

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1888 OF 2002

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Venkateshwara Charitable Foundation & Anr.      ... Petitioners  
 vs.  
 Mr. Ramnath Raghunath Kamathe & Ors.      ... Respondents

...

Mr. Aditya Shiralkar a/w Mrs.Prachi Mhatre for the the Petitioners.  
 Mr.M.A.Patil for the Respondent No.1.  
 Mr.J.A.Madane, AGP for the State.

...

**CORAM : A.A. SAYED, J.**

**DATED : 19 JANUARY 2017**

**ORDER:**

By this Petition filed under Articles 226 and 227 of the Constitution, the Petitioner-Management has impugned the judgment and order dated 15 March 2001 passed by the School Tribunal, Pune Region, Pune. By the impugned order, the Appeal filed by the Respondent No.1-teacher/original Appellant was allowed and the order of his termination dated 12 April 2000 was set aside and the Petitioner-Management was directed to reinstate the Respondent No.1 as Assistant teacher with effect from 1 May 2000 with full backwages. While granting Rule in this Petition on 1 April 2002 this Court stayed the operation of the impugned judgment and order. The stay was thereafter continued pending the hearing and final disposal of this Petition.

2. The Respondent No.1-teacher had acquired qualification of M.A., B.Ed. and was initially appointed as Assistant Teacher in the primary section of the school of the Petitioner-Management vide appointment order dated 28-1-1997. The appointment was upto 30-4-1997. The Respondent No.1-teacher was again reappointed in the said school vide order dated 3-6-1997 till 30-4-1998. Vide further order of appointment dated 21-7-1998, the Respondent No.1-teacher was appointed in the secondary section of the school with effect from 8-8-1998 to 30-4-1999. Thereafter by a last appointment order dated 7-6-1999, the Respondent No.1-teacher was appointed with effect from 7-6-1999 to 30-4-2000. All the aforesaid appointment orders were for a specified period stated therein and therefore, according to the Petitioner-Management the appointment of the Respondent No.1-teacher was temporary.

3. The case of the Respondent No.1-teacher, however, is that since he was appointed on a clear and permanent vacancy in the school, his appointment was on probation for a period of two years and his appointments were approved by the Respondent No.3-Education Officer. The Respondent No.1-teacher claims that his services were terminated by order dated 12-4-2000 with effect from 1-5-2000. According to the Respondent-teacher, the termination order was illegal as the Respondent

No.1-teacher was in continuous service since January 1997 and he was appointed on a clear and permanent vacancy and his services were required to be protected, as the Petitioner-Management has no right to terminate his services.

4. The case of the Petitioner-Management, on the other hand, was the appointment of the Respondent No.1-teacher was on temporary basis and the appointment orders itself indicate that the Respondent No.1-teacher's appointment was for a specified period and after expiry of the period of the last appointment order, the services of the Respondent No.1-teacher came to be terminated and the Petitioner-Management has right to terminate the employment of the Respondent No.1-teacher as his services were only temporary.

5. I have heard the learned Counsel for the Petitioner-Management and the learned Counsel for the Respondent No.1-teacher.

6 The issue whether the services of the temporary teacher/employee can be granted protection under section 5 of the MEPS Act. The issue is considered by various judgments of the Supreme Court as well as this Court including by a Full Bench.

7 In **Hindustan Education Society and Anr. vs. Sk.Kaleem SK.Gulam Nabi and Ors.** (1997) 5 SC 152, the Supreme Court has considered section 5 of the MEPS Act. In paragraphs 4, 5 and 6, the Supreme Court held as follows:

“4. Thus, it could be seen that the appointment of the first respondent was only a temporary appointment against a clear vacancy ... .

5. In view of the above and the order of appointment, the appointment of the respondent was purely temporary for a limited period. Obviously, the approval given by the competent authority was for that temporary appointment. As regards permanent appointments, they are regulated by sub-sections (1) and (2) of Section 5 of the Act according to which the Management shall, as soon as possible, fill up, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill in such vacancy. Every person so appointed shall be put on probation for a period of two years subject to the provisions of sub-section (4) and (5). He shall, on completion of the probation of period of two years, be confirmed.

6. Under these circumstances, the appointment of the respondent cannot be considered to be a permanent appointment. As a consequence, the direction issued by the High Court in the impugned judgment dated July 31, 1996 in writ petition No.5821/95 that he was regularly appointed is clearly illegal and cannot be sustained.”

8 In **Bharatiya Gramin Punanarrachana Sanstha vs. Vijay Kumar & Others**, (2002) 6 SCC 707, the Supreme Court while considering the provisions of section 5 of the MEPS Act held that a plain reading of section 5(2) would show that it applies to a person who is put on probation consequent upon his appointment in a permanent vacancy. The Supreme Court held that it is clear that under sub-section (2), only when an employee has completed successfully the probation period of two years, he shall be deemed to have been confirmed. The Supreme Court noted in that case that the order of appointment specifically mentioned that after expiry of the period of two years the services of the teacher would come to an end without any notice.

9 In a recent judgment in **Pragati Mahila Samaj and anr. vs. Arun s/o Laxman Zurmure and ors.**, (2016) 9 SCC 255, the Supreme Court followed the judgment in the case of **Hindustan Education Society** (supra).

10 In **Ramkrishna Chauhan vs. Seth D.M. High School**, 2013(2) MhLJ, the Full Bench of this Court has also dealt with the very issue involved in the present Petition. The Full Bench was constituted by the Hon'ble the Chief Justice upon a reference being made by a learned Single

Judge in view of the divergent opinions of different Benches of this Court. The Full Bench of this Court in its judgment in paragraph 2 has reproduced the question framed by the learned Single Judge which reads as follows:

“Would it be open to the School Tribunal to hold that an employee would be deemed to be on probation within the meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 on the ground that the appointment was made in a clear and permanent vacancy, notwithstanding the fact that the letter of appointment specifically stipulated that the appointment has been made in a temporary capacity?”

The Full Bench answered the question in paragraph 28 which reads thus:

“Accordingly, we are inclined to answer the issue in the negative. We hold that it is not open to the School Tribunal to assume as of fact that the appointment made against a clear and permanent vacancy is deemed to be on probation, within the meaning of section 5(2) of the Act. The School Tribunal cannot disregard the terms and conditions of the letter of appointment, if it expressly provides that the appointment is on temporary basis, for a limited term.”

In paragraph 18, the Full Bench has observed:

18. A priori, we have no hesitation in taking the view that neither section 5(1) nor 5(2) of the Act can be construed as forbidding the Management from making an appointment on contractual or temporary basis for a limited duration against a permanent vacancy until a suitable candidate is selected. Further, there is nothing in these provisions to indicate that every appointment made by the Management, in relation to a permanent vacancy, must be deemed

to have been made on probation for a period of two years. There is no such legal fiction unlike in the case of a person appointed “on probation” for a period of two years, is deemed to have been confirmed, upon completion of that period. In other words, the parties would be bound by the terms and conditions stated in the letter of appointment, as there can be no presumption of appointment having been made “on probation” unless expressly stated in the appointment letter itself.”

In arriving at its conclusion, the Full Bench observed that it was bound by the exposition of the Apex Court in **Hindustan Education Society** and followed the said decision and the decision in the case of **Bharatiya Gramin Sanstha**.

11 A learned Single Judge in the case of **Mrs. Sneh Kohli vs. The Universal English Trust and others (Writ Petition No.5247 of 1998 decided on 18 October 2016), 2016 SCC OnLine Bom 8923** followed the decision of the Full Bench in **Ramkrishna Chauhan**. The learned Single Judge after discussing law of precedents did not agree with the view of another learned Single Judge (Nagpur Bench) in **Shamin Azad Education Society, Giroli and others vs. Presiding Officer, School Tribunal, Amravati and others, 2004 (4) Mh.L.J. 723** and in **Abdul Rafique Abdul Hamid vs. Yevatmal Islamia Anglo Urdu Education Society and others, 2014 (3) Mh.L.J. 99**, wherein the learned Single Judge (Nagpur Bench)

discussed what was the ratio and what was not the ratio in the judgment of the Full Bench. The learned Judge in **Sneh Kohli** held that he was bound by the judgment of the Supreme Court in **Hindustan Education Society** and the Full Bench judgment of this Court in **Ramkrishna Chavan** and not the judgment of the learned Single Judge in **Shamin Azad Education Society** and **Abdul Rafique Abdul Hamid** which took a different view. The learned Single Judge observed that unless the Supreme Court takes a different view or the Full Bench decision is overruled by the Supreme Court he is unable to take a different view in the matter. It is noticed that the judgment of the Supreme Court in **Pragati Mahila Samaj** (supra) and the judgment of the Division Bench of this Court in case of **Pramod Satuppa Oulkar Vs. The Kini Karyat Shikshan Mandal and ors.** (LPA No.340 of 2007 decided on 22 August 2016), 2016 SCC OnLine Bom 9421, were not cited before the learned Single Judge which had also taken the same view.

13 In the aforementioned case of **Pramod Satuppa Oulkar**, the Division Bench of this Court, following the Full Bench in **Ramkrishan Chauhan** (supra), held in paragraph 16 as follows:

“16. The Full Bench of this Court in the case of *Ramkrishna Chauhan* (supra) has also clearly held that the terms and conditions of the letter of appointment are binding on the candidate and the Tribunal cannot presume that the appointment was made on probation. The contention of the learned counsel appearing on

behalf of the appellant that section 3 read with section 5 is applicable is without any substance because the said section is in respect of appointment which is made on probation...".

14 In light of the above discussion, it is not possible to grant any relief protecting the service of the Respondent No.1 and the impugned order cannot be sustained and is required to be set aside. Writ Petition is allowed.

Rule is made absolute in terms of prayer clause (b), which reads thus:

*"b. Your Lordships be pleased to issue an appropriate Writ and/or order or direction in the nature of such a Writ and be pleased to declare the impugned Judgment and Order dated 15<sup>th</sup> March, 2001 of the School Tribunal in Appeal No.33/2000 as illegal, improper, and your Lordship be pleased to quash and set aside the same."*

16 There shall be no order as to costs.

**(A.A. SAYED, J.)**