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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1155/2013

Yashwant S/o Gunderao Surner,
Age : 38 Years, Occu.: Nil,
R/o Warwanti, Tq. Ahmedpur,
District Latur.

...Petitioner...

Versus

- 1 Shri Ganesh Shikshan Prasarak
Mandal, Mandurki, Tq. Chakur,
Dist. Latur,
Through its Secretary.
- 2 Swami Vivekanand Madhyamik
Ashram School, Rui Tanda,
Tq. Ahmedpur, Dist. Latur,
Through its Head Master.
- 3 The Social Welfare Officer,
Zilla Parishad, Latur,
Dist. Latur.

...Respondents..

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Shri N.P. Patil-Jamalpurkar, Advocate for petitioner.
Shri S.G. Rudrawar, Advocate For respondent Nos.1 & 2.
Shri D.V. Tele, AGP for respondent No.3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE: 03.02.2016

ORAL JUDGMENT :

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1] The petitioner is aggrieved by the judgment and order dated 27.9.2012 by which his Appeal No.31/2011 challenging his oral termination dated 16.4.2010 has been dismissed by the School Tribunal.

2] Shri N.P. Patil Jamalpurkar, learned Advocate for the petitioner, has strenuously criticized the impugned judgment of the School Tribunal. His submissions can be summarized as under:-

a] The petitioner was appointed as a Junior Clerk on 9.6.2002 by the management. His order of appointment dated 9.6.2002 was for a period of two years.

b] He was appointed on probation.

c] He worked continuously with the respondent till he was orally disallowed from signing the Muster Roll with effect from 16.4.2010.

d] By order dated 8.6.2004, he was granted permanency and, therefore, became a permanent employee as a Junior Clerk with the respondent - educational institution.

e] He preferred Appeal No.31/2011 before the School

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Tribunal setting out therein the grounds for challenging his oral termination.

f] When he was appointed as a Junior Clerk, the respondent - school was being run on no grant basis.

g] He was not paid his monthly salary even once ever since he joined.

h] His proposal was not forwarded for approval.

i] In the written statement, the respondent - management took a stand that he was never appointed.

j] One Mr.Panhale was already appointed in 1999 and he worked till 2006.

k] One Mr.Tarde was appointed in 2006 in place of Mr.Panhale.

l] Only after the respondent received 100% grants for running the school, they chose to remove the petitioner from employment.

m] Mr.Panhale was fraudulently shown to have been appointed as a Junior Clerk in 1999.

n] Mr.Tarde was working as Head Master at Dnyanganga Madhyamik High School run by the

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respondent - institution at Salna in Taluka Aundha from 2003 to 2006.

o] When Mr.Tarde was working as Head Master elsewhere, why would he join as a Junior Clerk with respondent no.2 - school in 2006 ?

p] The name of Mr.Panhale also appears as an Assistant Teacher in the school records at Salna from 2003 to 2010.

q] How can Mr.Panhale be shown as a Junior Clerk with the school in which the petitioner was working ?

r] Documents were fraudulently prepared by the respondent - institution and produced before the School Tribunal.

s] The appointment of Mr.Tarde is also doubtful.

t] An advertisement published in some daily by the name "Mahila Ekjoot" is said to be the advertisement by which applications were invited.

u] The MEPS Rules, 1981, mandate that the advertisement should be published in atleast two newspapers having wide circulation.

v] The respondent - management has played a fraud

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on the State exchequer and has drawn two salaries in the name of Mr.Panhale at two different locations.

w] The School Tribunal has assigned erroneous reasons for dismissing the petition filed by the petitioner / appellant.

3] Shri S.G. Rudrawar, learned Advocate for the respondent – management has placed reliance upon the affidavit in reply in support of the impugned judgment. His submissions can be summarized as follows:-

a] The petitioner was never appointed as a Junior Clerk with the respondent no.2 – school.

b] He never served at any time as a Junior Clerk in the school.

c] He has prepared a false appointment order showing the signature of the Head Master.

d] There was no selection process undertaken through which the petitioner could be said to have been selected.

e] There was no clear vacant post during the period the petitioner claimed to have been working with

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the respondent no.2.

f] He was never appointed on probation for a period of two years.

g] Since he was never appointed, his proposal was not forwarded for approval.

h] Since he was not appointed, he was not paid any salary even for a single day.

i] The signature appearing on the purported appointment order is not of the Secretary of the school committee.

j] The stamp below the signature of the Head Master is also fabricated as that is not the stamp of the respondent – school.

k] There was no resolution passed by the school committee for appointing the petitioner and hence no appointment order was issued in accordance with the rules and the form prescribed under the MEPS Rules.

l] The appointment of Mr.Panhale was by following the due process of law.

m] His approval was granted by the competent department on 15.12.2003.

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n] Relevant documents and approval orders for each academic year in relation to Mr.Panhale are also produced on record.

o] Since the petitioner was never appointed, his signature does not appear on any Muster Roll.

p] The petitioner used to reside in an adjoining village and he used to visit the school for doing honorary work of supervision during examinations.

q] Since Mr.Panhale resigned in the academic year 2005-06, Mr.Tarde was appointed in his place on 11.6.2006.

r] The respondent no.3 granted approval to the appointment of Mr.Tarde with effect from 11.6.2006.

s] An advertisement was published on 5.6.2006 and the interviews were held on 8.6.2006.

t] There is only one post of Junior Clerk with the respondent.

u] The signature on the appointment order of the petitioner is not of the Head Master, but appears to be that of one Mr.Gelewad, who acted as an in-charge Head Master from 1999 to 2001.

v] The petition be dismissed with costs.

4] I have considered the submissions of the learned Advocates as have been recorded hereinabove.

5] Insofar as the appointment order of the petitioner is concerned, apparently the same is not in tune with the prescription as set out in the MEPS Rules. Neither was any advertisement published nor applications were invited nor any selection process was followed in relation to the purported appointment of the petitioner.

6] The stamp below the appointment order of the petitioner is of the Secretary / President of the institution. The signature, however, is neither of the Secretary nor of the President. Same is the case with his purported confirmation order. The Education Officer has not received any proposal of the petitioner for approval as a Junior Clerk.

7] An experience certificate is also placed on record, which is signed by one Mr. Gelewad as the Head Master. The same person was said to be an in-charge Head

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Master from 1999 till the year 2001. The said certificate was also considered to be seriously doubtful by the School Tribunal considering the fact that the Head Master had issued it for reasons unknown to the respondent. No reasons were divulged even before the School Tribunal by the petitioner. More over, a statement is made in the experience certificate that the name of the petitioner was not forwarded for approval to the Social Welfare Officer, Latur.

8] The School Tribunal has considered the rival contentions of the litigating sides in details. Neither was the School Tribunal convinced nor is there any material before this Court to establish that the petitioner had in fact worked for a period of almost eight years on day-to-day basis. Neither is there any evidence about his selection, his approval nor is there any evidence with regard to his working and his payment of salary.

9] Considering the above, I do not find that the impugned judgment of the School Tribunal could be said to

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be perverse or erroneous. In the absence of any material to establish the appointment of the petitioner as per procedure, whether Mr.Panhale or Mr.Tarde was working with the respondent or not, would not be a significant issue.

10] As such, this petition is dismissed. Rule is discharged with no order as to costs.

(RAVINDRA V. GHUGE, J.)