

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

WRIT PETITION NO. 5036 OF 2012

KRUSHNA HARISCHANDRA GHODKE  
VERSUS  
BALAJIK SHIKSHAN SANSTHA THR SECRETARY AND OTHERS.

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Advocate for Petitioner : Shri Y.P.Deshmukh h/f Shri Joshi Hrishikesh A.  
AGP for Respondent 3 : Shri S.N.Kendre.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE :- 15<sup>th</sup> February, 2017**

Per Court:

1 By order dated 12.07.2013 while issuing notice, this Court had indicated to the litigating sides that the petition will be heard and disposed of finally at admission stage.

2 None present for Respondent No.1. No appearance has been entered on behalf of Respondent No.2 despite the service of court notice.

3 I have heard the learned Advocate for the Petitioner and the learned AGP for Respondent No.3 and have considered the record available with their assistance.

4           The Petitioner is aggrieved by the impugned judgment dated 12.10.2011 by which Appeal No.37/2006 filed by the Petitioner has been dismissed on the ground that the Petitioner was appointed for fixed periods from academic years 1999 till 2004 and that there is no evidence that he has worked after 2004 so as to support his grievance of oral termination dated 12.06.2006.

5           The Petitioner has been issued with five appointment orders dated 12.06.1999, 13.06.2000, 12.06.2001, 10.06.2002 and 18.06.2003. Each of these appointment orders has been issued by the Management under Schedule-D of Rule 9(5) of the MEPS Rules, 1981. In neither of these orders, has it been stated that the Petitioner is appointed to a post which is reserved for a particular backward category. Each of these appointment orders indicate that he was appointed on the basis of his oral request and he was appointed on a vacancy which has temporarily arisen on account of leave by a permanent employee. It is undisputed that the Petitioner has worked from 1999 till the end of the academic year in 2004 thereby, putting in five years in service.

6           I find from the impugned judgment of the School Tribunal that the following aspects have been completely lost sight of:-

(a)       By virtue of the five appointment orders, the Petitioner has

been appointed under Rule 9(5) of the MEPS Rules, 1981 by following the form prescribed under Schedule-D.

- (b) It is not adjudicated as to who was the permanent teacher, who was absent and temporary leave vacancy was created against which the Petitioner was appointed for five consecutive academic years.
- (c) Whether, there is any material available before the School Tribunal to scrutinize the claim of the Management that the Petitioner was appointed against a leave vacancy.
- (d) The Education Officer was not called upon by the School Tribunal to assist it by stating whether, the Education Department is in receipt of any such leave application of a permanent employee in these five academic years so as to justify the engagement of the Petitioner for five academic years against a purported leave vacancy.

7            Since the above aspects were not considered by the School Tribunal, I deem it proper to remit the matter to the School Tribunal for a fresh adjudication.

8            In the light of the above, this Writ Petition is partly allowed. The impugned judgment of the School Tribunal dated 12.10.2011 is

quashed and set aside and Appeal No.37/2006 is remitted to the School Tribunal at Aurangabad on the following conditions:-

- (a) The Petitioner, Respondent No.1 and Respondent No.3 shall appear before the School Tribunal on 04.03.2017.
- (b) Notice be issued by the School Tribunal only to Respondent No.2 (Dnyanankur Vidya Mandir), which has failed to cause an appearance in these proceedings.
- (c) Since the School Tribunal has concluded that there was no evidence of the Petitioner having worked in the academic years 2005 onwards, the School Tribunal shall decide the appeal afresh by considering the service of the Petitioner till 2004 and the above aspects set out in paragraph 6 herein above, after giving an opportunity to the Respondents to explain on the said aspects.
- (d) The Education Officer is directed to file the Written Statement on the basis of the record available, with regard to the aforesaid aspects and particularly indicating whether, the Management or any permanent employee working in Respondent No.2/ School had tendered any application with regard to leave in the academic years 1999 till 2004, so as to test the sanctity of the grounds set out in the five appointment orders.

- (e) The School Tribunal shall endeavour to decide the said appeal on its own merits and after hearing all the sides, within a period of FOUR MONTHS from 04.03.2017.

*kps*

**(RAVINDRA V. GHUGE, J.)**