

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

Writ Petition No. 04707 of 1997

District : Jalgaon

Shri Chandrakant Dashrath Bharambe,
At & Post Bamnod,
Taluka Yawal,
District Jalgaon.

.. Petitioner.

versus

1. Chairman,
Railway North Colony
Education Society,
Bhusawal,
Taluka Bhusawal,
District Jalgaon.

2. Head Master,
Railway North Colony,
Vidya Mandir, Bhusawal,
Taluka Bhusawal,
District Jalgaon.

3. Education Officer (Secondary),
Zilla Parishad, Jalgaon.

.. Respondents.

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Mr. L.V. Sangit, Advocate, for the petitioner.

*Mr. S.R. Barlinge, Advocate, for respondent
nos.01 and 02.*

*Mr. S.N. Kendre, Asst. Government Pleader, for
respondent no.03.*

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 02ND MARCH 2017

ORAL JUDGMENT :

01. The petitioner - original appellant is aggrieved by the judgment of the School Tribunal, Nasik Region, Nasik, dated 23.06.1997, by which his Appeal No. 048/1995 has been dismissed.

02. This petition was admitted by this Court on 17.06.1998 and interim relief was refused.

03. I have heard the learned Advocates for the respective sides at length. With their assistance, I have gone through the record available.

04. The petitioner - appellant had approached the School Tribunal upon his termination from service on 09.10.1995. His first appointment order dated 25.11.1993 was as an Asst. Teacher for the academic year 1993-94. In effect, he was allocated work for 05 months after his appointment till the end of the academic year on 30.04.1994.

05. As advertisement was published by the management for appointing an Asst. Teacher, the qualification mentioned was S.S.C.,D.Ed. The date of interview was 22.05.1994. The petitioner has acquired the qualification of S.S.C.,D.Ed. Pursuant to the said advertisement, the petitioner had applied and upon being selected, he was served with an appointment order dated 30.05.1994. Clause 1 of the said appointment order mentions that he was appointed

on permanent basis. Nowhere in the appointment order, has it been mentioned that the petitioner was appointed as a probationer for any particular period. In fact, the appointment order clearly indicates that he is appointed with effect from 01.06.1994. A particular scale was prescribed and it was a permanent appointment.

06. The grievance of the petitioner is that the management claimed before the Tribunal that he was issued with another appointment order dated 16.06.1995 by which he was informed that his appointment is for only one academic year 1995-96 and after conclusion of the academic year, he would stand disengaged by efflux of time. It is further submitted that copy of this appointment order was never served on the petitioner and the respondent - management cannot indicate from any record having probative value, that he was served with the said appointment order.

07. The case of the petitioner is that the Head Master had asked for illegal gratification which he had refused to pay. The Head Master, therefore, threatened him that he would mar his service record and would ensure that such circumstances would be created by which he would be thrown out of employment.

08. The respondent had taken a stand before the Tribunal that the petitioner was never appointed on

permanent basis. There is no provision to appoint him directly as a permanent employee. Even if it is presumed that he was appointed for one or two years, or even if the tenure of employment is not mentioned in the appointment order dated 30.05.1994, the law requires that every new appointee has to undergo a probation period of two years. The termination of the petitioner on 09.10.1995 can, therefore, be said to be a termination during the probationary period. It is, therefore, submitted that the School Tribunal rightly concluded that the petitioner was appointed on temporary basis and as such, his termination at best could be said to be termination of a probationer from service.

09. In the light of the submissions of the learned Advocates and the record available, I find that there is no explanation forthcoming from the respondent - management as regards the issuance of the appointment order dated 16.06.1995 in the backdrop of the appointment order dated 30.05.1994. An advertisement was published and pursuant to which the petitioner had applied and had undergone a selection process on 22.05.1994. The management was not precluded from placing the petitioner under probation for 02 years by the appointment order dated 30.05.1994. It is categorically stated in the appointment order that he has been appointed on permanent basis after following the procedure of selection. It is also stated that if the School gets grants in aid, the regular salary of the petitioner

would be paid.

10. So also, considering the contention of the petitioner, that the appointment order dated 16.06.1995 was never served upon him, it was for the respondent - management, who had come up with a copy of the said order, to indicate from the record that it was served on the petitioner and he had accepted the new appointment order without any murmur or protest. No such evidence is pointed out inasmuch as the School Tribunal has also not concluded that the subsequent appointment order dated 16.06.1995 is shown to have been served on the petitioner.

11. There can be no dispute that the complaints cited by the respondent before the Tribunal as well as this Court were not referred to in the termination order dated 09.10.1995. However, there is a reference of two documents in the order of termination indicating that the Governing Council of the Educational Society had discussed the case of the petitioner in its meeting dated 08.10.1995 and thereafter a resolution was passed to terminate the services of the petitioner. The fact that the said resolution is not placed on record before the Tribunal or this Court would indicate by way of an inference that there could be a possibility that the management has discussed the complaints against the petitioner in the said meeting of the Governing Council and then resolved to terminate his services.

12. Even if the above issue is ignored, the fact remains that once the management has issued a permanent appointment order to the petitioner on 30.05.1994, it cannot revoke the said order after one year. So also, the management has not factually revoked the said order and has attempted to frustrate the rights of the petitioner by issuing another appointment order dated 16.06.1995, converting his permanent appointment into a temporary appointment. This cannot be permitted and it is apparent that the School Tribunal has failed to notice this aspect. In fact, the impugned order indicates that the School Tribunal never applied mind to this aspect of the matter. In my view, had the School Tribunal assessed these facts properly, it could have concluded that the management was precluded from converting the permanent service of the petitioner into a temporary appointee.

13. The events that have occurred pursuant to the termination of the petitioner cannot be ignored. After his termination on 09.10.1995, the petitioner is not in employment for more than 21 years. Having worked for a period of 05 months pursuant to the order dated 25.11.1993 and then for a period of about 01 year and 04 months, which would make 02 years service span of the petitioner, which was followed by unemployment for 21 years. In this backdrop and considering the fact that this Court refused interim relief to the petitioner, it cannot be ruled out that the respondent - management would have appointed a

new Teacher in his place who may have been working for the past two decades.

14. In these circumstances, though I conclude that the termination of the petitioner is unsustainable for the reasons set out herein above, it would not be practicable to reinstate the petitioner after a span of 21 years when he had worked only for 02 years. In this fact situation, I find it appropriate to rely on Section 11(2)(e) of the Maharashtra Employees of Private Schools (Conditions of Service) Regular Act, 1977 [**For short, "MEPS Act"**] and grant 06 months' salary with all allowances by way of compensation in lieu of reinstatement and all consequential benefits. Section 11(2)(e) of the MEPS Act reads as under :-

"Powers of Tribunal to give appropriate relief and direction.

(1)

(2) Where the Tribunal, after giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-

(a)

(b)

- (c)
- (d)
- (e) where it is decided not to reinstate the employee or in any other appropriate case, to give 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 of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereunder, as it may specify; or
- (f)"

15. In the light of the above, this petition is partly allowed. The impugned judgment of the School Tribunal dated 23.06.1997 is modified. Appeal No. 048/1995 filed by the petitioner is partly allowed. By setting aside his termination dated 09.10.1995, I am directing respondent no.01 - management to pay compensation of 06 (six) months' salary along with all allowances as per the Vth Pay Commission recommendations, along with interest at the rate of 06 % (six percent) per annum from the date of the judgment of the School Tribunal, which is 23.06.1997. The said amount along with interest shall be deposited by the respondent - management, in this Court, within a period of six weeks from today.

16. Needless to state, after the respondent -

management deposits the amount, the petitioner would be permitted to withdraw the said amount without conditions by filing an application duly identified by the learned Advocate along with tangible identity proof of the petitioner in the form of a photo-copy of the Election Commission's Voter Card.

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

(Ravindra V. Ghuge)
JUDGE

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