

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

WRIT PETITION NO.5818 OF 2016

Swami Vivekanand Shikshan
Sanstha, Shyamkunj,
Shyam Nagar, Latur,
Through its President
and anr.

..Petitioners

Vs.

Sudhakar Raosaheb Bane,
Age-40 years, Occ. Service,
r/o. Andhori, Tq. Ahmedpur,
Dist. Latur
and ors.

..Respondents

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Mr.A.V.Indrale-Patil, Advocate for petitioners

Mr.S.S.Manale, Advocate for respondent no.1

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**CORAM : V.M. KANADE AND
SANGITRAO S. PATIL, JJ.**

DATE : JANUARY 06, 2017

PER COURT :

Heard the learned Counsel for the
petitioners and the learned Counsel for respondent
no.1.

2. The petitioners — Management has
challenged the order dated 22.02.2016 passed by

the Regional Deputy Commissioner, Social Welfare Department, Latur, whereby the Commissioner has directed the petitioners to reinstate respondent no.1 after setting aside the order of termination issued by it.

3. The petitioners contend that respondent no.1 was appointed in petitioner no.2 – school for the academic year 2000-2001. The appointment of respondent no.1 was on purely temporary basis and without following the due procedure which was required to be followed for appointing an employee. The learned Counsel for the petitioners submits that since the appointment of respondent no.1 was temporary, the Management was entitled to remove him from service by giving him one month's notice.

4. On the other hand, learned Counsel for respondent no.1 submits that respondent no.1 was appointed as a Sports Teacher. He served in the

petitioners – school for more than 13 years without any break and therefore, as per the notification issued by the State Government, after completion of two years of service, respondent no.1 was deemed to be permanent. The learned Counsel further submits that after the order of termination was passed by the Management, respondent no.1 filed an appeal before the appellate authority. The appellate authority after hearing the petitioners and respondent no.1 came to the conclusion that respondent no.1 was appointed after following the due procedure laid down in law. It is further observed that respondent no.1 has completed 13 years 4 months' service without any break. It is, therefore, held that respondent no.1 was entitled to be made permanent and his services could not have been terminated merely by giving one month's notice.

5. We have gone through the impugned order dated 22.02.2016 passed by the appellate

authority. Though an objection was raised by the petitioners regarding the jurisdiction of the appellate authority to hear the appeal, that objection was waived by the petitioners and it is not now open for the petitioners to contend that respondent no.1 was appointed on purely temporary basis.

6. It is well settled that if an order is passed by the authority, which is competent to decide the issue raised before it, the findings recorded by the appellate authority cannot be set aside by the High Court under Article 226 of the Constitution of India by substituting its own reasons in place of the reasons given by the appellate authority. The Apex Court in the case of **Surya Dev Rai Vs. Ram Chander Rai and ors., (2003)6 SCC 675** in paragraph 12 has observed as under :-

"12. In the exercise of certiorari jurisdiction the High Court proceeds

on an assumption that a court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an appellate court and step into reappreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court."

7. In view of the ratio laid down by the Apex Court in the case of **Surya Dev Rai** (supra), it will not be possible for us to interfere with the findings recorded by the appellate authority.

8. The petitioners have relied on the decisions in the cases of (i) **Ramkrishna Chauhan and ors. Vs. Seth D.M. High School and ors., 2013(2) Bom.C.R.481**, (ii) **Priyadarshini Education Trust Vs. Ratis (Rafia) Bano Abdul Rasheed, 2007(6) Bom.C.R.79**, (iii) **Chandramani Devraj Tiwari**

**Vs. Secretary and ors., 2008(3)Bom.C.R.206, (iv)
State of Madhya Pradesh and ors. Vs. Sandhya Tomar
and anr., 2012 DGLS (Supreme Court) 712.**

9. In our view, the ratio laid down in the judgments relied upon by the learned Counsel for the petitioners would not apply to the facts of the present case. Those judgments were rendered in the cases relating to Assistant Teachers and therefore, have no application to the facts of the present case.

10. We are, therefore, not inclined to interfere with the order passed by the appellate authority. The Writ Petition, therefore, stands dismissed.

[SANGITRAO S. PATIL, J.]

[V.M. KANADE, J.]