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

**WRIT PETITION NO.10277 OF 2014
WITH
CIVIL APPLICATION NO.11701 OF 2017**

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

VERSUS

1. Mangal Yakub Kamble,
Age: Major, Occ: Nil,
R/o. House No.499,
Ambedkar Nagar, N-7,
CIDCO, 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 dtd.11.12.2015
respondent No.3 deleted) ..RESPONDENTS

WITH

WRIT PETITION NO.10278 OF 2014

Bhartiya Mahila Mandal,
Chawani, Aurangabad
Through its Secretary. ..PETITIONER

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VERSUS

1. Shobha Mohanlal Dobariyal,
Age: 55 years, Occ: Nil,
R/o. S.B. Sulatana,
N-7, A-4/84, 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
respondent No.3 deleted) ..RESPONDENTS

Mr V.J. Dixit, Senior Counsel I/b Mr S.G. Rudrawar,
Advocate for petitioners;
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 : 13th OCTOBER, 2017

ORAL ORDER :

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

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2. It is the case of the petitioners that petitioner No.1 is a registered society and public 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 petitioner No.2 school 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.10277 of 2014, respondent No.1 (hereinafter shall be referred to as 'employee' for the sake of brevity) claiming to be an employee of petitioner No.1-trust, employed in petitioner No.2 school, filed appeal being No.53 of 2004 before School Tribunal, Aurangabad under Section 9 of the MEPS Act, 1977 alleging that she was appointed on 1st April, 1983 on salary of Rs.550/- p.m. as a Peon. According to employee, on the date of filing of the appeal, she was getting

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salary of Rs.1202/- p.m. It is claimed that petitioner No.2-school is run on grant in aid basis.

4. She claimed that based on appointment letter dated 1st April, 1983, salary bill was submitted to respondent No.2 Education Officer of Zilla Parishad. It is claimed that her services were terminated orally from 14th June, 2004. As such, she preferred aforesaid appeal seeking quashing of the termination.

5. By judgment and order dated 29th March, 2011, the said appeal came to be allowed by the tribunal, which was questioned in Writ Petition No.8174 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 present respondent No.1 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 employee in the appeal, interalia stating that her 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 reply that one Pushpa Parkar was elected as Secretary, who has filed present petition. It is further claimed that selection and appointment and also alleged case of transfer of employee was denied.

7. The School Tribunal, Aurangabad, after considering the claim of employee, vide impugned judgment and order dated 29th March, 2011 allowed the appeal with direction that oral termination dated 14th June, 2004 is quashed and set aside with further direction to reinstate employee in the service with consequential benefits and full

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backwages. As such, this petition.

8. So far as Writ Petition No.10278 of 2014 is concerned, with somewhat similar set of facts, oral termination of employee on 14th June, 2004 was questioned in Appeal No.49 of 2004 before School Tribunal, Aurangabad. The respondents-employees claimed to have got selected and appointed on 25th June, 1989 as Assistant Teacher w.e.f. 4th July, 1989. It is claimed in both the petitions that when the claim for provident fund was filed, services were terminated illegally. The claim of the employee qua setting aside termination and reinstatement came to be allowed by the School Tribunal in Appeal No. 49 of 2004 vide judgment and order dated 19th December, 2013. As such, this petition.

9. Mr Dixit, learned Senior Counsel for the petitioners would submit that there was no recruitment process followed nor any selection after following due process was made qua claim of

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respondents-employees for appointment. According to him, it is only to facilitate to pursue D.Ed. Course by employee, the petitioners sponsored candidature for Postal D.Ed. Course. According to him, alleged claim of appointment and consequential confirmation of employees is far away from truth. He would rely upon communication issued by Education Officer dated 24th June, 1999. He would also rely upon the document viz., certificate of passing of D.Ed. Course so as to substantiate his claim. According to him, if the employee has worked for all these years, there is no approval to her appointment. He would then urge that employee is not duly qualified and no permission for the appointment of employee was obtained. He would also submit that employee has not signed muster roll. According to him, 2012 Inspection Report by the Education Extension Officer does not reflect the name of employee in the muster roll.

10. The aforesaid are submissions qua claim in Writ Petition No.10278 of 2014, wherein employee

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claimed to be appointed as Assistant Teacher.

11. So far as respondent-employee in Writ Petition No.10277 of 2014 is concerned, it is claimed by learned Counsel for the petitioners that there was no sanctioned post, as such, there is no question of appointment. Original appointment order is not produced. The case of impersonation is also sought to be canvassed. In both these petitions, the plea is raised that for claiming back wages, no specific finding qua gainful employment was recorded by the tribunal.

12. 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 respondent 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

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petitioners and order of the tribunal directing reinstatement with full back wages is justified.

13. In this background, rival claims of the parties are required to be appreciated.

Findings in W.P. No.10277 of 2014

As stated earlier, in this petition, the employee claims to have been appointed as a Peon after following due process of recruitment and appointment w.e.f. 1st April, 1983. It is also claimed that employee got status of permanent employee and her services were terminated when she sought benefit of provident fund scheme.

14. In appeal, respondent No.2 Head Mistress resisted the claim by filing her reply, whereas respondent No.3 supported claim of the employee.

15. The petitioners before this Court is respondent No.4 to the appeal, who claimed before

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the tribunal that claim in the appeal is without any basis and sought dismissal. Though it is claimed that school in question was on 'permanent no grant basis' and employee has accepted appointment with understanding that she will get consolidated salary which was paid to her as reflected in para 6 (2) of the judgment of the tribunal. It is also claimed that employee never worked pursuant to the appointment as claimed in the appeal. In fact, the appointment as claimed in the appeal is only for the purpose of getting admission to postal D.Ed. Course. There is also denial of termination of her 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

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remains that the petitioners, on one hand denied the appointment, but on the other hand, claimed that it was nominal appointment to facilitate her 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.

17. So far as the claim of the employee in the aforesaid petition is concerned, the question of postal D.Ed. Course for the post of Peon is not warranted as that is not requisite qualification. Be that as it may, the petitioners have tried to blow hot and cold at the same time, such as accepting appointment on consolidated salary of employee and on the other hand, denying termination including appointment itself.

18. The tribunal proceeded to consider the claim of the petitioners based on the pleadings raised by them. In the aforesaid background, learned tribunal has rightly discarded the defence

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of the petitioners as raised in the written statement. Apart from above, employee has placed on record certain documents so as to demonstrate her employment and she was shown to have been appointed and worked as Peon.

19. The petitioner-institution appears to have running in all four schools and present respondent Mangal along with other employees claimed to the provident fund authority that though there is deduction of the provident fund contribution, same is 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.

20. Certain documents are also placed on record so as to demonstrate that Education Officer (Primary) visited Holy Child English School, wherein employee was shown to have been employed in 1995-96. The extract of muster roll of 1999-2000 also speaks of arrears of employee in the school.

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The details of employees working with the petitioner-society as is reflected at page No.103 also speaks voluminous about employment of employee in the school.

21. In the aforesaid background, what is required to be noted is, the order of the tribunal allowing the appeal preferred by employee is based on appreciation of pleadings and cogent evidence.

22. 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.

In the cases in hand, what is required to

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be noticed is, though 100% back wages might not have been justified, as the respondents-employees have failed to demonstrate that they were gainfully employees, however, this Court cannot be mute spectator to gross illegality committed by the petitioner-management in terminating the services of respondents, that too, without considering the length of service and illegality in terminating such service. The offer for settlement given to the petitioners and indulgence shown by this Court, remained unanswered at the behest of the petitioners, as the petitioners were stubborn in settling the issue of back wages. The petitioner – management though has deposited the amount in this Court, when asked by this Court to part the same towards back wages, however, the petitioner – management has refused to. In the wake of above, the said claim of the petitioner – management about indulgence in the issue of back wages is also liable to rejected and is accordingly rejected.

23. The pleadings and evidence to that effect is also considered.

Findings in W.P. No.10778 of 2014

In this case, employee has produced order at Exh.6/A dated 25th June, 1989 appointing her w.e.f. 4th July, 1989 as 'Assistant Teacher' on probation. She proved her qualification by adopting postal D.Ed. Course as her candidature was sponsored by the petitioners as appeal from documents B/2, B/4 dated 24th June, 1999 and 9th December, 2001, respectively. Employee appears to have completed postal D.Ed. in 2000-01 and she 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 her service with petitioner-management.

24. Though learned Senior Counsel for petitioner-management has relied upon alleged communication dated 2nd February, 2012, depicting that respondent-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.

25. 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.

26. Once having noticed that both the employees i.e. respondent No.1 in both the petitions having been held to be permanent

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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.

27. Learned tribunal, as such, in my opinion, was right in setting aside the termination and ordering reinstatement. As such, no interference is warranted in both these petitions.

28. 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.

29. As such, both the petitions do not call for any interference in extra-ordinary jurisdiction. The petitions fail and stand dismissed.

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In view of dismissal of petitions, civil application stands disposed of.

(NITIN W. SAMBRE, J.)

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