

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2568 OF 2003

Smt. Sukhada Surendra Bapat ... Petitioner

Vs.

Head Master
Shri. Ganpatrao Arwade High School &
Late Sou Tanubai G-Arwade Jr. College & Ors. ... Respondents

....

Mr. Mandar Limaye I/b Ms. Gauri Velankar for the Petitioner.
Mr. S.G. Deshmukh for the Respondent Nos. 1 and 2.
Mr. A.R. Metkari, for the Respondent Nos. 3 and 4-State.

...

CORAM : A.A. SAYED, J.

DATE : 08 DECEMBER 2016

ORDER:

1 The challenge in this Petition under Articles 226 & 227 of the Constitution of India is to the judgment and order dated 26 February 2001 passed by the School Tribunal, Kolhapur Region, Kolhapur. By the impugned order, the Appeal filed by the Petitioner/original Appellant under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ('MEPS Act' for short) impugning her oral/otherwise termination with effect from 26 June 1998 came to be dismissed.

2 The case of the Petitioner in the Appeal before the School Tribunal was as follows:

That she had acquired qualification of B.A. B.Ed. Pursuant to an advertisement published in daily Agra Doot, she applied and was interviewed on the same day i.e 05.06.1996 and was appointed as an Assistant Teacher in the School run by the Respondent-Management on 12 June 1996. She was appointed as class teacher of Std. VIII Div. F and was given work of 32 periods per week. Her appointment was on probation and on a clear and permanent vacancy. However, she was not issued order of appointment. She was not allowed to sign regular muster and was allowed to sign only on a separate muster on the ground that her appointment was not approved. She was not paid her salary in the academic year 1996-97. At the end of the academic year 1996-97, she was compelled to submit a fresh Application in June 1997 and again orally asked to join duty. Her salary was not paid for Academic Year 1997-98 also as the Education Officer refused to give approval for the appointment of the Petitioner. The school re-opened from 15 June 1998. She was present in the School but was not given any work. On 26 June 1998, she was informed that the Education Officer refused to grant approval to her appointment and therefore she cannot be continued in the service. She had become a permanent employee of the school after completing 2 years of service and her

termination was illegal. She was required to be re-instated with full back-wages.

3 The Petitioner had also filed an Application for interim relief. The School Tribunal stayed the order of termination. Being aggrieved by the interim order of the School Tribunal, the Respondent Management filed Writ Petition No. 391/1998 in this Court. By an order dated 4 August 1998 this Court directed the Respondent Management to pay Rs. 68,000/- to the Petitioner towards her salary.

4 The Respondent Nos. 1 and 2 resisted the Appeal by filing their Reply. The case of the Respondent Nos 1 and 2 in their Reply was as follows: There was delay in filing the Appeal. The Petitioner was never appointed with the school and was never issued any appointment order. She was not appointed on a clear and permanent vacancy. The Petitioner was not appointed in accordance with the procedure presented by law. It was on the request of the Petitioner that they had allowed her to teach in the school with effect from 4 June 1996 to April 1997 for experience and on voluntary basis. There was no question of approval by the Education Officer. There was no demand of any appointment by the Petitioner from 4 July 1996 till the date of filing of the Appeal. The Respondent Management in anticipation that there

would be an increase in divisions in the school had given an advertisement on 11 July 1997 in daily Agra Doot for academic year 1997-98 for Sanskrit, Marathi and other subjects. In response to the said advertisement, the Petitioner had applied on 26 July 1997. The Petitioner was not considered, as the Divisions were not sanctioned and due to backlog in the institution. The Petitioner was not given any permission to teach for the academic year 1997-98. There was no clear vacancy or any workload which could have been assigned to the Petitioner.

5 The School Tribunal framed the following issues and answered the same in the following terms:

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the appellant proves that her termination is illegal and invalid.	No
2. Whether appellant is entitled to be reinstated?	No
3. What order?	As per the final order.

The School Tribunal dismissed the Appeal by order dated 26 June 2001 which order is the subject matter of challenge in the present Writ Petition.

6 The School Tribunal has in paragraphs 6 and 8 (wrongly numbered as para 7) held as follows:

“ Even assuming for the sake of arguments that the appellant's appointment was lawfully made to a permanent vacancy, even then she will not get any right of permanency because the management can even make temporary appointment to a permanent vacancy. This view is taken by the apex Court in the decision of- Hindustan Education Society v/s. Sk.Kaleem, reported in AIR 1997, S.C. wherein Their Lordships have held that-

“The appointments in private schools are regulated and controlled by the provisions of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977. Where the appointment letter states that the appointment of a candidate in a clear vacancy is purely temporary for a period of 11 months, his appointment has to be taken as purely temporary for a limited period and his appointment cannot be considered to be a permanent appointment. Therefore, he cannot be treated as a regularly appointed employee.”

...

“In the present case I have already discussed above that the appellant was not lawfully appointed. Even assuming for the sake of argument that her appointment was made on clear and permanent vacancy, even then it cannot be said that the appellant has become a permanent employee and consequently she will not be entitled to any relief as claimed in the appeal.”

7 I have heard the learned Counsel for the Petitioner teacher and the Respondent Management.

8 The Petitioner, in my view, is not entitled to claim protection of her service since her appointment was only on temporary basis. Nothing is brought on record by the Petitioner to show that she was appointed on probation. As a matter of fact, it is an admitted position that the Petitioner was not issued any appointment letter and her name did not appear on the muster roll. After serving the school for the academic year 1996-97 she had admittedly applied afresh in June 1997 for appointment. The appointment of the Petitioner was thus a temporary appointment for the academic year 1996-97. Thereafter she was reappointed in June 1997 for the academic year 1997-98 and the appointment of the Petitioner for academic year 1997-98 was also temporary. In these circumstances, there can be no manner of doubt that the appointment of the Petitioner was temporary for the academic year 1996-97 and for academic year 1997-98 and her services were discontinued in June 1998.

9 The issue whether a teacher/employee who has been appointed on temporary basis can claim protection of services, in that, whether he can claim that though he is appointed on temporary basis, his

appointment is deemed to be on probation under the provisions of section 5 of the MEPS Act has been considered by various judgments of the Supreme Court as well as this Court including by a Full Bench.

10 In **Hindustan Education Society and Anr. vs. Sk.Kaleem SK.Gulam Nabi and Ors.** (1997) 5 SC 152, relied upon by the School Tribunal, the Supreme Court has considered section 5 of the MEPS Act. In paragraphs 4, 5 and 6, the Supreme Court held as follows:

“4. Thus, it could be seen that the appointment of the first respondent was only a temporary appointment against a clear vacancy

5. In view of the above and the order of appointment, the appointment of the respondent was purely temporary for a limited period. Obviously, the approval given by the competent authority was for that temporary appointment. As regards permanent appointments, they are regulated by sub- sections (1) and (2) of Section 5 of the Act according to which the Management shall, as soon as possible, fill up, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill in such vacancy. Every person of two years subject to the provisions of sub-section (4) and (5). He shall, on completion of the probation of period of two years, be confirmed.

6. Under these circumstances, the appointment of the respondent cannot be considered to be a permanent appointment. As a consequence, the direction issued by the High Court in the impugned judgment dated July 31, 1996 in writ petition No.5821/95 that he was regularly appointed is clearly illegal and cannot be sustained.”

11 In **Bharatiya Gramin Punanarrachana Sanstha vs. Vijay Kumar & Others**, (2002) 6 SCC 707, the Supreme Court while considering the provisions of section 5 of the MEPS Act held that a plain reading of section 5(2) would show that it applies to a person who is put on probation consequent upon his appointment in a permanent vacancy. The Supreme Court held that it is clear that under sub-section (2), only when an employee has completed successfully the probation period of two years, he shall be deemed to have been confirmed. The Supreme Court noted in that case that the order of appointment specifically mentioned that after expiry of the period of two years the services of the teacher would come to an end without any notice.

12 In a recent judgment in **Pragati Mahila Samaj and anr. vs. Arun s/o Laxman Zurmure and ors.**, (2016) 9 SCC 255, the Supreme Court followed the judgment in the case of **Hindustan Education Society** (supra).

13 In **Ramkrishna Chauhan vs. Seth D.M. High School**, 2013(2) Mh.L.J., the Full Bench of this Court has also dealt with the very issue involved in the present Petition. The Full Bench was constituted by the Hon'ble the Chief Justice upon a reference being made by a learned Single Judge in view of the divergent opinions of different Benches of

this Court. The Full Bench of this Court in its judgment in paragraph 2 has reproduced the question framed by the learned Single Judge which reads as follows:

“Would it be open to the School Tribunal to hold that an employee would be deemed to be on probation within the meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 on the ground that the appointment was made in a clear and permanent vacancy, notwithstanding the fact that the letter of appointment specifically stipulated that the appointment has been made in a temporary capacity?”

The Full Bench answered the question in paragraph 28 which reads thus:

“Accordingly, we are inclined to answer the issue in the negative. We hold that it is not open to the School Tribunal to assume as of fact that the appointment made against a clear and permanent vacancy is deemed to be on probation, within the meaning of section 5(2) of the Act. The School Tribunal cannot disregard the terms and conditions of the letter of appointment, if it expressly provides that the appointment is on temporary basis, for a limited term.”

In paragraph 18, the Full Bench has observed:

18. A priori, we have no hesitation in taking the view that neither section 5(1) nor 5(2) of the Act can be construed as forbidding the Management from making an appointment on contractual or temporary basis for a limited duration against a permanent vacancy until a suitable candidate is selected. Further, there is nothing in these provisions to indicate that every appointment made by the Management, in relation to a permanent vacancy, must be deemed to have been made on probation for a period of two years. There is no

such legal fiction unlike in the case of a person appointed “on probation” for a period of two years, is deemed to have been confirmed, upon completion of that period. In other words, the parties would be bound by the terms and conditions stated in the letter of appointment, as there can be no presumption of appointment having been made “on probation” unless expressly stated in the appointment letter itself.”

In arriving at its conclusion, the Full Bench observed that it was bound by the exposition of the Apex Court in **Hindustan Education Society** and followed the said decision and the decision in the case of **Bharatiya Gramin Sanstha**.

14 A learned Single Judge of this Court in the case of **Mrs. Sneh Kohli vs. The Universal English Trust and others (Writ Petition No.5247 of 1998 decided on 18 October 2016)**, 2016 SCC OnLine Bom 8923 followed the decision of the Full Bench in **Ramkrishna Chauhan**. The learned Single Judge after discussing law of precedents did not agree with the view of another learned Single Judge (Nagpur Bench) in the case of **Shamin Azad Education Society, Giroli and others vs. Presiding Officer, School Tribunal, Amravati and others**, 2004 (4) Mh.L.J. 723 and in the case of **Abdul Rafique Abdul Hamid vs. Yevatmal Islamia Anglo Urdu Education Society and others**, 2014 (3) Mh.L.J. 99, wherein the learned Single Judge (Nagpur Bench) discussed what was the ratio and what was not the ratio in the judgment of the Full Bench. The learned Judge in **Sneh Kohli** held

that he was bound by the judgment of the Supreme Court in the case of **Hindustan Education Society** (supra) and the Full Bench judgment of this Court in **Ramkrishna Chavan** and not the judgment of the learned Single Judge in **Shamin Azad Education Society** and **Abdul Rafique Abdul Hamid** which took a different view. The learned Single Judge observed that unless the Supreme Court takes a different view or the Full Bench decision is overruled by the Supreme Court he is unable to take a different view in the matter. It is noticed that the judgment of the Supreme Court in the case of **Pragati Mahila Samaj** (supra) and the judgment of the Division Bench of this Court in case of **Pramod Satuppa Oulkar Vs. The Kini Karyat Shikshan Mandal and ors.** (LPA No.340 of 2007 decided on 22 August 2016), 2016 SCC OnLine Bom 9421, were not cited before the learned Single Judge which had also taken the same view.

15 In the aforementioned case of **Pramod Satuppa Oulkar**, the Division Bench of this Court, following the case of **Ramkrishan Chauhan**, held in paragraph 16 as follows:

“16. The Full Bench of this Court in the case of *Ramkrishna Chauhan* (supra) has also clearly held that the terms and conditions of the letter of appointment are binding on the candidate and the Tribunal cannot presume that the appointment was made on probation. The contention of the learned counsel appearing on behalf of the appellant that section 3 read with section 5 is applicable is without any substance because the said section is in respect of appointment which is made on probation...”.

16 For the aforesaid reasons, the Petitioner being a temporary employee, is not entitled to protection of her services. Reliance by the learned Counsel for the Petitioner on the judgment of the Full Bench of this Court in **St. Ulai High School & Another v/s. Devendraprasad Jagannath Singh and another**, 2007 (1) Mh.L.J.597, is of no avail and does not advance the case of the Petitioner.

17 In light of the above, no fault can be found in the impugned order. The Petition is dismissed. Rule is discharged. There shall be no order as to costs.

(A.A. SAYED, J.)