

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

WRIT PETITION NO. 4552 OF 2005

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|                                             |                 |
|---------------------------------------------|-----------------|
| Miss. Shobha alias Shanta Mahadeo Vader     | ....Petitioner  |
| V/S                                         |                 |
| The Principal                               |                 |
| Seventh Day Adventist English School & Ors. | ....Respondents |

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Ms. Pavitra Maneesh i/by Shri M.S. Topkar for the Petitioner.  
 Mr.Pravin Mehta i/b M/s. Miti & Co. for the Respondent No.1.

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

**DATED : 5 MAY 2017**

**ORDER:**

1     The challenge in this Petition under Articles 226 and 227 of the Constitution is to the order dated 25-02-2005 passed by the School Tribunal, Kolhapur in an Appeal filed by the Petitioner/original Appellant under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act). By the impugned order the Appeal of the Petitioner/original Appellant was dismissed.

2 The case of the Petitioner/original Appellant before the School Tribunal was as follows:

She was serving as Asst. Teacher in the primary section of the school run by the Respondent-Management. The Respondent No.3 is the Administrative Officer of the Municipal School Board, Ichalkarangi Municipal Council, Ichalkarangi, District: Kolhapur. She was serving the Respondent No.1/Institution from 1983 and she was qualified as M.A. and Diploma in Higher Education (D.H.E.). She was initially appointed from 1983 on year to year basis and was continuously continued till 1990 and the Respondent-Management malafidely gave year to year appointment orders by showing artificial breaks in the summer vacation. Being a poor lady and serving on a meager salary she did not challenge the discontinuation from the academic year commencing from 1990. The Respondent-Management re-employed her from the academic year 1995 and she was given appointment order on year to year basis from the year 1995 and she was paid meager salary of only Rs.1050/- p.m. Her appointment was approved by the Respondent No.3 from time to time. She was given last appointment order on 25-5-1999 and by letter dated 30-4-2000, she was informed that her contract has come to an end, though she was expecting continuation as was done in the earlier years. The Respondent-Management has not issued any termination order to

her. Thus, she had become permanent by virtue of provisions of section 5 of the MEPS Act, as she has worked continuously from 1983 to 1990 and then from 1995 to 2000 and the Respondent-Management without following the provisions of Rules 25A to 38 of MEPS Rules discontinued her services.

3. The Respondent-Management, though had entered appearance, did not file its Written Statement before the School Tribunal.

4. The Tribunal held that the Petitioner was admittedly given the appointment orders on year to year basis. The Tribunal recorded the contention of the Advocate for the Respondent-Management that the Petitioner was appointed for a specific period and was not entitled to claim permanency. The Tribunal has referred to appointment orders dated 15-5-1997, 29-5-1998 and 25-5-1999 and observed that it goes to show that the Petitioner was issued appointment orders for the period of 11 months in the academic years 1997-98, 1998-99 and 1999-2000 respectively. The Tribunal has observed that the Petitioner is an untrained teacher in respect of the primary section of the School. The Tribunal held that the Petitioner failed to establish the fact that she has acquired permanent status and therefore the termination of her services

without inquiry is legal and dismissed the Appeal as indicated in para (1) hereinabove.

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

6 The primary issue which arises for consideration is whether a teacher/employee who has been appointed on temporary basis can claim protection of services, in that, whether he can claim that though he is appointed on temporary basis, his appointment is deemed to be on probation under the provisions of section 5 of the MEPS Act. This 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 the case of **Hindustan Education Society** and followed the said decision and the decision in the case of **Bharatiya Gramin Sanstha**.

11 In **Pramod Satappa Oulkar** (supra), the Division Bench of this Court, following Full Bench in **Ramkrishan Chauhan**, 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...”.

12 In the facts and circumstances of the case, the judgments relied upon by the learned Counsel for the Petitioner teacher in the case of **Sadhana Janardhan Jadhav vs. Pratibha Patil Mahila Mahamandal and others, 2013 (2) Mh.L.J.** and in the case of **State of Maharashtra and others vs. Tukaram Tryambak Chaudhari and others, (2007) 9 SCC 201** would not assist the case of the Petitioner teacher. In the view that I have taken, it is not necessary to go into the issue whether the Petitioner teacher was qualified for the said post or otherwise.

13 In light of the aforesaid discussion, the Petitioner is not entitled to protection of her service. The Writ Petition is dismissed. Rule is discharged. There shall be no order as to costs.

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