

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

WRIT PETITION NO. 2591 OF 2003

The Secretary,
Punjab Sevak Sabha (Regd.) and anr. ... Petitioners
vs.

Ms. Sushma N. Saini and anr. ... Respondents

None for the petitioners.
Mr. Ramesh Majgaonkar i/by Mr. N. C. Saini, Advocate for
respondent no.1.

Coram : Smt. R. P. SondurBaldota, J.
Date : 9th March, 2017

P.C. :

The matter is placed on the board for correcting the date of the order disposing off the writ petition. The correct date is 30th January, 2017. The date be corrected and the order be read accordingly.

[Smt. R. P. SondurBaldota, J.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2591 OF 2003

1). The Secretary,
Punjab Sevak Sabha (Regd.)
Guru Nanak High School,
Kurla Camp, Ulhasnagar-4
Dist. Thane

2). The Headmistress
Punjab Sevak Sabha (Regd.)
Guru Nanak High School,
Kurla Camp, Ulhasnagar-4
Dist. Thane

.....Petitioners

V/s.

1. Ms. Sushma N. Saini,
Hindu, Adult, residing at,
Block No.C-533/1066, Station
Road, Ulhasnagar-4
Dist. Thane

2. The Education Officer,
Zilla Parishad, Dist. Thane

.....Respondents

* * * * *

Mr. S.P. Kanuga i/by. Mr. H.P. Vyas, Advocate for the petitioner.

Mr. N.C. Saini, Advocate for the respondents.

CORAM :- SMT. R.P. SONDURBALDOTA, J.
DATE :- 30th JANUARY, 2017.

JUDGMENT :-

1). This petition challenges the order dated 2nd August, 2002 by which the School Tribunal, Navi Mumbai allowed the appeal preferred by respondent no.1, directing, the petitioners,

inter-alia, to reinstate her as an Assistant Teacher in petitioner no.2, School.

2). The brief statement of facts, which are undisputed reads as under :-

Petitioner no.1, Punjab Seva Sangh (Registered) is a registered trust which runs and manages High School, in the name of Guru Nanak High School ("the School" for short). Petitioner no.2, is the HeadMistress of the School. Respondent no.2 is the Education Officer of the Zilla Parishad in whose superintendence and authority the school teachers are appointed and approved. In the month of June, 1996 the petitioners temporarily needed a teacher on account of the exigencies of work. Accordingly, they appointed respondent no.1 as a Teacher for a temporary period from 19th June, 1996 to 30th April, 1997. Accordingly, letter of temporary appointment was issued to her. By the letter dated 13th June, 1997 the second temporary appointment of respondent no.1 was made for the period upto 30th April, 1998. Since the appointment of respondent no.1 was a temporary appointment under Section 5(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. ("MEPS Act" for short) the appointment letters of respondent no.1 were in a cyclostyled form duly filled in by the authority and signed. At the relevant time including respondent no.1, there were 29 teachers in the School. As required by the Rules applicable to the School, the petitioners, in the year 1999 forwarded the work schedule to the Education Officer to determine the strength of the school for the period 1998-99. The Education Officer, approved only 22 teachers for the school. On receipt of the work schedule approved by the Education Officer for 22 teachers, the same was communicated by the petitioners to the teachers and their signatures obtained in

acknowledgement. The name of respondent no.1 appears in the list of acknowledgement at serial no.16 and bears her signature against her name. As a consequence of approval of only 22 teachers in the school, there was no vacancy in the year 1999-00. Therefore, there could be no further temporary appointment of respondent no.1.

3). About 7 months thereafter i.e. on 14th July, 1999 respondent no.1 preferred Appeal No. 79 of 1999 to the School Tribunal claiming that, since she had worked upto April, 1999 after her appointment on 13th June, 1997 she had become a deemed permanent teacher in the school and her services had been otherwise terminated. By the order impugned in the petition, the School Tribunal allowed the appeal in the following terms :-

ORDER

The appeal is allowed.

The impugned order of otherwise termination w.e.f. 14.6.1999 is hereby quashed and set aside.

The respondent no.1 and 2 are hereby directed to reinstate the appellant as an assistant teacher in respondent no.2 high school within 40 days from the date of this order will all the consequential benefits including backwages and continuity of service.

In the above circumstances, the respondent no.1 and 2 shall pay cost of Rs.2,000/- each to the appellant within 40 days from the date of this order shall bear their own costs.”

4). In her appeal, respondent no.1 had claimed, that she was appointed as an Assistant teacher in the secondary section vide appointment letter dated 14th June, 1996 on temporary basis

w.e.f. 17th June, 1996 upto the end of the academic year 1996-97. Her services were continued in the next academic year i.e. 1997-98 and her appointment on probation basis w.e.f. 19th June, 1997 was made by the appointment order No. ESC/s/69 dated nil. According to her, the petitioners by their letter dated 3rd June, 1997 had directed her to resume her duties in the School w.e.f. 19th June, 1997. The Head-Master of the School, by mistake, by his letter dated 1st April, 1999 sent for approval of her appointment upto the academic year 1998-99. Since appointment of respondent no.1 was on probation, approval for her appointment ought to have been given on probation basis. Since respondent no.1 was in continuous service even after expiry of the probation period of two years, she ought to have been deemed as a "permanent teacher" in the school. When the school reopened on 14th June, 1999 respondent no.1 went to the school for resuming her duties. However, she found that her name was not in the muster roll. On making enquiries, she was told that she would be called very soon and her name would be put on the muster. Respondent no.1, however, received no intimation from the petitioners. This conduct, according to respondent no.1, amounted to her otherwise termination from service which is illegal. Respondent no.1, therefore claimed reinstatement in service w.e.f. 14th June, 1999 with full backwages, continuity of service and other service benefits.

5). The petitioners, in their written statement claimed, on the other hand that, appointment of respondent no.1 as Assistant Teacher was purely on temporary basis for the specific periods of 17th June, 1996 to 30th April, 1997 and 19th June, 1997 to 30th April, 1998. Since the second appointment of the petitioner was a fresh appointment, it was subject to approval by respondent no.1

which approval became mandatory from the academic year 1998-99. As the petitioner was a teacher appointed in excess, respondent no.2 did not pass the schedule of work sent by the petitioners and did not approve her appointment beyond the academic year 1998-99 vide his letter dated 1st January, 1999. That letter of respondent no.2 was communicated to all the members of the staff including respondent no.1 on 10th January, 1999. Respondent no.1 had signed the Circular in acknowledgment. In the circumstances, there could be no appointment of respondent no.1 for further years. The petitioners claimed in their written statement that, there was a break in service of the petitioner during the period 1st May, 1997 to 18th June, 1997 and denied that respondent no.1 has completed probation period of 2 years. The petitioners also contend that, the appeal preferred, 7 months after her discontinuation in service, by respondent no.1 was barred by limitation.

6). In support of her claim of appointment in service on probation basis, respondent no.1 had produced appointment order No. ESE/s/69 dated Nil. As against this, the petitioners produced letter dated 13th June, 1997 as her letter of appointment. Respondent no.1 had contended that, copy of the letter of appointment produced by the petitioners was a bogus, forged and fabricated letter. The School Tribunal compared the two letters and accepted the letter produced by respondent no.1 and her contention based thereon that she had been appointed on probation. It held that, on completion of the period of probation, she ought to have been deemed to be made permanent in service. Since the entire order of the school Tribunal is based on comparison of the letters of appointment produced by the parties, it becomes necessary to look into the same in some details.

7). The appointment letters produced by both the sides are in cyclostyled form with the blanks therein filled in. The letter produced by the petitioners bears the date of 13th June, 1997 whereas the letter produced by respondent no.1 does not carry any date. Absence of the date on the letter creates a doubt as regards its issuance. The blanks in the form for the details of the application of respondent no.1 for employment in the School are seen to be filled by hand in the copy produced by the petitioners. These spaces, however, are blank in the letter produced by respondent no.1. This is another strange aspect of the letter. Both the letters carry the same date i.e. of 14th June, 1997 as the effective date of appointment. There is difference in the amount of monthly consolidated salary mentioned in the two letters. The salary mentioned in the petitioner's letter is of Rs.790/- p.m., whereas, that mentioned in the letter produced by respondent no.1 is of Rs.901/-p.m. In the copy produced by the petitioners, the word "probation" in the second para of the letter is scored off by hand and replaced with the word "temporary". It specifies the period of appointment as "upto 30th April, 1998". Strangely, the letter produced by respondent no.1 mentions that her appointment was on probation "upto 30th April, 1994". The appointment letter produced by respondent no.1 clearly specifies at the top that it is "re-appointment order". Since, respondent no.1 does not dispute that her first appointment letter was dated 14th June, 1996 and that it was on temporary basis w.e.f. 17th June, 1996 and upto the end of the academic year 1996-97, her reappointment order could not have been with the period of probation ending on 30th April, 1994. This aspect is also unexplained. The differences in the letters produced by both sides have not been taken into consideration by the School Tribunal. The differences are serious

differences and are in respect of material aspects. They are not such as to brush them aside. Further, the undisputed position that the first appointment of respondent no.1 was temporary and the second letter of appointment relied upon by her carried the heading "Re-appointment Letter" will support the claim of the petitioner. Yet another material relevant fact is the schedule of work fixed by respondent no.2. This schedule of work has not been touched upon by respondent no.1 but it could not have been ignored by the School Tribunal.

8). Mr. Kanuga, the learned Advocate appearing for the petitioners, submits that, respondent no.1 could not have claimed permanency since her appointment was not through regular process of selection against a permanent vacant post. In this connection, he relied upon decision of Single Judge of our High Court in **President, Late Shri. Ramchandra Patil Sikhshan Sanstha, Kunikonur and Others Vs. Haidarali Mahmadhanif Inamdar and Another**, reported in 2008 (4) Mh.L.J. page 159 and of Division Bench in **Chandramani Devraj Tiwari vs. Secretary, Smt. R.B. Tiwari, Sanskrutik Kendra and Ors. reported in 2008 (3) Mh.L.J. page 274**. Undisputedly, in the present case, there was no advertisement issued to fill a regular permanent vacancy of Assistant Teacher in the petitioner School. The appointment of respondent no.1 was, temporary appointment made by resort to Section 5(5) of the MEPS Act. Mr. Kanuga, submits that, because the appointment of respondent no.1 was a temporary appointment, she was issued cyclostyled letters of appointment. According to him, the regular appointments made by the petitioner are not by way of cyclostyled letters. This argument of Mr. Kanuga, needs to be accepted since there is nothing on

record to show that any advertisement had been issued by the petitioner for filling up vacancy of a permanent post of Assistant Teacher. In fact, that is not even the case of respondent no.1. To claim benefits of permanency under Section 5(2) of the MEPS Act, it was necessary for respondent no.1 to prove before the School Tribunal that, she was duly selected in the manner prescribed. Holding of an interview to select a temporary teacher is not adoption of regular process for appointment to a permanent vacancy of an Assistant Teacher.

9). Mr. Saini, the learned Advocate appearing for respondent no.1, on the other hand, seeks to support the impugned order submitting that, respondent no.1 having completed two years of service after her appointment, is entitled to the benefits of permanency. He has handed over compilation of the decisions of our High Court to support his submission. The same are as under :-

(i)Anurath T. Acharya Vs. K.V. Pendharkar College of Arts, Sc & Comm. reported in 1996 II LJ page 346.

(ii)Anil Dattatraya Ade Vs. Presiding Officer, School Tribunal, Amravati and Others, reported in 2003 (4) Mah.L.J. page 866.

(iii)Standard Chartered Grindlay's Bank Ltd. vs. Govind Phopale and another, reported in 2003 (2) Mh.L.J. page 944.

(iv)1993 CTJ 80 -Kamlakar Ramchandra Mule Nasik Versus. R.G. Gadekar, Member, Industrial Court, Plastic House, Gurudwara Road, Singhade Talao, Nasik.

(v) Motiram Devji Bawankur Versus. R.R. Bhavsar, reported in (1995)2 Mah. L.R. Page 291.

(vi) Sanjay Haribhai Indane Vs. Rashtriya Apang Association, Amravati, reported in [2009] 4 All.M.R. Page 366.

(vii) Vijaya Vs. Chhatrapati Shivaji Shikshan Sanstha & Others, reported in [2014] 0 Supreme (Mah) page 1669.

(viii) Vijaykumar Tukaram Kasale vs. State of Maharashtra and Others, reported in 2009 (4) Mh.L.J. page 384.

10). Four of the decisions listed above i.e. serial no.(i), (iii), (iv) and (v) are of no assistance to the Court. At serial nos.(iv) and (v), Mr. Saini has included only the headnotes of the two decisions. The text thereof is not available. As regards the decision at serial no.(iii), the same arises out of the proceedings under the Industrial Disputes Act. The decision at serial no.1 is an order passed in the concerned matter on the facts of that case and does not lay down any principle of law. This leaves, the decisions at serial nos.(ii), (vi), (vii) and (viii) for consideration.

11). The decision at serial no.(ii) in *Anil Ade's* case is of Division Bench of this Court, wherein the Division Bench was considering the challenge to the termination from service of the petitioner before it. He had also claimed successful completion of the probation period and benefit of permanency on that count. It was his contention, that he was appointed in a permanent vacancy of Lecturer and became permanent after completion of the probation period of 2 years from the date of his appointment. In the facts of that case, where the appointment was against a permanent vacancy, this Court held that in view of Section 5 of the MEPS Act, an employee gets automatic confirmation, after completion of the probation period and acquires the status of

permanency automatic without any specific order of confirmation by the employer. The decision at serial no. (vii) in *Vijaya's* case (supra), is similarly claim of deemed status of permanency on the basis of appointment in permanent vacancy with completion of the probation period. The facts and circumstances of the case, on hand, however are entirely different. Respondent no.1, was not appointed on any permanent vacancy. Her appointment was an temporary appointment under Section 5(5) of the MEPS Act. As such, there could be no question of she getting any automatic benefit of permanency.

12). The next decision at serial no.(vi) is of Single Judge of this Court, which considered termination of an employee on the ground of misconduct without any departmental enquiry. As such, the same is not applicable to the facts of the present case. The last decision at serial no.(viii) cited of the Division Bench in *Vijay Kumar Kasle's* case, deals with continuity in service after reinstatement and payment of backwages. This decision is also distinct on facts. Thus, none of the decisions cited by Mr. Saini are of any assistance to the Court in deciding the questions arising in the present petition.

13). As already noted at para-8 above, the decision of the School Tribunal cannot be sustained for the reasons stated therein. Hence, the petition is allowed in terms of prayer clause (a). At the request of Mr. Saini, the order is stayed for a period of 8 weeks.

(SMT. R.P. SONDURBALDOTA, J.)

The order is corrected pursuant to the order of speaking to the minutes dated 9th March, 2017.