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

WRIT PETITION NO.10274 OF 2014

Bhartiya Mahila Mandal,
Chawani, Aurangabad
Through its Secretary.

..PETITIONER

VERSUS

1. Chagan Pavalsa Bhalekar,
Age: 63 years, Occ: Nil,
R/o. House No.499,
Ambedkar Nagar, N-7,
CIDCO, Aurangabad.
2. The Education Officer (Primary),
Zilla Parishad, Aurangabad.
3. Sharad Sadashiv Kulkarni,
Age: 47 years, Occ: Nil,
R/o. C-5, near Deepnagar,
N-11, Hudco, Aurangabad.

(As per court order dtd.11.12.2015
respondent No.3 deleted) ..RESPONDENTS

WITH

WRIT PETITION NO.10922 OF 2014

1. Bhartiya Mahila Mandal,
Chawani, Aurangabad
Through its Secretary
2. Sharda Hindi Madhyamik Vidyalay,
N-7, CIDCO, Aurangabad,
Through its headmaster

..PETITIONERS

VERSUS

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1. Sambhaji Kerbaji Hanawave,
Age: 56 years, Occ: Nil,
R/o. House No. 5-12-119,
Amin Chowk, Bhim Nagar,
Bhavsingpura, Aurangabad.
2. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.
3. Sharad Sadashiv Kulkarni,
Age: 47 years, Occ: Nil,
R/o. C-5, near Deepnagar,
N-11, Hudco, Aurangabad.

(As per court order
respondent No.3 deleted) ..RESPONDENTS

Mr V.J. Dixit, Senior Counsel I/b Mr S.G. Rudrawar,
Advocate for petitioners;
Mr N. B. Patekar, Advocate h/f Mr P.R.
Katneshwarkar, Advocate for respondent No.1;
Mr S.M. Ganachari, A.G.P. for respondent/State

CORAM : NITIN W. SAMBRE, J.

DATE : 3rd OCTOBER, 2017

ORAL ORDER :

By consent of the parties, both these writ
petitions are heard together and are being disposed
of finally.

2. It is the case of the petitioners that
petitioner No.1 is a registered society and public

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trust, running educational institutions and services of whose staff are governed by the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter shall be referred to as 'MEPS Act' for the sake of brevity). Petitioner No.1 trust is running Sharda Hindi Madhyamik Vidyalaya on 'no grant in aid' basis from 8th to 10th standard and thereafter 5th to 10th standard since 2000 onwards.

3. In Writ Petition No.10274 of 2014, respondent No.1 (hereinafter shall be referred to as 'employee' for the sake of brevity) claiming to be an employee of aforesaid school, filed appeal being No.51 of 2004 before School Tribunal, Aurangabad under Section 9 of the MEPS Act alleging that he was appointed on 28th June, 1988 on salary of Rs.975/- p.m. as Assistant Teacher. According to employee, on the date of filing of the appeal, he was getting salary of Rs.2170/- p.m. It is claimed that the aforesaid school is run on 'grant in aid' basis.

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4. The employee claimed that, based on appointment letter dated 28th June, 1988, salary bill was submitted to respondent No.2 Education Officer. It is claimed that his services were terminated orally from 14th June, 2004. As such, he preferred aforesaid appeal seeking quashing of the termination, reinstatement in service with full back wages and consequential benefits.

5. By judgment and order dated 25th March, 2011, the said appeal came to be allowed by the tribunal, which was questioned in Writ Petition No.8173 of 2011. The said petition came to be allowed on 3rd July, 2012, thereby remanding the matter back to the School Tribunal with observation that the appeal of employee be decided afresh, as expeditiously as possible and in any case not later than six months from the date of said decision.

6. Present petitioners filed their written notes of argument resisting the claim made by the

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employee in the appeal, inter alia stating that his claim is far away from truth. According to them, alleged amendment to the appeal carried out on 3rd July, 2007 is with an intention to change initial claim made. It is further claimed by the petitioners in their written notes of argument and claimed that one Pushpa Parkar was elected as Secretary, who has filed present petition. It is further claimed that selection, appointment and alleged case of transfer of employee was denied.

7. The School Tribunal, Aurangabad, after considering the claim of employee, vide judgment and order dated 25th March, 2011 allowed the appeal, quashed and set aside oral termination dated 14th June, 2004 with further direction to reinstate employee in the service with consequential benefits and full back wages. As such, this petition.

8. So far as Writ Petition No.10922 of 2014 is concerned, with somewhat similar set of facts,

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oral termination of respondent No.1 (hereinafter referred to as 'employee' for the sake of brevity) on 14th June, 2004 was questioned in Appeal No.50 of 2004 before School Tribunal, Aurangabad. The employee claimed to have got selected and appointed on 6th June, 1989 as Assistant Teacher.

9. It is claimed in both the petitions that when the claim for provident fund was filed, services of employees were terminated illegally.

10. The claim of the employee qua setting aside termination, reinstatement in service with full back wages came to be allowed by the School Tribunal vide judgment and order dated 23rd March, 2011 passed in Appeal No. 50 of 2004. As such, this petition.

11. So far as Writ Petition No.10274 of 2014 is concerned, it is claimed by Mr. Dixit, learned Counsel for the petitioner that date of birth of employee is 10th October, 1957, who stood

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superannuated at the end of month i.e. on 31st October, 2015. According to him, postal D.Ed. Course was completed on 10th February, 2000 and on the date of filing of the appeal, it is claimed by employee that salary of Rs.2170/- p.m. was drawn. Oral termination, according to him, is alleged on 14th June, 2004. According to him, after completion of postal D.Ed., employee never turned up and on 12th June, 2005 the school run on permanent no grant basis, in which, the employee was working, was closed down. According to him, since there was no approval to the appointment of employee, he being untrained teacher, so as to facilitate him completion of postal D.Ed., he was shown to be appointed but the said appointment was not to be acted upon. He submits that his name was not included in the inspection report.

12. So far as Writ Petition No. 10922 of 2014 is concerned, following pleas are sought to be raised by Mr. Dixit, learned Senior Counsel for the petitioners, on the issue of alleged termination.

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According to him, oral termination is claimed to have been effected on 14th June, 2004 and 8th July, 2004. According to him, though the employee claimed to have been appointed as Assistant Teacher on 6th June, 1984 on fixed pay of Rs.2100/- p.m., his appointment was refused to be approved by the management, as is apparent from communication dated 12th March, 1997/1998. It is further claimed that in view of his date of birth, superannuated in 2010. It is also alleged that after completion of D.Ed. Course, employee never reported for the service and no appointment was to be actually acted upon, but was only with intention to facilitate postal D.Ed. by employee.

13. He would also submit that the employees have given undertaking that in case they fail to complete postal D.Ed. by 2002, they shall not claim any right to continue in service and their services would stand terminated. He would also rely upon the inspection report of the school.

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14. Per contra, learned Counsel for the employee in both these petitions would invite attention of this Court to the findings recorded by learned tribunal and would urge that record speaks voluminous about employment viz., appointment, working and inclusion of name of employee in the muster roll. He would also rely upon the inspection report of the Education Officer so as to claim that the employees were very much working with the petitioners and order of the tribunal directing reinstatement with full back wages is justified.

15. The petitioner before this Court was respondent No.4 to the appeal, who claimed before the tribunal that claim in the appeal was without any basis and sought dismissal. Though it is claimed that school in question was on 'permanent no grant basis' and employee had accepted appointment with understanding that he will get consolidated salary which was paid to him as reflected in para 6 (2) of the judgment of the tribunal. It is also claimed that employee never

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worked pursuant to the appointment as claimed in the appeal. In fact, the appointment as claimed in the appeal was only for the purpose of getting admission to postal D.Ed. Course. There is also denial of termination of his services. It is also claimed that employee has left service of the petitioners without any reason or intimation. The status of permanency to the employee was also denied.

16. From the aforesaid factual matrix, as claimed by present petitioners in reply to the appeal is concerned, though it is open for the petitioners to raise contradictory plea, the fact remains that the petitioners, on one hand denied the appointment, but on the other hand, claimed that it was nominal appointment to facilitate him for the purpose of pursuing D.Ed. Course. It is also claimed by the petitioners that school was on permanent 'no grant basis' and employee worked on consolidated salary.

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17. The tribunal proceeded to consider the claim of the petitioners based on the pleadings. In the aforesaid background, learned tribunal has rightly discarded the defence of the petitioners as raised in the written statement. Apart from above, employees have placed on record certain documents so as to demonstrate their employment and they were shown to have been appointed and worked as Assistant Teacher.

18. The petitioner-institution appears to have running in all four schools and an employee by name Mangal along with other employees claimed to the provident fund authority that, though there was deduction of the provident fund contribution, same was not deposited, which has resulted into initiation of the proceedings against the petitioner-institution. The order of adjudication is placed on record qua claim made by employee.

19. In the aforesaid background, what is required to be noted is, the order of the tribunal

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allowing the appeal preferred by employee is based on appreciation of pleadings and cogent evidence.

20. Though the petitioners have tried to place reliance upon certain judgments of the Apex Court in the matters of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors.** reported in **MANU/SC/0942/2013**, particularly paras 11 and 33 and in the matter of **Balasaheb Ramchandra Burke and others vs. President, Bahujan Samaj Prabodhan Shikshan Sanstha and others**, reported in **2016 (3) Bom. C.R. 197**, so as to canvass that no foundation for back wages was laid, still, what is required to be considered is, if wrongful termination of service is noticed, reinstatement with continuity of service and back wages is a normal rule, with exception of nature and length of service.

21. In these cases, employees have produced orders appointing them as 'Assistant Teacher' on probation. They have proved their qualification by

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adopting postal D.Ed. Course as their candidature was sponsored by the petitioners as appears from documents produced on record. Employees appear to have completed postal D.Ed. in 2000-01 and they continued in the service of petitioners for about 15 years. The tribunal considered pleadings and evidence as brought on record including that of stand raised by the petitioners. The proceedings qua payment of contribution of provident fund, sponsoring candidature of the employee for postal D.Ed. speaks voluminous about selection and appointment of employee and continuation of their services with petitioner-management.

22. Though learned Senior Counsel for petitioner-management has relied upon alleged communication dated 2nd February, 2012, depicting that employee shown to have been worked from 1989 to 1995 and then from 1997 to 1999 as is apparent from the report dated 2nd February, 2012 issued by the Senior Education Extension Officer, which takes this Court to the conclusion that employee was confirmed employee of the petitioner-management.

23. As a consequence thereof, the petitioners who have come out with contrary stand in the petition and also before the tribunal qua appointment, sponsoring candidature for postal D.Ed. Course etc., owes an explanation for the same.

24. Once having noticed that the employees in both the petitions having been held to be permanent employees of the petitioners, least that was expected was, to justify termination/discontinuation of their services, in accordance with the provisions of law, which they have failed to.

25. The order impugned passed by the tribunal depicts that same stand was taken by the petitioner – management, that employees were never appointed as they lack qualification. An opportunity to complete postal D.Ed. Course was given on humanitarian ground and it was never intention of

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the petitioner-management to appoint them on any clear vacancy. There was no oral termination, as such.

26. In the background of above, the undertaking given by employees as is relied upon, further confirm that they were in the employment of petitioner up to their completion of postal D.Ed. i.e. 2001-2002. In the wake of above, the case of oral termination as is alleged by employees appears to be justified.

27. The order of learned tribunal speaks voluminous about the conduct of the petitioner, which, in my opinion, does not call for any interference.

28. Learned tribunal, as such, in my opinion, was right in setting aside the termination and ordering reinstatement of employees with full back wages. As such, no interference is warranted in both these petitions.

29. It will be worth to observe here that option for settlement was given by the employees and also tried to be pursued by this Court, for which the matter was adjourned time and again at the behest of petitioners, which remained unfruitful, as the petitioner-management refused to pay any back wages.

30. In view of above, both the petitions do not call for any interference in extra-ordinary jurisdiction. The petitions fail and stand dismissed.

(NITIN W. SAMBRE, J.)

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