

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.397 OF 1998

Latabai w/o Tanaji Jadhav,  
Age-35 years, Occu-Nil,  
R/o Visarwadi, Tq.Navapur,  
Dist.Dhule

-- PETITIONER

VERSUS

1. The State of Maharashtra,
2. President/Secretary,  
Visarwadi Education Society,  
Visarwadi, Tq.Navapur,  
Dist.Dhule,
3. The Head Master,  
Sarvajanik High School,  
Visarwadi, Tq.Navapur,  
Dist.Dhule,
4. The Education Officer,  
(Secondary), Zilla Parishad,  
Dhule, Dist.Dhule

-- RESPONDENTS

Mr.S.R.Barlinge, Advocate for the petitioner.  
Mr.S.K.Tambe, AGP for respondent Nos. 1 and 4.  
Mr.S.P.Brahme, Advocate for respondent Nos. 2 and 3.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 05/06/2017

ORAL JUDGMENT :

1. The petitioner is aggrieved by the judgment of the School Tribunal dated 01/07/1997 by which her Appeal No.20/1995 has

been dismissed. The petitioner was not granted any interim relief while admitting the petition on 02/07/1998. There can be no dispute that the petitioner has worked in between 01/10/1990 till 30/03/1995 under various appointment orders and is not in employment for the past 22 years. The petitioner is about 54 years of age today.

2. I have heard Mr.Barlinge, learned Advocate for the petitioner, the learned AGP and Mr.Brahme, learned Advocate on behalf of respondent Nos.2 and 3 Management. For the sake of brevity, the petitioner is being referred to as the appellant and the educational institution is being referred to as the Management in this judgment.

3. Having considered the extensive submissions of the learned Advocates for the respective sides, I find that the following aspects are undisputed :-

[a] The appellant has acquired the qualification of S.S.C. D.Ed. and was therefore qualified as a Trained Under Graduate Teacher' to impart education in the primary school.

[b] On 01/10/1990, the appellant was appointed against the leave vacancy of another teacher namely Mrs.Thakare, who had proceeded on maternity leave.

[c] The appellant thus worked against leave vacancy from

01/10/1990 till 29/12/1990.

[d] The appellant was not in employment after 29/12/1990, till she was appointed temporarily by order dated 13/02/1991 due to the demise of a permanent teacher Mrs.Kulkarni on 12/02/1991.

[e] The appellant worked from 13/02/1991 till 30/04/1991 against the said vacancy.

[f] By an appointment order dated 04/11/1991 based on an application dated 03/11/1991 filed by the appellant, she was appointed on probation for a period of 2 years.

[g] The original appointment order clearly indicates that the appellant was appointed on probation for 2 years.

[h] The appellant was then terminated on 27/03/1992 on the ground that her service was not required.

[i] The order of termination has not been challenged.

[j] The Education Officer granted approval to the service of the appellant from 18/11/1991 for the academic year 1991-1992 vide his order dated 30/07/1992.

[k] By a resolution dated 01/08/1992, the Management resolved to confirm the services of 9 teachers, 6 for the secondary school and 3 for the higher secondary school. The appellant is at Sr.No.6 for the secondary school.

[l] The appellant was granted approval by the Education Officer on 13/05/1993 subject to the Management ensuring that there is no backlog in appointing teachers belonging to the backward classes.

[m] The appellant was again appointed for one academic year by order dated 05/06/1993 by virtue of a resolution.

[n] The State of Maharashtra introduced a GR dated

22/06/1994 granting 33% reservation for women.

[o] By order dated 02/04/1994, the appellant was terminated from service. She has not challenged the said termination.

[p] The Management passed a resolution on 04/10/1994 for appointing the appellant for the academic year 1994-95.

[q] The Education Officer declined to grant approval by order dated 29/11/1994 on the ground that the Management has not cleared the backlog with regard to appointment to posts reserved for the backward categories.

[r] The Education Officer vide communication dated 01/02/1995, has informed the Management that it should clear the backlog by appointing the candidates belonging to reserved categories and questioned whether the appellant is eligible for appointment as an 'Assistant Teacher' and whether one post belonging to the reserved category is available or not.

[s] The appellant filed an application dated 20/03/1995 seeking maternity leave which was received by the Management on the same date.

[t] By order dated 24/03/1995, the Management decided to terminate the service of the appellant w.e.f. 30/04/1995.

[u] The order of termination dated 24/03/1995 was sought to be served on the appellant on the address of the same school though she had proceeded on maternity leave to her parental home.

[v] The School Tribunal has dismissed the appeal on the grounds of it being a stale cause of action, the newly appointed person is not arrayed as a respondent, the appellant was initially appointed against vacancy and subsequently on

temporary basis by ignoring the backlog and she had not challenged her termination orders dated 29/03/1993 and 02/04/1994.

4. In the light of the above, it is obvious that the appellant was initially appointed against a maternity leave vacancy for about 3 months in between 01/10/1990 and 21/12/1990. She was then appointed against the vacancy created on account of the demise of Mrs.Kulkarni in between 13/02/1991 till 30/04/1991.

5. The appellant was then appointed on probation from 04/11/1991. Her appointment was approved for one year subject to clearing the backlog. However, she was terminated on 27/03/1992 though she was probation. She did not challenge the said termination and as such, her termination after 5 months of probation was never a subject matter of judicial scrutiny.

6. Having accepted her termination during probation, she then accepted her fresh appointment for the academic year 1992-1993 on a temporary basis. She was then terminated on 29/03/1993 which was not challenged by her. She accepted the said termination and thereafter accepted a fresh appointment order for the academic year

1993-94 as a temporary. She was again terminated on 02/04/1994 which was not challenged by her.

7. The appellant was then appointed by virtue of a resolution dated 04/10/1994 on a temporary basis and was then terminated w.e.f. 30/03/1995. It, therefore, appears that having accepted the termination after 5 months of probation and having raised no grievance, it would lead to the conclusion that she did not desire to take up the issue of her termination.

8. Nevertheless, the above recorded factors clearly indicate that the Management had in fact exploited the services of the appellant by appointing her at their will and terminating her at the end of the academic year on the pretext that she was a temporary employee and that the backlog of reservation would not entitle her to continued employment. This would, therefore, indicate that though the petitioner was appointed without following the due procedure of selection and appointment and *de-hors* the reservation policy, the Management appears to be engaging the appellant as and when required. Since the appellant was in need of employment, she appears to have silently accepted all her appointments and termination orders and only when she realized that she was being

exploited, that she challenged her last termination w.e.f. 30/03/1995.

9. In the light of the above, I am of the view that though the appellant may not be entitled to reinstatement since her appointment was never an outcome of a regular selection process and was in opposition to the reservation policy and the backlog of reservation, the respondent/Management deserves to be penalised for having exploited the services of the appellant thereby imposing unemployment on her. The appellant/petitioner makes a statement that she failed to secure any employment from April 1995 onwards and is engaged in the present litigation.

10. Section 11(2)(e) of the M.E.P.S.Act, 1977 reads as under :-

*“(e) where it is decided not to reinstate the employee or in any other appropriate case, \*[to give to 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 or compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereunder, as it may specify; or”*

11. In the light of the above, this petition is partly allowed. The impugned order of the School Tribunal dated 01/07/1997 is modified only to the extent of granting compensation to the appellant since she cannot be reinstated in service, u/s 11(2)(e) of the MEPS Act, 1977. Consequentially, the respondent/Management shall be liable to pay compensation of 6 months gross salary u/s 11(2)(e) to the petitioner within a period of 3 (three) months from today with interest @ 6% from 01/04/1995. In the event, the said amount to be calculated as per the 4<sup>th</sup> Pay Commission Recommendations alongwith interest, is not paid within 3 months, the interest would stand enhanced to 9% on the said amount w.e.f. 01/04/1994.

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

( Ravindra V.Ghuge, J.)