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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4874 OF 2015

Sambhaji J. Bhosale	...Petitioner
V/s.	
The President,	
Kai.D.P. Bhosale Shikshan Sanstha	
Jijamata Mahila Sahakari Bank Ltd. & Ors.	...Respondents

Mr.Chandrakant Chavan for the Petitioner.

Mr.K.S. Bapat with Mr.T.R. Yadav i/b Mr.Avinash Fatangare for the Respondent Nos.1 and 2.

CORAM : R.D. DHANUKA, J.
DATE : 11TH APRIL, 2016.

P.C. :-

1. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner has impugned the order dated 16th March, 2015 passed by the learned Presiding Officer, School Tribunal, Kolhapur, dismissing his appeal filed under section 9 of the Maharashtra Employees Of Private Schools (Conditions of Service) Regulation Act, 1977 (for short "MEPS Act"). I have heard learned counsel for the petitioner at length at the stage of admission. Some of the relevant facts for the purpose of deciding this writ petition are as under :

2. It was the case of the petitioner that pursuant to an advertisement issued by the respondent no.1, the petitioner was appointed as an Assistant Teacher on 27th June, 2004 on clear permanent vacancy. According to the petitioner his appointment continued from time to time till 25th February, 2012 when he was not allowed to sign the muster. The petitioner therefore, filed an appeal under section 9 of the MEPS Act before the School Tribunal. The management opposed the said appeal by filing a reply before the School Tribunal. No oral evidence was led before the School Tribunal.

3. Mr.Chavan, learned counsel appearing for the petitioner submits that the petitioner had applied for the said post pursuant to an advertisement issued by the then management of the respondent no.1 and was appointed as an Assistant Teacher on probation. He submits that in addition to the teaching work, the petitioner has also done the other work assigned to him as an Assistant Teacher. He submits that the letter of appointment was signed by Mrs.Jyoti Bhosale, whose name was recorded in P.T.R. extract filed before the Charity Commissioner. He placed reliance on a copy of resolution tendered across the bar and would submit that the appointment of the petitioner was approved after proper resolution by the then management of the respondent no.1. He submits that the termination

of the petitioner was illegal and thus the Tribunal ought to have set aside the order of termination.

4. It is submitted that the School Tribunal did not give proper opportunity to the petitioner to lead evidence. He submits that the appeal is dismissed on the ground that some of the teachers, who were necessary parties according to the School Tribunal, were not impleaded as parties to the appeal and thus the petitioner has impleaded those teachers as respondent nos.4 to 7 in the present writ petition. He submits that since the principles of natural justice was violated by the School Tribunal, the matter shall be remanded back to the School Tribunal with an opportunity to the petitioner to implead those teachers as necessary and proper parties to the appeal and to lead oral evidence. He submits that gross injustice is done to the petitioner by the management and also in view of the impugned order passed by the School Tribunal.

5. Mr.Bapat, learned counsel appearing for the management on the other hand relied upon the findings rendered by the School Tribunal. He submits that the petitioner had fabricated various documents and had relied upon the same before the School Tribunal. He submits that the School Tribunal has recorded a finding of fact that the documents were fabricated by the petitioner. Since the finding of facts are not perverse, this Court cannot be interfere with

the findings of fact under Articles 226 read with 227 of the Constitution of India.

6. A perusal of the impugned order passed by the School Tribunal indicates that though the petitioner was granted an opportunity to lead oral evidence before the School Tribunal, the petitioner did not lead any oral evidence. Some of the documents relied upon by the petitioner were disputed by the management as fabricated documents. The onus was thus on the petitioner to prove the authenticity and correctness of such documents.

7. A perusal of the impugned order and record further indicates that said Mrs.Jyoti Bhosale, who had alleged to have signed the appointment letter of the petitioner, her name was not reported to the Charity Commissioner and was not a Secretary of the School Committee. Under the provisions of MEPS Act, 1977, the appointment letter has to be signed either by the Headmaster or by the Secretary of the School Committee. The School Tribunal has rendered a finding of fact that Mrs.Jyoti Bhosale was not a Secretary of the School Committee. It is held that since the appointment of the petitioner was illegal, there was no need of termination of the services of the petitioner. The School Tribunal has placed reliance on the judgment of the Supreme Court in case of **Kendriya Vidyalaya Sangh vs. Ajay Kumar Das, AIR 2002 SC, 2426.**

8. The School Tribunal has also rejected the appeal of the petitioner on the ground that there were several candidates available from reserved category and the petitioner admittedly belonged to an open category. There was no clear vacancy in respect of the open category post. It is held by the School Tribunal that the petitioner has not even produced any prior approval of the Education Department as required under section 5(1) of the MEPS Act, 1977. It is held that since the appointment of the petitioner itself was illegal, there was no question of the appointment being confirmed on expiry of two years on the said post though the appointment was on probation.

9. A perusal of the impugned order indicates that the learned School Tribunal has also rendered a finding of fact that the muster produced by the petitioner before the School Tribunal was a fabricated record. Even such muster produced by the petitioner did not disclose or conclusively prove that the petitioner was in service of the respondent no.1 or had worked as an Assistant Teacher. A perusal of the record indicates that the petitioner was not able to prove before the School Tribunal inspite of an opportunity rendered to the petitioner that the appointment of the petitioner was legally made by the management after following the procedure under the provisions of the MEPS Act, 1977 and Rules.

10. Several other teachers had been appointed to the said

post, who were not impleaded as parties to the appeal. In my view, the School Tribunal has thus rightly rejected the appeal also on the ground of non-joinder of necessary parties. The finding of facts recorded by the School Tribunal are not perverse and thus cannot be interfered with by this Court under Articles 226 read with 227 of the Constitution of India.

11. The petition is devoid of merits and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)