

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

**WRIT PETITION NO.4950 OF 2004
WITH
CIVIL APPLICATION NO.226 OF 2015
IN
WRIT PETITION NO.4950 OF 2004**

Mangala B. Kulkarni ... Petitioner/Applicant

vs.

The Chairman,
Chhatrapati Shikshan Mandal & Ors. ... Respondents

Mr. V.N. Tayade for the Petitioner/Applicant.

Mr. A.A. Garge for the Respondent Nos.1 to 3.

Mrs. Vaishali Nimbalkar, AGP for the Respondent No.4/State.

Coram : **A.A.Sayed, J.**

Date : 04 January 2017

P.C. :

1 By this Petition under Article 227 of the Constitution, the Petitioner teacher/original Appellant has impugned the judgment and order dated 29 June 2002 passed by the School Tribunal, New Mumbai, whereby the Appeal of the Petitioner teacher is dismissed. The operative part of the impugned judgment and order reads as follows:

“The Appeal is dismissed.

The respondent no.1 and 2 are hereby directed to pay the appellant one month's salary (pay post allowances, if any) in lieu of notice period and shall also pay six months salary (pay and allowances, if any) within 40 days from the date of this order.

Both the parties to bear their own costs.”

2 It is an admitted position that the Petitioner was initially appointed on leave vacancy and that no prescribed procedure was followed in respect of her appointment. She was appointed temporarily on part time basis from year to year. It is the contention of the Petitioner that since she has been continued as part time music teacher with effect from 1 July 1987 in the Respondent No.3 School for consecutive period of three years i.e. 1987-88, 1988-89 and 1989-90 and thereafter again reappointed in 1991-92 on clear and permanent post on which she has worked for continuous seven years from the academic year 1991-92 to academic year 1997-98 till her services came to be terminated and though there was a break in her service only for one academic year i.e. 1990-91, her services are required to be protected as she is deemed to have become permanent. It is her contention that her services could not have been terminated without following due procedure and the order of termination dated 24 December 1997 with effect from 1 January 1998 and the oral order of termination dated 30 April 1998 is required to be set aside.

3 I have heard the learned Counsel for the Petitioner and the learned Counsel for the Respondent Management.

4 The learned Counsel for the Petitioner submitted that though the Petitioner was appointed initially on temporary basis and that notwithstanding the fact that in the appointment letters it was stated

that her appointment was temporary, she was entitled protection in service and was deemed to have been confirmed as a permanent part time teacher. It is submitted that the Petitioner has served the Respondent No.3 School for more than seven years and therefore, her services are required to be protected. Learned Counsel has placed reliance on the judgment of Single Judge of this Court in **Nagpur Shikshan Mandal vs. Varsha Vinod Sayam, 2014 (5) Mh.L.J. 550.**

5 The learned Counsel for the Respondent Management on the other hand supported the impugned order.

6 Having heard the learned Counsel for the parties, I am unable to find any fault with the impugned order. It is an admitted position that the Petitioner was initially appointed on a temporary vacancy and the due procedure for appointment was not followed viz. there was no advertisement, interview etc. The appointment letters also clearly bear out that she was appointed on temporary basis as part time teacher.

7 **Nagpur Shikshan Mandal** (supra) would have no application in the facts of the present case, inasmuch as in that case the appointment of the Assistant teacher was after following prescribed procedure and the Assistant teacher was appointed as Shikshan Sevak and had completed three years service and had acquired the status of permanent employee.

8 In view of the law laid down in (i) **Hindustan Education Society & Anr. vs. Sk. Kaleem Sk. Gulam Nabi & Others, (1997) 5 SCC 152** of Supreme Court (ii) **Ramkrishna Chauhan vs. Seth D.M. High School, 2013 (2) Mh.L.J. 713** of Full Bench of this Court (iii) **Pragati Mahila Samaj vs. Arun s/o Laxman Zurmure, (2016) 9 SCC 255** of Supreme Court and (iv) **Mrs.Sneh Kohli vs. The Universal English Trust** (Writ Petition No.5247 of 1998 dated 18 October 2016) of learned Single Judge of this Court, it is not possible to accept the contention of the Petitioner that she is deemed to have become permanent. In the aforesaid cases the Courts have interpreted section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and it has been laid down that even if a candidate is appointed on clear vacancy on temporary basis for limited period he cannot be treated as regularly appointed employee and the terms and conditions of letter of appointment cannot be disregarded. Moreover, considering the exposition of law in **Priyadarshini Education Trust vs. Ratis (Rafia) Banu d/o Abdul Rasheed, 2007 (6) Mah.L.J. 667** wherein it has been held that the teacher is required to show that his appointment is made after following due procedure of selection, viz. Advertisement, Interview, etc. he would not be entitled to claim deemed permanency.

9 In view of the above, the Petitioner is not entitled to protection of her service which are discontinued from 1 January 1988. It is noticed

that though the School Tribunal has not granted reinstatement and back-wages to the Petitioner, the School Tribunal has directed the Respondent Management to pay her one month salary in lieu of notice period as also six months salary. It is not in dispute that this amount has been paid to the Petitioner.

10 In view of the above, no interference is warranted in the impugned order of the School Tribunal. The Petition is dismissed. Rule is discharged. No order as to costs.

11 The Civil Application does not survive and to stand disposed of.

(A.A.Sayed, J.)