

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

WRIT PETITION NO. 277 OF 1998

Dipak Bhimrao Pawar,
Age Major, Occupation Nil,
R/o At Post Neri Vadgaon,
Taluka Pachora, District Jalgaon.

...PETITIONER

-VERSUS-

1 The Secretary,
Kai.Shrimati Sau. Manikraje
Shivrao Pawar,
Vishwasrao Educational and
Historical Trust, Nagar Deola,
Taluka Pachora, District Jalgaon.

2 The Head Master,
Rajmata Jijabai Bhosle Girls School,
Neri Vadgaon, Taluka Pachora,
District Jalgaon.

3 Education Officer (Secondary),
Zilla Parishad, Jalgaon.
Through AGP, Aurangabad.

...RESPONDENTS

...
Advocate for Petitioner : Shri Bharat R Warma.
Advocate for Respondents 1 and 2 : Shri V.G.Sakolkar.
AGP for Respondent 3 : Shri N.T.Bhagat.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 10th February, 2017

Oral Judgment :

1 The Petitioner is aggrieved by the judgment of the School
Tribunal dated 23.10.1997 by which Appeal No.19/1994 filed by the
Petitioner has been dismissed and his disengagement from 25.03.1994 has
been sustained.

2 This Court has admitted this petition on 31.01.2000. Interim
relief has not been granted.

3 By order dated 19.01.1998 passed by this Court, Respondent
No.3/Education Officer was directed to file an affidavit with regard to the
following two points:-

- "(a) *Whether, the appointment order issued to the
Petitioner on 11.06.1993 was made in keeping with
the provisions of Section 5 of the MEPS Act, 1977?*
- (b) *Whether, the said appointment was approved and
whether, the appointment was made against the
vacancy reserved?"*

4 Respondent No.3 has filed it's affidavit in reply on 16.02.1999
and has further filed an additional affidavit on 08.03.1999.

5 I have heard the learned Advocates for the respective sides at
length.

6 From the submissions of the learned Advocates and the record available, the following factors appear to be undisputed:-

- (a) The Petitioner was initially appointed on Full Time Clock Hour basis from 14.06.1990 till 01.05.1991.
- (b) The Experience Certificate was issued by the Headmaster dated 16.09.1991 indicating that the Petitioner was working on Full Time Clock Hour Basis.
- (c) By order dated 12.06.1991, the Petitioner was appointed for one academic year on purely temporary basis.
- (d) By order dated 11.06.1993, the Petitioner was again appointed for one academic year on purely temporary basis.
- (e) The experience certificate dated 28.09.1993 was issued by the Headmistress indicating that the Petitioner had worked from 13.06.1992 as an untrained assistant teacher and had worked as a trained assistant teacher from 14.06.1993 on the scale permissible to an Assistant Teacher.
- (f) By order dated 25.03.1994, the services of the Petitioner were terminated on the ground that he was appointed for a particular academic year and the same came to an end after the conclusion of the academic year.

7 The Petitioner has relied upon the following judgments in

support of his case:-

- (a) *Shamim Azad Education Society, Giroli vs. Presiding Officer, School Tribunal, Amravati, 2014 (4) Mh.L.J. 723.*
- (b) *Maharashtra Shikshan Prasarak Mandal vs. Kawadu Pandurangji Ghutake, 2014 (5) Mh.L.J. 151.*
- (c) *Head Master, Shri Gurudeo Post Basic Ashram School, Kamlapur vs. Prabhakar Sambaji Dhabekar, 2014 (2) Mh.L.J. 895.*
- (d) *Nagpur Shikshan Mandal vs. Varsha Vinod Sayam, 2014 (5) Mh.L.J. 550.*
- (e) *Sadhana Janardhan Jadhav vs. Pratibha Patil Mahila Mahamandal, 2013 (2) Mh.L.J. 484.*
- (f) *Kolhapur Arya Samaj Shikshan Sanstha vs. Supriya Subodh Khade, 2010 (5) Mh.L.J. 518.*
- (g) *The President, Lewa Educational Union vs. Ajay Gopalrao Firke, Writ Petition No.11707/2015 (Aurangabad Bench), judgment dated 08.02.2016.*

8 Shri Sakolkar, learned Advocate for the Management, has strenuously supported the impugned order. He also relies upon the written

submissions filed by the Respondent/ Management before the School Tribunal wherein it has been contended that an advertisement was published by the Management for the academic year 1991-1992 in "Dainik Batmidar". For academic year 1992-1993, one more advertisement was published in the similar newspaper and yet another advertisement was published in "Dainik Janshakti" for academic year 1993-1994. It has been specifically averred in the said written notes of arguments based on the reply filed by the Management that the Petitioner had applied pursuant to each of these advertisement and he was appointed as an Assistant Teacher on temporary basis.

9 He further submits that it was specifically averred before the Tribunal that because the Petitioner was appointed on temporary basis for one academic year, his services were brought to an end only for the reason that his engagement was contractual and for specific academic year. It is then canvassed that the appointment of the Petitioner was not against a clear permanent vacant post.

10 The learned AGP submits that Rule 6 of the MEPS Rules, 1981 permits the appointment of an untrained teacher on permanent regular post. Such appointment is permissible only if a trained teacher is not available and such appointment would be purely on temporary basis for a

single year until a trained teacher is available.

11 The learned AGP further submits that with such a reply filed, the two issues framed by this Court vide order dated 19.01.1998 have been answered. He further submits that the affidavit filed by Respondent No.3 indicates that the impugned judgment of the Tribunal is legal and proper and the appeal has been rightly dismissed.

12 He then refers to the additional affidavit filed on 18.03.1993 and submits that Section 5 of the MEPS Act, 1977 and Rule 6 of the Rules, 1981 enable the Management to appoint an untrained graduate teacher in science or arts or commerce faculty only in exceptional circumstances of there being no availability of trained graduates. He points out from the affidavit that the approval granted by the Education Officer was for individual academic years 1992-1993 and 1993-1994. It is then stated that the said approval was for a particular academic year against the permanent post reserved for the Scheduled Caste category.

13 Having considered the submissions of the learned Advocates as above, I have gone through the reports cited.

14 Both the appointment orders indicate that the Petitioner was

appointed purely on temporary basis and for a particular academic year. The appointment orders do not mention that the Petitioner was appointed on the post reserved for S.C. category. It is stated that the Petitioner belongs to the S.C. category.

15 Though the Management has stated in it's written submissions before the Tribunal that the Petitioner was appointed pursuant to an advertisement, it is not indicated as to whether, a regular selection committee was formed and as to whether, the Petitioner was selected pursuant to a particular procedure which was adopted for carrying out the selection process.

16 What appears from the appointment orders is that the Petitioner was appointed purely on temporary basis and was not appointed on a permanent vacant post. These appointment orders have been accepted by the Petitioner and he has worked on the basis of the same. After the conclusion of his first engagement for the academic year 1992-1993, he accepted the fresh appointment order as a temporary for the academic year 1993-1994 without any objection. He is out of employment for the last 23 years.

17 This Court in the matter of Maharashtra Shikshan Prasarak.

Mandal (supra) has observed in paragraph 10 as under:-

"10. Be that as it may, the respondent no.1 did not make any grievance against the fresh appointments made on 01.07.2000 and 02.07.2001. From the documents produced on record, it is apparent that the respondent no.1 had accepted that his appointment was purely on temporary year to year basis and he could not have claimed regular appointment on the post, whether it was reserved for Nomadic Tribe (C) category or Scheduled Tribe Category. The decision of the Apex Court in Kankawali's case, relied upon by the learned counsel for the petitioner, follows the earlier decision of the Apex Court in Shakuntala's case. Following these decisions, the learned Single Judge of this Court in a decision rendered in Sharad Balaji Mankar vrs. Presiding Officer, School Tribunal, Amravati and others, delivered in Writ Petition No. 2767 of 1996, decided on 6th November, 2006, has held that in absence of pleadings and the material facts, the benefits under Rule 9(9) of the M.E.P.S Rules cannot be granted. This case has been considered by this Court in a decision in the case of Magaswargiya Shikshan Sanstha, cited supra. In view of this, the view taken by the School Tribunal in the impugned judgment and order holding that the appointment of the respondent no.1 employee was required to be treated as on probation w.e.f. 01.07.2000 and consequently he had acquired deemed confirmation of service, cannot be sustained. The appointment of the respondent no.1 was on year to year basis and after coming to an end the period stipulated in the order of appointment, his services were terminated."

18 This Court has, therefore, concluded that when a teacher did not make any grievance against a fresh appointment order after accepting the same on purely temporary basis for a particular academic year and having worked on such terms and conditions, he cannot be treated as

being on probation from the date of his appointment.

19 Insofar as the judgments relied upon by the Petitioner are concerned, in the matters of Ajay Gopalrao Firke (supra) (the case pertaining to a stigmatic termination and the stigma having been mentioned in the appointment order), Prabhakar Sambhaji Dhabekar (supra) (where the employee was appointed for a period during which the approval was not granted and hence, he was terminated), Nagpur Shikshan Mandal (supra) (the case was with regard to an issue of whether, the post was for full time or part time teacher) and Sadhana Janardhan. Jadhav (supra) (the appointment order of the employee being held to be in accordance with Section 5 of the MEPS Act, 1977), I find that these judgments would be of no assistance to the Petitioner.

20 The appointment of the Petitioner was approved by grant of approval by the Education Officer. The same was for a particular academic year. It was not established before the Tribunal as well as before this Court as to whether, the said post on which the Petitioner was appointed, was a permanent vacant post. Considering the issues framed by this Court by its order dated 19.01.1998, the Education Officer has filed the affidavits to indicate that the engagement of the Petitioner as an untrained teacher was

only till regularly selected trained teacher was available and was permissible only for one academic year on temporary basis.

21 Considering the above, I do not find that the impugned judgment of the School Tribunal could be termed as being perverse or erroneous. This Writ Petition being devoid of merit is, therefore, dismissed. Rule is discharged.

kps

(RAVINDRA V. GHUGE, J.)