters), submits that the management cannot be permitted to take advantage of its own wrong even if it is presumed that the petitioner was irregularly appointed. The learned Counsel submitted that in the aforesaid

matter before this court, similar facts were involved and similar stand was taken by the management therein and the contentions so raised on behalf of the management were turned down by this court and the petitioners therein were reinstated in employment with continuity in service. The learned counsel submits that in view of the aforesaid decision by this court, the present writ petition deserves to be allowed and the order passed by the School Tribunal be quashed and set aside and consequently, the petitioner be reinstated with continuity of service and back wages.

6) Shri Shelke, learned Counsel appearing for the respondents Nos.1 and 2, reiterated the contentions raised in the affidavit in reply, which was filed in the appeal before the School Tribunal. The learned Counsel submitted that the learned School Tribunal has rightly refused to grant any relief to the present petitioner. The learned Counsel submitted that though approval to the appointment of the petitioner was rejected by

the Education Officer, the said order has not been challenged by the present petitioner before any other higher authority or before this court. The learned counsel submitted that in view of the fact that there was no post available for appointment or for accommodating the present petitioner, there was no other option for the respondent/management except to terminate the services of the petitioner. The learned counsel further submitted that even otherwise, no right could have been granted in favour of the petitioner since his initial entry in the service itself was illegal.

. The learned counsel further submitted that it was the precise contention of the respondent/management before the School Tribunal that the appointment issued in favour of the petitioner was not backed by any resolution of the School Committee and before making his appointment, the procedure prescribed under the law, was not followed.

. In order to substantiate his

contentions, the learned Counsel relied upon the judgment of this Court in the case of Navjeevan Shikshan Sanstha Bhishnur and Anr. Vs. Chandrashekhar Anandraoji Rewatkar and Ors. - 2015 (1) Mh.L.J. 782, wherein this court has in clear terms held that the initial entry in service has to be a lawful entry and any irregularity in that regard cannot create any vested right in favour of employee. The learned Counsel further pointed out that this court has further held that, 'it is not material as to who is at fault; either the employee concerned or the management, and the relevant fact will be whether or not the initial appointment was in consonance with the procedure prescribed under law'.

. The learned counsel further invited my attention to the stand taken by the Education officer in the appeal before the School Tribunal. It was the contention of the Education officer that on the establishment of respondent school there was only one sanctioned post for a teacher having qualification of B.Ed. (Physical

Education) since the strength of the students in the respondent school was below 250. It was also contended by the Education officer that the teacher, who is working as head Master of the respondent school is also having qualification as B.Ed. (Physical Education) and in such circumstances, no second teacher, having similar qualification, could have been appointed by the respondent management and that was the reason, the appointment of the petitioner was not approved by the Education Officer.

7) After having considered the aforesaid aspects it does not appear to me that the School Tribunal has committed any error in rejecting the appeal filed by the present petitioner. The petition appears to be devoid of any substance and deserves to be rejected. It is accordingly rejected. Rule discharged.

sd/-
(P.R.BORA, J.)

bdv/