

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

**REVIEW APPLICATION NO.192 OF 2017
IN
WRIT PETITION NO.9903 OF 2016**

- 1 Sarvodaya Kala Mandal Aurangabad.
Through its President,
Subhash Bhikan Patil,
Age : 65 years, Occupation : Social Work,
R/o B-501, Mayur Park, Jalgaon Road,
Aurangabad.
- 2 Chatrapati High School,
Vijay Nagar, Vijay Chowk,
Garkheda Parisar, Aurangabad.
Through its Headmaster,
Rajendra Uttam Chavan,
Age : 44 years, Occupation : Service,
R/o Vijayantnagar, Beed Bypass,
Satara Parisar, Aurangabad.
- 3 Tukaram Dadarao Shinde,
Age : 38 years, Occupation : Service,
R/o Ulkanagari, Garkheda Parisar,
Aurangabad.

... REVIEW APPLICANTS.

-VERSUS-

- 1 The State of Maharashtra.
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2 The Education Officer (Secondary),
Zilla Parishad, Aurangabad,
Taluka and District Aurangabad.
- 3 The Deputy Director of Education,

Aurangabad Region, Aurangabad,
Taluka and District Aurangabad.

- 4 Nanda Murlidhar Deshmukh,
Age : 43 years, Occupation : Service,
R/o Gajanan Colony, Plot No.86,
Aurangabad.

...RESPONDENTS

...
Shri V.D.Salunke a/w Shri V.G.Salgare, Advocates for the Review
Applicant.

Shri S.R.Yadav Lonikar, AGP, for Respondent Nos.1 to 3.

Shri S.V.Jadhav Patil, Advocate for Respondent No.4.

...

CORAM: RAVINDRA V. GHUGE, J.

Reserved on 22nd February, 2018.

Pronounced on 07th March, 2018.

JUDGMENT:

1 The Review Applicant/ Management seeks review of the
judgment of this Court delivered on 06.02.2017 in Writ Petition
No.9903/2016.

2 I have heard the extensive submissions of the learned
Advocate for the Management, the learned AGP on behalf of the State
Authorities and the learned Advocate on behalf of Respondent No.4/
Employee, who was the original Petitioner before this Court in Writ
Petition No.9903/2016.

3 The learned Advocate for the Review Applicant/ Management

has argued for almost two hours. He has re-argued the entire Writ Petition. He has cited the following judgments :-

- (a) Ravinder Kumar Sharma vs. State of Assam and others, AIR 1999 SC 3571, Supreme Court.
- (b) State of Madhya Pradesh vs. Yogesh Chandra Dubey, 2006 (8) SCC 67, Supreme Court.
- (c) State of Manipur vs. State Land Used Board Casual Employees' Association, 2007 (1) Gau.L.J. 337 : 2007 (112) FLR 794 (Gauhati High Court).
- (d) Birendra Singh vs. State of U.P. and others, 2016 (3) All LJ 124 : 2016 (2) ADJ 127 (Allahabad High Court).
- (e) Shri Iswar Upadhyay, Assistant Teacher, Aunibari vs. The State of Assam. 2016 (4) Gau.L.R. 64, Gauhati High Court.
- (f) Ram Chet Verma vs. State of U.P., 2015 (33) LCD 1522, Allahabad High Court.
- (g) Superintending Engineer (Elec.) vs. Ranganath, 2013 ILR (Karnataka) 6017, Karnataka High Court.
- (h) Sanjay Kumar vs. State of Haryana, 2011 (2) SLR 757, Punjab and Haryana High Court.
- (i) Sheo Nath Sahni vs. The State of Bihar, 2014 (1) PLRJ 141, Patna High Court.
- (j) Rukiya Khatun vs. The State of Assam, 2012 (1) Gau.L.J. 515,

Gauhati High Court.

- (k) Bansraj Pandey vs. District Inspector of Schools, Jaunpur, 2012 (90) ALR 522, Allahabad High Court.
- (l) Parmanand Panday vs. District Inspector of Schools, Varanasi, 2009 &) ADJ 374, Allahabad High Court.
- (m) Santosh Kumar Mandal vs. State of Jharkhand, 2009 (2) JLJR 351, Jharkhand High Court.
- (n) Usha K. vs. State of Kerala, 2008 (5) SLR 145, Kerala High Court.
- (o) Probhat Kr. Mondal vs. State of West Bengal, 2001 (3) SCT 377, Calcutta High Court.
- (p) Sri Shri Pal vs. State of U.P., 2001 LIC 1765, Allahabad High Court.
- (q) J.N.V. University vs. Shishupal Singh, 1997 LIC 2833, Rajasthan High Court.
- (r) Rajesh Kumar vs. State of Jammu and Kashmir, 2000 (3) SCT 26, Jammu and Kashmir High Court.
- (s) Sri Parashuram Mahato vs. State of West Bengal, 2008 (1) SLR 500, Calcutta High Court.
- (t) Priyadarshini Education Trust vs. Ratis (Rafia) Bano d/o Abdul Rasheed, 2007 (6) Mh.L.J. 667, Bombay High Court.
- (u) M.P. State Cooperative Bank Limited vs. Nanuram Yadav, 2007

AIR (SCW) 6036, Supreme Court.

- (v) Pragati Mahila Samaj vs. Arun, 2016 AIR (SCW) 3450, Supreme Court.
- (w) Hindustan Education Society vs. Sk. Kaleem Sk. Gulam Nabi, AIR 1997 SC 2126, Supreme Court.
- (x) Chairman and Managing Director, Central Bank of India vs. Central Bank of India Scheduled Castes/ Scheduled Tribes Employees Welfare Association and others, (2016) 13 SCC 135, Supreme Court.
- (y) State of Jammu and Kashmir vs. District Bar Association, Bandipora, AIR 2017 SC 11, Supreme Court.

4 Though the learned Advocate for the Review Applicant has argued for a long duration, his entire submissions, though amount to re-arguing of the Writ Petition, can be summarized as under :-

- (a) Respondent No.4/ Employee was working intermittently in between 2001 and 2011.
- (b) No selection process was initiated by the Review Applicant/ Management.
- (c) There is no dispute that Respondent No.4/ Employee possessed the requisite qualification of B.A., B.Ed. for being appointed as a primary teacher.

- (d) Though the Review Applicant/ Management did not challenge the observations of the School Tribunal which are against the Management, the said observations can be set aside on the basis of the affidavit in reply filed by the Management in the Writ Petition filed by the Employee.
- (e) All the documents produced by the Appellant are bogus documents as per the pleadings in the Written Statement filed by the Management before the School Tribunal.

5 The Honourable Supreme Court has held, in *Lily Thomas vs. Union of India*, **AIR 2000 SC 1650**, that while entertaining the Review Application, the Review Applicant cannot be permitted to re-argue the entire Writ Petition. Despite this crystallized position in law, the Review Applicant has reopened the entire Writ Petition and has argued for hours.

6 Notwithstanding the above, the basic thrust of the Management is that the Employee was not appointed by following the due selection process. It cannot be ignored that the Management has engaged the services of the Employee from 2001 till she was terminated on 15.06.2011. She was continuously shown to be temporary and work was extracted from her. She was then disengaged after 14.06.2011 contending that her last engagement was for a period from 15.06.2009 to 14.06.2011 on an honorarium basis.

7 This Court has consistently held that the Management cannot be permitted to exploit the employees by appointing them as temporaries and by keeping them in employment for years together. In Balasaheb Ramchandra Burke vs. President, Bahujan Samaj Prabodhan Shikshan Sanstha and others, 2016 (3) BCR 197, this Court has held that the Employer should be estopped from taking a stand that the employee was not legally appointed after extracting work from the employee for a decade or more. In the instant case, the employee had worked for almost 10 years and was possessing the requisite qualification of B.A., B.Ed., which is sufficient for appointment as an Assistant Teacher with the primary schools.

8 The Review Applicant has relied upon the judgment of the Honourable Supreme Court in the matter of Ravinder Kumar Sharma (supra) to contend that the cross-objection by the Respondent/ Defendant in an appeal was not necessary to assail adverse findings in the decree. The filing of cross-objection after the 1976 amendment is purely optional and not mandatory. Based on this judgment, the Review Applicant/ Management submits that the observations of the School Tribunal, in paragraphs 21 and 22 of it's judgment, which are against the Management, can be quashed and set aside on the basis of the affidavit in reply filed by the Management in the Writ Petition filed by the Employee,

without challenging the said observations by filing a substantive writ petition.

9 When the Employee approached the School Tribunal for challenging her termination, the School Tribunal dismissed her appeal by the judgment dated 14.01.2016 only for the reason that her appointment was irregular. It, however, arrived at some findings of facts in paragraphs 21 and 22, which are reproduced hereunder :-

“21. *The appellant further relied on the copy of a resolution dated 06/03/2009 below Exhibit-4 (page No.15) and submitted that she had been working as a Head Mistress for around 9 years, that is, from the year 2001 to 2009. From this copy of resolution, it can be definitely construed that the appellant was working as In-charge Head Mistress for considerable long period. The inspection report also shows her designation as 'In-charge Head Mistress'. The copy of Bank Account of the school was admittedly in the name of the appellant. Though the appellant was working as In-charge Head Mistress till the academic year 2008-09, unless she proves that her appointment was legal and valid as per section 5 of the M.E.S.P Act, mere length of service cannot ipso facto render her appointment legal and valid.*

22. *It is true that continuously for around 9 years, the Sanstha has successfully extracted the services of the appellant, without issuing any legal and valid appointment order as prescribed under Section 5 of the MEPS Act. At the same time, it can be seen that this fact was not suppressed by the Sanstha from her. She was In-charge Head Mistress of the school, she had complete knowledge that her appointment letter was for temporary period. She was issued two written appointment orders for temporary period and no appointment order for the further period was issued. It is pertinent to be noted that she was not even issued*

with any appointment order to work as In-charge Head Mistress. She was working with the Sanstha without any legal and valid appointment order. Moreover, she placed reliance on the third appointment order dated 10-6-2009 which shows that she was appointed as a temporary Shikshan Sevak in Subhashitam Primary School, Aurangabad. She also filed a joining letter, showing that she resumed her duty in Subhashitam Primary School from 15-6-2009. This reflects that she has not raised any grievance about her fresh appointment, that too, in Primary and non-aided school on the honorarium of Rs.2000/- per month. This shows that she accepted the terms and conditions of her new appointment in the year 2009 without any protest.”

10 From the above observations, it is evident that the School Tribunal has considered the entire submissions of the Management and yet concluded that the Employee was continuously working as the Headmistress for nine years from 2001 to 2009. The Management had also passed the resolution dated 06.03.2009 permitting the Employee to operate the Bank account of the School. It was concluded by the School Tribunal that the Employee had put in total 10 years in employment.

11 The Review Applicant/ Management has tried to canvass that the above observations of the School Tribunal need not be challenged by the Management since the appeal of the Employee was finally dismissed by the School Tribunal. It is contended that as like in an appeal under Section 96 or the Second Appeal under Section 100 of the Code of Civil

Procedure, even an affidavit in reply in the Writ Petition filed under the revisional and supervisory jurisdiction of this Court, can be treated as a cross objection and without challenging the findings of the School Tribunal against the Management, on the basis of the affidavit in reply, the said findings can be quashed and set aside. I am of the view that the Management has put forth fallacious and misconceived submissions.

12 Another limb of the submissions of the Management is that the post on which the Employee was working, was never a sanctioned post. The School Tribunal has observed in paragraph 13 of its judgment that *"So far as the clear, vacant and sanctioned post is concerned, the Respondents have not denied this fact in toto. The inspection report dated 09.04.2002 (Exhibit 4, page 41) relied upon by the Appellant shows that the school has (been) given recognition to standard 09th in the year 2000-2001. It also bears a noting that trained teachers have been appointed by the School and the list of said teachers is provided at page 47. The name of the Appellant has been listed at Sr.No.1 as in-charge Head Mistress of the school. The length of service of the Appellant has been noted as two years in the pay scale of 5500-9000 in the year 2002. From this inspection report, it can be concluded that there was clear, vacant and permanent posts of teachers and the Appellant was the first person, who was appointed on that post."*

13 Even the above finding on facts by the School Tribunal has

not been challenged by the Management. Though the Writ Petition was pending adjudication, the Management did not file a cross Writ Petition to assail the findings on facts in paragraphs 13, 21 and 22. So also, in the inspection report of the Education Department, which was placed before the School Tribunal, the Employee was shown as the Headmistress, one post of the Headmaster, two posts of prescribed graduates, one post of senior clerk and two posts of Peon, were shown as sanctioned.

14 Apart from the judgment in the matter of Ravinder Kumar Sharma (supra), the Review Applicant has placed reliance on other judgments to support its contention that unless there is a sanctioned post, no person can be appointed on a non-existing post. This contention of the Review Applicant is demolished by the record available as discussed above.

15 The Review Applicant has then contended that all the documents produced by the Employee were forged documents. There is no such finding by the School Tribunal. In fact, the School Tribunal has considered the submissions of the Review Applicant and has concluded that the documents throw sufficient light on the fact that the Employee was working on the sanctioned post. The School Tribunal had dismissed the appeal only for the reasons that the due process of selection was not followed. This issue is dealt with by this Court as noted above by holding

that the Employer is estopped from alleging that the employee was not properly selected and appointed, after the said employee had put in 10 years in service.

16 The Written Statement of the Management filed in September, 2015 before the School Tribunal is placed before this Court. No where has the Management alleged or even whispered that the documents placed on record are bogus and fabricated by the Employee. This proves that the Management has filed a false affidavit-in-reply, that it had taken a stand before the School Tribunal that all the documents filed by the Employee are fabricated. For this act of the Management, costs deserve to be saddled. Moreover, the Management has not challenged the significant findings delivered against it by the School Tribunal, by filing a writ petition in this Court.

17 Considering the above, I find that the Management has taken a mischievous stand before this Court that the documents are bogus when no such stand was taken before the School Tribunal. The Management has, therefore, failed in pointing out any error on the facts and on law, apparent on the face of the judgment and order dated 06.02.2017.

18 In the light of the above, this Review Application is, therefore, dismissed by imposing costs of Rs.25,000/- (Rupees Twenty Five Thousand) on the Applicants/ Management to be deposited in this Court on or before 07.04.2018, failing which, the said amount would carry

interest at the rate of 6% per annum from the date of this order till it's actual deposit. After the costs are deposited, Respondent No.4/ Employee would be at liberty to withdraw the said amount with accrued interest, if any, without conditions.

kps

(RAVINDRA V. GHUGE, J.)