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

WRIT PETITION NO.9203 OF 2014

Mrs. Preeti Hetal Desai.

... Petitioner.

V/s.

Navasamaj Mandal through
its President and Ors.

... Respondents.

Ms. Kumud Bhatia for the Petitioner.

Mr. Shaikh Nasir Masih for Respondent 1.

Mr. A.D. Kango, AGP for Respondents 3 & 4.

CORAM : N.M. JAMDAR, J.

DATE : 14 JANUARY, 2016.

P.C. :-

By this Petition the Petitioner challenges the order passed by the School Tribunal dated 11 July 2014 dismissing the Appeal filed by the Petitioner.

2. The Petitioner was given appointment firstly on 2 August 2010 on temporary basis from 1 August 2010 to 30 April 2011. Thereafter, on 3 May 2011, she was given appointment on temporary basis on 7 June 2011 to 30 April 2012. Thereafter, again on 26 April 2012, another appointment on temporary basis

was given till 30 April 2013. Thereafter, her services were not continued and by way of a letter of discharge dated 9 April 2013, she was informed that her services will not be continued. The Petitioner thereafter filed an Appeal bearing No. 6 of 2013 in the School Tribunal, Mumbai. The School Tribunal considered that the appointments were on temporary basis even though they were on permanent vacancy, proceeded to dismiss the Appeal following the law laid down by the Full Bench of this Court in *Ramkrishna Chauhan v/s. Seth D.M. High School and Ors. [2013 (2) Bom.C.R. 481]*. The School Tribunal held that the appointments were on temporary basis and it is open to the management to appoint a teacher on temporary basis in permanent vacancy and the presumption does not automatically follow that such appointment is on permanent basis.

3. This order has been challenged in the present Petition.

4. The learned Counsel for the Petitioner has relied upon the decision of the learned Single Judge of this Court in the case of *Abdul Rafique Abdul Hamid V/s. Yavatmal Islamia Anglo Urdu Education Society and Ors. [2014(3) Mh.L.J. 99]*. Relying on this decision, she submitted that the Tribunal ought to have lifted veil and examined the conduct of the Respondent which was arbitrary, unreasonable and capricious. She submitted that if this exercise was not done, the methodology laid down in Section 5 of the

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 will be deviated from by the management which will defeat the object of this beneficial legislation.

5. I have considered this submission. The learned Single Judge in the case of *Abdul Rafique*, after noting the decision of the Full Bench in *Ramkrishna Chauhan* has held that burden is on the employee who comes to the School Tribunal to show that such exercise was malafide. If the Tribunal finds that the conduct of the management is malafide and is to circumvent the provisions of the Act, the Tribunal is not powerless to pass appropriate order. The learned Single Judge has emphasized that the heavy burden is placed on the employee alleging such case.

6. The learned Counsel for the Petitioner has orally argued regarding the malafides of the Respondent. She submitted that the Petitioner accepted the appointment orders even though they were clearly on temporary basis because she was informed that was the practice followed and she was misled. No such case is made out in the Appeal Memo. No arguments were advanced before the School Tribunal, as reflected from the Judgment, calling upon the Tribunal to lift the veil and probe into the malafide conduct of the Respondent.

7. Even assuming the averments are made in the rejoinder, they are specifically absent in the Appeal Memo. More

importantly this factual aspect is not argued before the School Tribunal. If the Petitioner has not argued this specific factual aspect and no finding is rendered, it is not open to the Petitioner to urge so first time in the Petition.

8. Only argument that was made by the Petitioner is that the Petitioner had become permanent since she had completed two years. The Tribunal has rightly rejected this contention following the law laid down by the Full Bench in the case of *Ramkrishna Chauhan* (supra). The argument regarding the validity of the discharge being illegal termination does not arise, if the Petitioner has not become permanent.

9. In the circumstances, the view taken by the School Tribunal cannot be faulted with. The Writ Petition is accordingly rejected.

(N.M. JAMDAR, J.)