

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 0761 of 1998

District : Osmanabad

Bapu s/o. Baba Surose,
Age 32 years,
Occupation : Service,
Asstt. Teacher,
Lokmanya Vidyalaya,
Manakeshwar,
Taluka Paranda,
District Osmanabad.

.. Petitioner.

versus

1. Upale Rayat Shikshan Prasarak
Sanstha, Upale (Makadache),
Taluka & Dist. Osmanabad
(through its Chairman).

2. The Head Master,
Lokmanya Vidyalaya,
Manakeshwar,
Taluka Paranda,
District Osmanabad.

3. The Education Officer
(Secondary),
Zilla Parishad,
Osmanabad.

.. Respondents

4. ~~The Presiding Officer,
School Tribunal,
Aurangabad.~~

.. Respondent no.04
deleted.

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Mr. S.R. Barlinge, Advocate, for the petitioner.

*Mr. S.V. Warad, Advocate, for respondent nos.01
and 02.*

*Mr. S.P. Tiwari, Asst. Government Pleader, for
respondent no.03.*

Respondent no.04 deleted as per Court's order dated 16.02.2017.

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 02ND MARCH 2017

ORAL JUDGMENT :

01. The petitioner is aggrieved by the judgment of the School Tribunal, Aurangabad, dated 26.08.1997 vide which Appeal No. 190/1996 filed by the petitioner has been dismissed on the ground of delay as well as on merits.

02. When this matter was admitted by this Court on 04.09.1998, interim relief was not granted. Consequentially, the petitioner is out of employment for the past more than 20 years.

03. I have considered the strenuous submissions of the learned Advocates for the respective sides and the judgments cited.

04. The undisputed factors in this case are as under :-

(a) The petitioner has acquired the qualification of B.A., B.Ed. [English]. By appointment order dated 15.06.1992, he was appointed for one academic year 1992-93.

(b) The petitioner belongs to the Other Backward Class and has produced the caste certificate.

(c) A fresh appointment order dated 13.06.1993 was issued, again appointing the petitioner for the academic year 1993-94.

(d) In 1994, the respondent - management published an advertisement citing several vacancies for various subjects. Three vacancies were shown for Asst. Teachers for the English subject. One was reserved for Scheduled Tribe category, one for V.J.D.T.N.T. category and one was reserved for Other Backward Class category.

(e) The interviews were scheduled on 09.06.1994.

(f) On 11.06.1994, the petitioner was again appointed in continuation to his earlier appointment order dated 13.06.1993 by making a specific mention to that effect in the appointment order.

(g) On 12.06.1995, the petitioner was again issued with an appointment order for the academic year 1995-96.

(h) He preferred his appeal before the School Tribunal alleging that he was not allowed to join duties on 11.06.1996 after reopening of the school post vacation.

(i) The respondent - management took a stand that the petitioner was never terminated on 11.06.1996 and that his service for the academic year 1995-96 came to an end on 30th April, 1996.

(j) The respondent contended that the petitioner has given an undertaking and, therefore, he does not have the right to continue in the post after the end of the academic year in 1996.

(k) The School Tribunal has concluded that though the petitioner claims oral termination on 11.06.1996, he stood automatically terminated from 30.04.1996 and hence, his appeal filed on 05.07.1996 was barred by limitation. So also, the appeal has been dismissed on merits.

05. The petitioner has relied upon the following judgments :-

- (1) ***New Education Institute, Nasik & others Vs. Mahejabin Ashfak Ahmed Shaikh & others*** (2008(1) Mh.L.J. 69).
- (2) ***Shri Vinayak Vidhyadayini Trust & another Vs. Smt. Aruna T. Prabhu & others*** (2010(5) ALL MR 200).
- (3) ***National Education Society's High School & Junior College Vs. Lulomool Monachary (Mrs.)*** (1987 (2) Bom.C.R. 521).
- (4) ***Hareshwar Shikshan Prasarak Mandal & another Vs. Rajashree Sarjerao Lokhande & others*** (2007(1) Mh.L.J. 681).

- (5) *Jagdamba Education Society, Nagpur Vs. Rajendra s/o. Baburao Golhar & others* (2009(2) Mh.L.J. 522).
- (6) *Hindi Vidya Bhavan, Mumbai & others Vs. Presiding Officer, School Tribunal, Mumbai & others* (2007(6) Mh.L.J. 563).
- (7) *Gramin Vikas Shikshan Va Krida Prasarak Mandal, Khadki & another Vs. Yamu Narayanrao Bire & others* (2012(3) Mh.L.J. 820).

06. The respondent has relied upon a judgment of this Court in the matter of *Akbar Peerbhoy College & others Vs. Mrs. Pramila N. Kutty & others* [1997(3) Mh.L.J. 195].

07. There can be no dispute that though the petitioner was shown to have been appointed for one academic year at a time, followed by his disengagement at the stroke of commencement of the Summer Vacation and to be re-appointed again at the opening of the academic year, he has worked for a period of 04 years.

08. Notwithstanding the strenuous submission of Shri Warad, learned Advocate for the respondent - management, that every appointment was followed by an automatic termination and the petitioner has accepted such appointment orders without protest, it cannot be ignored that the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [For short, "MEPS Act"] does not permit appointment of

temporary Teachers for each academic year, to be re-appointed immediately upon re-opening of the school or college, only to be disengaged at the end of the academic year and again to be re-appointed at the beginning of the academic year.

09. Subsequent to the judgment delivered by this Court in the matter of **Akbar Peerbhoy College & others** (*supra*), this Court has consistently held that the employer / Education Society can appoint Asst. Teachers only in accordance with the MEPS Act. Upon completion of 02 years in employment, unless not qualified or not possessing the prescribed qualifications, such appointments are to be presumed to be on probation. This Court has realized in several cases that such educational institutions have been exploiting Asst. Teachers and similar other employees by appointing them for one academic year and invariably without following the due procedure laid down in law. After passage of few years of such engagement, the same management takes a stand that the appointment was without observance of the procedure of appointments and hence, such appointments were irregular or illegal. Naturally, this amounts to taking advantage of one's own wrong.

10. All the above factors were before the School Tribunal. The Tribunal has held that the appeal was delayed by about 35 days, by presuming that the limitation commenced from 01.05.1996 and concluded on 30.05.1996. When the appeal was filed on 05.07.1996,

it was apparently a minor delay. While dealing with the appeal, the Tribunal could have taken up the issue of condonation of delay considering the fact that the contention of the appellant was that he is orally terminated on 11.06.1996. Even considering this aspect, the delay of 35 days can neither be said to be inordinate nor deliberate and hence the Tribunal should have condoned the same. In this view of the matter, I find that it was a fit case for condonation of delay of 35 days.

11. In the above fact situation, there is no dispute that the petitioner has worked in 04 academic years. So also, I find that the management has no explanation to offer as to what were the circumstances that constrained the management to avoid following the due process of law while making appointments and what prompted the management to continue to appoint the petitioner in each academic year for 04 consecutive years.

12. It also cannot be ignored that after the petitioner was appointed by order dated 13.06.1993 for one academic year, the management of its own accord issued a continuation order dated 11.06.1994 specifically stating therein that the said order was in continuation to the appointment of the petitioner by the earlier order dated 13.06.1993. With this order of continuation, the petitioner is deemed to have continued in employment for two consecutive academic years without any break.

13. In this view of the matter, the termination, after putting in 04 consecutive years in employment, could not have been sustained. Notwithstanding this conclusion, the fact remains that the petitioner is out of employment for more than 20 years. Reinstatement in such circumstances is impracticable in view of the following 04 judgments of the Hon'ble Apex Court :-

- (1) *Asst. Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohanlal* [2013 LLR 1009];
- (2) *Asst. Engineer, Rajasthan Development Corporation & another Vs. Giram Singh* [(2013) 5 SCC 136].
- (3) *BSNL Vs. Man Singh* [(2012) 1 SCC 558]
- (4) *Jagbir Singh Vs. Haryana State Agriculture Marketing Board* [(2009) 15 SCC 327].

14. In the above peculiar circumstances, I deem it proper to exercise my jurisdiction keeping in view Section 11(2)(e) of the MEPS Act, which reads as under :-

"Powers of Tribunal to give appropriate relief and direction.

(1)

(2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that

the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-

- (a)
- (b)
- (c)
- (d)
- (e) where it is decided not to reinstate the employee or in any other appropriate case, to give the employee twelve months' salary (pay and allowances, if any) if he has been in the services of the school for ten years or more and six months salary (pay and allowances, if any) if he has been in service of the school for less than ten year, by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereunder, as it may specify; or
- (f)"

15. I find that though the termination is unjustified and unsustainable, it would not be practicable to reinstate the petitioner who is out of employment for 20 years. As such, as the termination of the petitioner relates to the end of the academic year 1996 when the VIth Pay Commission became applicable, this petition is partly allowed by

directing respondent no.01 - management to pay six months' salary to the petitioner along with all allowances under Section 11(2)(e) of the MEPS Act, at the rate of VIth Pay Commission recommendations since they were made applicable from 01.01.1996. Consequently, the impugned judgment of the School Tribunal is set aside and is replaced by this direction of payment of compensation.

16. Needless to state, the management shall pay the said compensation with interest at the rate of 06 % (six percent) from the date of the judgment of the School Tribunal, within a period of 08 (eight) weeks from today. The said amount can be deposited by the management in this Court and if so deposited, the petitioner would be at liberty to withdraw the said amount without conditions by filing an application duly identified by the learned Advocate along with tangible identity proof of the petitioner in the form of a photo-copy of the Election Commission's Voter Card.

17. Rule is made partly absolute in the above terms.

(Ravindra V. Ghuge)
JUDGE

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