

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 1947 OF 2016**

1. The Chairman,	)	
Bhor Education Society,	)	
2. The Head Master,	)	
Raja Raghunathrao Vidyalaya,	)	
Bhor, Dist. Pune	)	 Petitioners

VERSUS

1. Shri Dattatraya Bajirao Bhilare,	)	
Age about 33 years,	)	
Resident at & Post Ambavade,	)	
Tal.Bhor, Dist. Pune	)	
2. The Education Officer,	)	
Zilla Parishad, Pune	)	
3. The State of Maharashtra	)	 Respondents

Mr.Sandeep K.Shinde,i/b. Ms.Tanaya Goswami for the Petitioners.

Mr.N.V.Bandi Wadekar, i/b. Mr.Mandar Bagar for the Respondent no.1.

Ms.Vaishali Nimbalkar, A.G.P. for Respondent nos. 2 and 3.

CORAM : R.D. DHANUKA, J.

DATED : 16th JUNE, 2016

JUDGMENT

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioners have impugned the order and judgment dated 15th January, 2016 passed by the School Tribunal, Pune allowing the appeal filed by the respondent no.1 under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act, 1977 (in short 'MEPS Act') thereby setting aside the

impugned termination order passed by the petitioner no.1 dated 24th June, 2014 and directing the petitioner nos.1 and 2 management to reinstate the respondent no.1 as Shikshan Sevak with all back-wages and with all consequential benefits. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The respondent no.1 is qualified as B.Sc., B.Ed. and belongs to open category. The petitioner no.1 is a public trust and society, registered under the provisions of Bombay Public Trust Act, 1950 and Societies Registration Act, 1860 respectively. In the month of June 2009, the petitioner no.1 issued an advertisement in daily 'Sakal' inviting applications for various posts of teachers in their non grant in aid divisions which were approved by the State Government in Raja Raghunathrao Vidyalaya. The respondent no.1 applied for the said post and was appointed by the petitioner no.1 as assistant teacher w.e.f. June 2009. The respondent no.1 however was issued the appointment letter only for one academic year. There is no dispute that there was a clear vacancy for the said permanent post of assistant teacher and that the respondent no.1 was appointed for the said post after the regular selection.

3. It was the case of the respondent no.1 that though at the end of each academic year, he was served with a notice of termination, the termination was not given effect and he continued in service in the academic year 2010-11 and 2011-12. It was the case of the respondent no.1 that he became permanent employee having served for a continuous period of more than three years. The Education Department thereafter sanctioned grant in aid in respect of the said divisions. The petitioner no.1 issued a fresh advertisement on 28th August, 2012 in the daily 'Prabhat' inviting applications for the post of Shikshan Sevak. The respondent no.1 applied for the said post and was again selected as a regular Shikshan Sevak and

was issued an appointment letter dated 7th September, 2012.

4. It is the case of the respondent no.1 that though he was in continuous service, the petitioner no.2 issued a letter on 5th November, 2012 calling upon him to return the original appointment order given to him and also to give an undertaking that he would not claim any right based upon such appointment order. The respondent no.1 therefore preferred an appeal (62 of 2012) before the school tribunal and challenged the said oral order of termination. By an order dated 22nd March, 2013, the school tribunal allowed the said appeal and directed the reinstatement of the respondent no.1 as a Shikshan Sevak by setting aside the said order of termination. It is the case of the respondent no.1 that he was reinstated in service on 15th July, 2013. The management of the petitioner no.1 filed a writ petition (6272 of 2013) in this court thereby impugning the order dated 22nd March 2013 passed by the school tribunal. There is no dispute that the said writ petition (6272 of 2013) came to be withdrawn by the management of the petitioner no.1.

5. The petitioners thereafter applied for approval of the respondent no.1 to the said post as assistant teacher to the Education Officer. It is the case of the respondent no.1 that the group of officers of the petitioner no.1 pressurized the Education Officer to refuse an approval to his appointment. The Education Officer by his letter dated 23rd June, 2014 refused to approve the appointment of the respondent no.1 to the said post of Shikshan Sevak. The respondent no.1 thereafter made a representation to the Joint Director of Education. The Deputy Director of Education by his letter dated 11th September, 2014 informed the Education Officer to consider the request of the respondents. The Deputy Director of Education informed the respondent no.1 about rejection of approval again.

6. The petitioner no.1 issued a letter of termination dated 24th June, 2014 based on the letter addressed by the Education Officer refusing to grant approval to the appointment of the respondents no.1. The respondent no.1 impugned the said letter of termination by filing an appeal (27 of 2015) before the School Tribunal, Pune. By an order dated 15th January, 2016 passed by the learned Presiding Officer, School Tribunal, Pune, the said appeal filed by the respondent no.1 came to be allowed. The School Tribunal declared the impugned termination order passed by the petitioner no.1 dated 24th June, 2014 as void and quashed and set aside the same. The school tribunal directed the petitioner nos.1 and 2 to reinstate the respondent no.1 as Shikshan Sevak with full back-wages and all consequential benefits and to comply with the said order within one month from the date of the said order. This order of the school tribunal is impugned by the petitioner in this writ petition.

7. Mr.Shinde, learned counsel for the petitioners submits that the appointment of the petitioners to the post of Shikshan Sevak was temporary and was subject to the approval of the Education Officer, Zilla Parishad, Pune. He submits that since the Education Officer has refused to grant approval to the appointment of the respondent no.1 to the said post of Shikshan Sevak, the petitioner no.1 had rightly terminated his services by their letter dated 24th June, 2014. He submits that the school tribunal thus could not have allowed the appeal of the respondent.

8. It is submitted by the learned counsel for the petitioners that the earlier Writ Petition No.6272 of 2013 filed by the earlier management of the petitioner no.1 was withdrawn by the management in collusion with the respondent and thus the said order was not binding upon the present management of the petitioner no.1.

9. It is submitted by the learned counsel for the petitioners that the respondent no.1 could not have been appointed to the said post of assistant teacher by the erstwhile management contrary to the Government Resolution dated 2nd May, 2012 issued by the State of Maharashtra. He submits that at the relevant time, there was backlog of 2 ST, 2 NT(k), 1 NT(D), 1 SBC and 1 OBC. He submits that the school tribunal thus ought to have considered this crucial issue while allowing the appeal filed by the respondent.

10. Mr.Bandivadekar, the learned counsel for the respondent no.1 on the other hand placed reliance upon the findings rendered by the school tribunal and would submit that the petitioners had admittedly withdrawn the earlier writ petition impugning the order passed by the school tribunal setting aside the order of termination and granting reinstatement in favour of the respondent. He submits that the petitioners did not raise any issue in the said writ petition about the alleged illegal appointment made by the erstwhile management of the petitioner no.1. He submits that the petitioners cannot be allowed to now urge that there was a collusion between the erstwhile management and the respondent no.1. No steps were taken by the petitioners for recall of the order passed by this court on such ground.

11. It is submitted by the learned counsel for the respondent no.1 that there is no provisions in the MEPS Act for approval of the appointment by the Education Officer. He submits that at the first instance, there could not be any condition imposed in the letter of appointment by the petitioners. Learned counsel placed reliance on the judgment of Full Bench of this court in case of ***St.Ulai High School vs.Devendraprasad Jagannath Singh & Anr.*** 2007(1) Bom.C.R.540. He submits that the petitioners thus could not have terminated the services of the

respondent on the basis of the letter of Education Officer refusing to grant approval to the appointment of the respondent no.1. He submits that the order of termination issued by the petitioners is contrary to the law laid down by this court in case of ***St.Ulai High School*** (supra). He submits that the school tribunal has rightly rendered a finding of fact which are not perverse and thus no interference with the order passed by the school tribunal is permitted under Articles 226 and 227 of the Constitution of India.

REASONS AND CONCLUSIONS :

12. A perusal of the record indicates that the respondent no.1 was initially appointed as assistant teacher w.e.f.June 2009 and also in the academic years 2010-11, 2011-12. He was appointed as Shikshan Sevak by appointment letter dated 7th September, 2012. The oral termination of the respondent no.1 by the petitioners was impugned by him before the school tribunal by filing appeal (62 of 2012). A perusal of the order passed by the school tribunal in the said appeal thereby allowing the said appeal and directing the reinstatement of the respondent no.1 to the said order passed clearly indicates that the school tribunal had rendered finding of fact that section 5(1) and 5(2) did not contemplate that there must be resolution of the management or selection committee.

13. The school tribunal after considering the evidence came to the conclusion that the respondent no.1 herein had proved that he was appointed on clear and permanent post of Shikshan Sevak on and from 7th September, 2012 and had joined the services as Shikshan Sevak from that date and his appointment was legal and valid. There is no dispute that though the petitioners had filed a writ petition (6272 of 2013) in this court impugning the said order passed by the school tribunal,

admittedly the said writ petition came to withdrawn by the petitioners. The said order passed by the school tribunal recording various findings in favour of the respondent about his appointment to the post of Shikshan Sevak in the clear and permanent vacant post and granting reinstatement with full back-wages attained finality. In my view the petitioners thus were rightly not allowed by the school tribunal to agitate those issues once again in the appeal (27 of 2015) filed by the respondent no.1 impugning the second order of termination issued by the petitioners.

14. Insofar as the submission of the learned counsel for the petitioners that since the earlier writ petition filed by the management was withdrawn in collusion with the respondent no.1 by committing a fraud is concerned, it is held by the school tribunal that if according to the petitioners a fraud was played upon the school tribunal by the earlier body of management while disposing of Appeal No.62 of 2012, it could have brought to the notice of this Court. Admittedly, no application was filed by the petitioners for restoration of the earlier writ petition which was withdrawn by the management of the petitioner no.1 or for recall of the said order on the ground of alleged fraud or otherwise.

15. A perusal of the order passed by the school tribunal dated 22nd March, 2013 thereby allowing the earlier appeal filed by the respondent no.1 (62 of 2012) indicates that the petitioners had alleged fraud and illegalities against the earlier management in appointing the respondent no.1 to the post of Shikshan Sevak. The school tribunal did not accept such allegations made by the petitioners in the said order. The writ petition against the said order has been admittedly withdrawn. The school tribunal in the said judgment has rendered a positive finding about the validity of the appointment of the respondent no.1 by the then management. In my

view, the school tribunal in the impugned order has rightly held that the said order of the school tribunal dated 22nd March, 2013 is in force and could not be challenged before the school tribunal again. The petitioners thus cannot be allowed to agitate the allegations of fraud against the earlier management while appointing the respondent no.1 to the post of Shikshan Sevak which appointment has been upheld on merits by the school tribunal, which order has attained finality.

16. Insofar as the submission of the learned counsel for the petitioners that the appointment of the respondent no.1 to the post of assistant teacher was temporary and conditional appointment subject to the approval of the Education Officer and in view of the order of the Education Officer, refusing to grant approval to the appointment of the respondent no.1 to the said post, the petitioners were justified in reliving the respondent no.1 from the said post is concerned, a perusal of rule 9(5) of MEPS Rules clearly indicates that a candidate appointed to a post has to be issued a letter of appointment in accordance with the form prescribed in Schedule-D. A perusal of Schedule-D clearly indicates that no such condition is prescribed for prior or *post facto* approval as a condition for continued employment.

17. The Full Bench of this Court in case of **St.Ulai High School** (supra) has held that an order of appointment cannot be at variance with the conditions prescribed in the Rules which have statutory force and effect in conjunction with section 4(1) of the MEPS Act. The mode of appointment and conditions of service of employees or recognised private schools are statutorily prescribed by the Act and the Rules and it would, therefore, not be open to the management to impose a condition that the validity of the appointment would be subject to the grant of approval. It is held that the State Government as a delegate of the Legislature has not prescribed any such condition in the Rules and the management cannot impose

such a condition which has not been provided in the Rules, as an overriding prerequisite to the validity of an appointment. This Court has held that neither MEPS Act, 1977 nor the Rules framed thereunder mandate grant of approval by the Education Officer as a condition precedent to a valid order of appointment. The requirement of approval which relates to disbursement of grant in aid is a matter between the management and the State Government and want of approval will not invalidate an order of appointment. The judgment of the Full Bench of this Court in case of ***St.Ulai High School*** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

18. In my view, since rule 9(5) of the MEPS Rules provides for format of a letter of appointment in accordance with the form prescribed under Schedule-D, which does not impose any condition for prior or *post facto* approval as a condition for continued employment, the management at the first instance could not have imposed such condition in a letter of appointment thereby making the said appointment subject to the approval of the Education Officer. In my view, such condition imposed in the letter of appointment itself was contrary to and in violation of the provisions of the MEPS Act and Rules. Since the said provisions do not provide for a mandatory requirement of approval of an appointment by the Education Officer as a condition precedent to a valid order of appointment, the management could not have terminated the services / relieved the respondent no.1 of services based on the order passed by the Education Officer refusing to grant approval to the appointment of the respondent no.1.

19. In my view, the order passed by the Education Officer refusing to grant approval itself was thus illegal being contrary to the provisions of the MEPS Act and Rules, contrary to the law laid down by the Full Bench of this Court in case of

St.Ulai High School (supra) and also contrary to the order passed by the school tribunal on 22nd March, 2013 in Appeal No.62 of 2012 thereby setting aside the earlier order of termination and holding that the appointment of the respondent no.1 to the said post of Shikshan Sevak on and from 7th September, 2012 was by following the procedure laid down under section 5 of the MEPS Act and Rules thereunder.

20. A perusal of the order passed by the school tribunal clearly indicates that the school tribunal has considered all the submissions advanced by the parties and the provisions of law and have rendered various findings of fact which in my view are not perverse and thus cannot be interfered with by this Court in this petition filed under Articles 226 and 227 of the Constitution of India. The petition is totally devoid of merits.

21. I therefore, pass the following order :-

- a). Writ Petition No.1947 of 2016 is dismissed. No order as to costs.
- b). The petitioners are directed to implement the order passed by the school tribunal within two weeks from today.

[R.D. DHANUKA, J.]