

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4182 OF 2012

Laxman Trimbak Dahiphale .. Petitioner
Versus
Jain Vidya Prasarak Mandal & ors .. Respondents

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Mr.N.V.Bandiwadekar for the petitioner.
Mr.Sanjeev Sawant for respondent nos.1 and 2.
Mr.S.B.Kalel, AGP for the respondent no.3 State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.
RESERVED ON : 20th JUNE 2018
PRONOUNCED ON : 3rd JULY 2018

JUDGMENT (Per Smt.BHARATI H. DANGRE,J)

1 Rule. By consent, Rule returnable forthwith. Heard both sides.

In this third round of litigation, the petitioner is seeking a relief in relation to his appointment as a Full time teacher in the respondent no.2 school from the year 2003 and is constrained to approach this Court since and after a lapse of almost 15 years, the issue in relation to his appointment still remains unresolved. The petition revolves around his appointment effected long back in the year 2003, and as on

today, the petitioner, inspite of an order issued partly in his favour by the Deputy Director of Education, has not gained fruits of the litigation in which he succeeded on earlier two occasions. In order to appreciate the controversy in the present Writ Petition, it would be necessary to relate back to the chronology of events and the earlier two rounds of litigation.

2 The petitioner with qualification of M.A and B.Ed came to be appointed as a full time lecturer in the respondent no.2 junior college to teach the subject 'English'. This order of appointment is the bone of contention in the entire *lis* decided by the Court and also forms a subject matter of the present writ petition, since there is no appointment order issued in his favour in writing. According to the petitioner, the said appointment was in the capacity as a full time lecturer in a clear and permanent vacancy in subject 'English' in the Smt.Gendibai Tarachand Chopda High School and Junior College, Chinchwad, Pune i.e. respondent no.2, run by respondent no.1. At the time of appointment, the said Junior college was not in receipt of any grant-in-aid. According to the

petitioner, he worked in the said post continuously till 28th August 2006. However, when on 29th August 2006, he was not allowed to sign the muster and he was directed orally on 15th September 2006 not to come to the school. Thus, it is the case of the petitioner that his services were otherwise terminated.

3 Being aggrieved by the termination of his services, the petitioner approached the School Tribunal at Pune by filing an appeal which was numbered as Appeal No.9 of 2007. The said Appeal came to be dismissed by the School Tribunal by recording a finding that the petitioner was not able to demonstrate that he was duly appointed by following the procedure prescribed under Section 5(1) of the Maharashtra Employees of Private Schools, Act 1977. The School Tribunal recorded a finding that the petitioner/appellant does not have any status even of any temporary employee and in fact, he was never duly appointed in the eyes of law and therefore, there was no necessity of following any due procedure before putting an end to his services. Being aggrieved by the dismissal of his appeal, the petitioner approached this Court by filing a writ

petition No.4623 of 2008. In the said proceedings, the respondent management took a specific stand that the appointment orders on which reliance was sought to be placed by the petitioner were not genuine and authentic. However, a submission came to be made before this Court that the management would have no objection if the School Tribunal is directed to consider the appeal afresh on the basis of the entire material on record, including the material which is sought to be placed before the Court in the present proceedings, by reserving the right of the management to lead all appropriate defences. On such a concession being granted, the order passed by the School Tribunal dated 11th March 2008 was set aside and the Appeal No.9 of 2007 was directed to be restored to the file of the School Tribunal with liberty to the petitioner to produce additional documentary material on record and without expressing any opinion on the merits of the rival claims of the parties, the writ petition came to be disposed of.

4 On remand, the School Tribunal proceeded to decide the appeal filed by the petitioner under Section 9 of the

Maharashtra Employees of Private Schools (Regulation and Conditions of Service) Act, 1977 (for short “MEPS Act”) where the petitioner had called in question “otherwise termination” effected from 29th August 2006. The School Tribunal decided the proceedings afresh, but arrived at a similar conclusion which it had recorded on the earlier occasion and held that the appointment of the petitioner was not duly made under Section 5(1) of the MEPS Act on permanent basis with effect from 12th June 2003, as sought to be canvassed by the appellant. The School Tribunal also negated the contention of the petitioner about having full workload and his contention that his appointment was made on year to year basis and on completion of period of three years, he is deemed to be a regular teacher. It was the specific case put up by the management before the School Tribunal that one Shri.V.B. Kale was appointed as a teacher in English with effect from 17th August 1999 and he came to be deputed as a Principal in the said school run by the management i.e. Sangvi Kesari Mahavidyalya by allowing him to retain his lien on the post in the present school. According to the management, the appellant was appointed temporarily in

his absence. However, when Shri V.B. Kale expressed his desire to come back to the school from 2nd June 2006, the services of the petitioner were required to be put to an end.

5 On consideration of the claim of the respective parties, the Tribunal arrived at a conclusion that the petitioner failed to establish that he was validly appointed under Section 5(1) of the MEPS Act as per the ratio laid down in the case of *Anna Manikrao Pete Vs. Presiding Officer*,¹ and the appointment of the petitioner was merely a stop-gap arrangement in absence of Shri V.B. Kale who was a regular appointed teacher in English in the respondent no.2 school. It observed that the appointment of the petitioner itself was void *ab initio*, illegal and by recording a finding that it was not a case of termination of services of an employee who is appointed on a permanent or temporary basis, the appeal came to be dismissed by the School Tribunal on 19th January 2010.

6 On dismissal of the said Appeal, the petitioner again approached this Court in a second round of litigation by

1 (1997)3 Mh.L.J 697

invoking the jurisdiction of this Court under Article 227 of the Constitution of India. This Court considered the legality of the judgment passed by the School Tribunal and on assessment of the factual aspects of the matter, concluded that the petitioner was appointed on probation for the years 2003-04, 2004-05 and 2005-06. This Court also observed that the appointment of the petitioner was along with 8 other persons who were appointed as Shikshan Sevaks (full time) on 22nd June 2003 and on perusal of the documents which were produced along with the petition, this Court also observed that the appointment of the petitioner is a full time appointment and not on clock hour basis. This Court also noted that the management sought approval to the appointment of the petitioner and therefore, it cannot turn around and question the petitioner's appointment. The Court also took into consideration the fact which was admitted by the Dy. Director that the petitioner was appointed as full time teacher on probation and his appointment was approved by respondent nos.1 to 3 on par with other teachers who were granted 16 hours workload.

On a detailed consideration of the affidavit which was filed on behalf of the Government, the Court concluded that the Tribunal did not get the benefit of elaborate affidavit being filed before the Court by the Department of Education. In the result, the Court was of the opinion that the issue of the approval of the petitioner ought to be re-examined by the Dy. Director of Education by affording necessary opportunity to the petitioner and the management, and a direction was issued to the Dy. Director to pass a reasoned order by keeping all the contentions of the parties open.

7 Subsequent to the order passed by this Court, the Dy. Director of Education who was relegated with the matter, afforded an opportunity of hearing to the petitioner as well as the management and passed an order on 20th October 2011. By the said order, the Dy. Director of Education directed the management to issue appointment to the petitioner as a full time teacher in the subject English in the higher secondary school Smt. Gendibai Chopda Junior College, Chinchwad Pune with effect from 10/10/2011.

It is this order by which the petitioner is aggrieved and has approached this Court, praying for quashing and setting aside of the said order to the extent that it grants appointment as a full time lecturer in favour of the petitioner with effect from 10/10/2011 in ignorance to his demand, to be appointed as a full time teacher with effect from 12th June 2003. The Writ Petition was filed on 25th April 2012 and is pending for adjudication before this Court since then.

It is pertinent to note that the respondent management has also invoked the jurisdiction of this Court by filing a writ petition which was numbered as 'Writ Petition No.10195/22' assailing the same order dated 10/10/2011 passed by the Dy. Director of Education. By order dated 17th July 2012, this Court had directed listing of the present writ petition along with writ petition 10195/11 filed by the management, and the parties were put to notice that the matter will be disposed of finally at the stage of admission. Both the writ petitions were heard by us on 13th June 2018 and further on 20th June 2018. On 20th June 2018, the management sought to withdraw the writ petition, since the Court did not show its

inclination to entertain the same and hence Writ Petition no.10195/11 filed by the Management was permitted to be withdrawn.

8 We have heard Mr.N.V. Bandiwadekar, learned counsel appearing for the petitioner. The learned counsel would submit that the facts of the case would reveal the insensitive approach by the managements and the education authorities in respect of the teachers who are appointed in educational institutions on acquiring the necessary qualifications. He would submit that the petitioner though has been working since 2003, has been deprived of any benefits flowing from the said service rendered by him and he would heavily criticize the irresponsible and arbitrary behaviour on the part of the management as well as the education authorities, causing gross injustice to the petitioner. Shri Bandiwadekar would submit that the petitioner had placed before the Court the information received by him in the proceedings in respect of his appointment and he makes a categorical statement that he was appointed on probation and

he would submit that he had also produced the chart showing the workload assigned to him. Shri Bandiwadekar would further submit that he was never appointed on clock hour basis, as sought to be canvassed by the management and in fact, it was the management who had forwarded the proposal of the petitioner in the backdrop of the workload allotted to him. The learned counsel would also submit that along with the petitioner, there were other teachers who were appointed and they were similarly situated as the petitioner and the staff approval was sought to accommodate all the teachers who were so appointed. He would submit that just because some errors were committed by the management in forwarding the proposal, the appointment of the petitioner cannot be wiped out, when his appointment was completely legal and proper. Mr.Bandiwadekar would also submit that the petitioner has been adversely discriminated since the other teachers i.e. Shri Hore, Shri Datir, Shri Waghmare and Mrs.Gawli who were similarly situated as the petitioner and in whose favour along with the petitioner's approval was sought, have already been continued in service and have been conferred with the benefits.

Shri Bandiwadekar also submits that the lame excuse that the appointment of the petitioner was against Shri V.B. Kale, is also completely misconceived since he was appointed as a teacher in a different institute i.e. Tarabai Muktha Kanyashala Chinchwad, whereas the petitioner was appointed at Smt.Gendibai Chopda Vidyalaya and Jr. College, Chinchwad Pune and therefore, the said stance of the management falls flat on the face. Shri Bandiwadekar would submit that this Court, by its detailed order dated 26th August 2011 passed in WP No.3012/10 had deeply analyzed the stand of the management as well as the education authorities and he would further submit that this Court has conclusively held, on perusal of the necessary record that the dismissal of the appeal of the petitioner by the School Tribunal would not be an impediment for the petitioner to seek proper reliefs, including that his appointment as a teacher in English to be regularized and confirmed in the backdrop of the specific findings recorded by this Court. He would submit that in these peculiar circumstances, the case of the petitioner was directed to be re-examined by the Dy.Director of Education, and was directed to pass a reasoned order. This Court had made it

clear that if the Dy. Director of Education comes to a conclusion that the petitioner was appointed in the year 2003-04, similar to Mr. Datir and another teachers, then, he must be conferred with relief identical to those teachers by approving his appointment and by releasing salary grants, admissible as per rules. Shri Bandiwadekar would submit that the Dy. Director of Education, on hearing, has recorded a clear finding that the petitioner was appointed along with Shri Datir and others as a full time teacher in the Academic Year 2003-04 till the academic year 2005-06 and the appointments were approved every year by the Dy. Director of Education. According to Shri Bandiwadekar, the parameters which were carved out by this Court to test the appointment of the petitioner were worked out by the Dy. Director of Education in his favour. However, without any justifiable reason, the Dy. Director of Education had constricted himself in granting relief in favour of the petitioner from 10/10/2011 by directing the respondent management to issue an appointment order in his favour from 10/10/2011 as a full time teacher in English and that the approval to be obtained to that effect. He would submit that Dy. Director of

Education has adopted a discriminatory approach by not granting him appointment as a full time teacher in English from the year 2003 and his grievance, thus is not redressed.

9 We have also heard Shri S.A.Sawant learned counsel appearing for respondent nos.1 and 2 who would rely on the affidavit filed by the Secretary of respondent no.1 on 2nd August 2012. Shri Sawant would argue that the petitioner was never appointed on a permanent vacancy and no procedure laid down under the MEPS Act and Rules was followed while effecting his appointment. It is stated in the affidavit that the petitioner was appointed in a vacancy which was created temporarily due to the absence/deputation of Mr.V.B.Kale who was appointed to teach English subject in respondent no.2 college. It is specifically stated that the Dy.Director of Education, Pune Division, Pune has granted approval to the appointment of the petitioner on clock hour basis. It is also stated that the petitioner applied for appointment on 23rd March 2006 and appeared for the interview conducted for the post.

Learned counsel would justify the stand of the management and would submit that there was only one post of teacher for English subject in respondent no.2 school and when Shri V.B. Kale who was appointed as Principal of Sangahvi Kesari College, Chinchwad, he was allowed to keep his lien on the post of teacher in English and in order to satisfy the need of an English teacher, the petitioner came to be appointed. He would submit that on repatriation of Shri V.B. Kale on his original post, the services of the petitioner were no longer required. Learned counsel Shri Sawant would place heavy reliance on the findings recorded by the School Tribunal against the petitioner and specifically about non-followance of the procedure mandated under Section 5(1) of the MEPS Act. He would thus pray for dismissal of the writ petition.

10 We have carefully perused the petition along with its annexures and the affidavit in reply filed on behalf of the respondent. It is pertinent to note that as far as writ petition no.10195/11 is concerned which is filed by the management challenging the same order which is impugned in the present

petition, we have permitted the said writ petition to be withdrawn on a motion made by the learned counsel Shri S.A. Sawant appearing for the management in the said matter, and we have expressed our disinclination to grant any relief in favour of the management. The chronology of facts and the findings recorded in the earlier round of litigation instituted by the petitioner would reveal that the petitioner along with eight others came to be appointed as a full time teacher by an order dated 22nd June 2003. The said appointment was made with effect from 12th June 2003 to 30th June 2004. Though along with the present writ petition, the petitioner has not placed on record the said order of appointment, it is to be noted that while dealing with Writ Petition no.3012/2012, this Court had recorded a finding that on perusal of the documents and the annexures placed along with the petition filed before the Court in the earlier round, that the petitioner was appointed as a full time teacher by an order dated 22nd June 2003 as 'Shikshan Sevak'. The proposal for the appointment of the petitioner was forwarded to the Dy. Director of Education Pune. In the year 2003-04, the respondent no.2 was not in receipt of any grant.

The Dy. Director granted staff approval for 5 full time and 3 clock hour posts. However, in the year 2004, the respondent no.2 was entitled for 20% grant-in-aid for the junior college. In any case, the appointment of the petitioner as a full time teacher on probation was approved by respondent nos.1 to 3 and this Court has recorded a clear admission of the Dy Director to that effect. It has also noted that in similar circumstances, an approval was sought in respect of Mr.Hore, Mr.Datir, Mr.Waghmare and Ms.Gawli who were appointed along with the petitioner, granting 16 hours workload. The State Government had filed an affidavit before the Court in the second round of litigation i.e. WP No.3012/13 and had categorically admitted that the Government sanctioned appointment of the petitioner for a period of 1 year from 2003-04 on 'no grant basis' and after expiry of one year, the limited recognition automatically lapsed. However, in the same affidavit, it was stated before the Court that a letter dated 18th December 2009, the letter was forwarded to the School Tribunal intimating that the government had recognized that the petitioner was serving as a Shikshan Sevak for a period of

one year strictly on 'no grant basis' and though the proposal of the petitioner was forwarded by the Management, there were certain deficiencies and therefore, the petitioner was not granted any approval. It was also stated on affidavit that the petitioner was appointed as a full time teacher in Smt.Gendibai Tarachand Chopda Junior College, Chinchwad Pune. The Department also clarified that as per Government Resolution dated 24th November 2004, though the workload of 17 hours is required for the approval of a full time post, 3/4th workload available for the post can be clubbed with workload available in secondary school and that can be considered for sanction of full time post, and accordingly, Dy.Director of Education had sanctioned full time post for workload of 16 hours.

This Court also recorded a finding that Shri Kale's appointment is approved for full time course for English subject in Smt.Tarabai Mutha Kanya Prashala, Chinchwad Pune for the year 2006-07 which was a distinct institution whereas appointment of the petitioner in the year 2003-04 and 2004-05 on 'non grant basis' as full time teacher is in Gendibai Chopda Vidyalaya, Chinchwad, Pune. The appointment was issued in

terms of schedule-D though in the proposals and the resolutions, it was categorized as 'Shikshan Sevak'. However, it is not in dispute that in Gendibai Chopda School, a full time teacher's post in English subject is approved. In such circumstances, the petitioner was taken to be appointed to fulfill the said post and this Court noted that the management and the Dy.Director of Education is to be blamed for the state of affairs since the department had stated that the appointment of the petitioner was against a full time vacancy and full time permanent post, but his appointment order shows that his designation was a Shikshan Sevak. In this backdrop, the Court noted that even if the appeal of the petitioner challenging his otherwise termination is dismissed by the School Tribunal, still, the Education Department is not forbidden from considering the request of the petitioner for regularization of his appointment as teacher in English and his confirmation on the said post. In this background, the matter was remanded to the Dy.Director of Education to take into account the statements made on affidavit before the Court as well as to consider the relevant Government Resolution and circulars with regard to

the appointment of teachers/Shikshan Sevak and the required workload. A time was stipulated for the Dy. Director of Education to take a decision by affording opportunity of hearing to the petitioner as well as the management.

11 However, it is surprising to note that the Dy. Director of Education again acted in a most cavalier and casual manner. After recording the stand as has been brought before him, the management was specifically asked to produce the resolution in relation to Shri V.B. Kale being posted in the Junior college and about his lien, the Dy. Director recorded that the society had not passed any such resolution and in the year 2002, Shri V.B. Kale was given a letter to resume in the Smt. Gendibai Tarachand Chopda School, Chinchwad Pune. However, the petitioner Shri Dahiphale was already working as a teacher in English. In the said circumstances, Shri V.B. Kale was sent to Sou. Tarabai Shankarlal Mutha Kanyashala, Chinchwad. It is also clarified by the management before the Dy. Director of Education that Shri Kale imparted education in Sou Tarabai Shankarlal Mutha Shala Chinchwad and Shri

Sanghvi Kesari College, Chinchwad and the society had disbursed his salary. It is made clear by the management before the Dy. Director of Education that in the year 2004, Shri Kale was not qualified as he did not possess a M.A degree and therefore, no approval was sought in respect of appointment of Shri Kale. It is also clarified by the management that from the year 2002 till the Academic Year 2006-07, Shri Kale was working as in-charge Principal in Shri Sanghvi Kesari Mahavidyalaya Chinchwad. The Dy. Director of Education has noted the appointment of the petitioner with effect from 12th June 2003 along with Shri P.D. Hore, Mr.R.V. Waghmare, Sou.S.R.Gawli and Shri S.H Datir and the approval granted by the office of the Dy. Director of Education dated 26th February 2004. On consideration of the submissions specifically advanced by the petitioner before the Dy. Director of Education, that the post which he was holding was never filled in after the year 2006, the Dy. Director of Education recorded a finding and derived a conclusion that the petitioner was appointed from the Academic Session 2003-04 till the year 2005-06 every year along with 4 other teachers as full time teacher on non grant-

in-aid basis. The Dy.Director of Education has also recorded that all the five teachers so appointed in the year 2003-04 were granted approval for a period of one year and they have worked continuously from the academic session 2003-04 to 2005-06. However, Shri Dahiphale was not issued an order of appointment in the year 2006-07. The further conclusion drawn by the Dy.Director of Education is that Shri V.B. Kale did not possess M.A degree (second class) and therefore, he was not qualified to be appointed in the Higher secondary school and Shri V.B.Kale did not report back to Smt.Gendibai Chopda School for the academic session 2001-02, and there was no order permitting to retain his lien granted by the management. On the other hand, Shri Kale was appointed in Sou Tarabai Shankarlal Mutha Kanyashala in the year 2005-06 and this appointment was approved by the Dy.Director of Education. Resultantly, Shri V.B. Kale loses his right to a post of teacher in English in Gendibai Chopda School. The Dy.Director of Education also concluded that there is one post of English subject lying vacant and no roster is applicable to the institute which is a religious minority. Surprisingly, the Dy.Director of

Education has also concluded that the petitioner who has worked from the academic session 2003-04 and along with other teachers is entitled for the said post, but he was deprived of working on the said post with effect from 30th August 2006.

Inspite of such findings being recorded in favour of the petitioner, the Dy. Director of Education has completely lost sight of the observation made by this Court in its judgment dated 26th August 2011. This Court had categorically directed the Dy. Director of Education to consider the case of the petitioner and also directed the Dy. Director to grant relief in favour of the petitioner if it arrives at a conclusion that the petitioner was appointed in the year 2003-04 on par with Mr. Datir and other teachers. However, unmindful of recording to the effect that the petitioner was appointed in the year 2003-04 along with four other teachers, including Shri S.H. Datir, as a full time teacher, and that the claim of the management that Shri V.B. Kale had a lien over the post of English teacher in Gendibai Tarachand Chopda School was without basis, the Dy. Director of Education, has refused to confer the benefits on the petitioner on par with Mr. Datir and other teachers when this

Court had made it amply clear by its earlier order that in case the Dy. Director of Education concludes that the petitioner was appointed in the year 2003-04, similar to Mr.Datir and other teachers, then, his appointment should be approved as was done in case of other teachers, and the salary grants should be released in his favour. The Dy. Director of Education, inspite of carrying out the exercise in terms of the directions issued by this Court by its order dated 26th August 2011, has failed to grant the relief which the petitioner is legally entitled for being treated as a full time teacher from 12th June 2003. The petitioner is also entitled to be declared as a confirmed teacher on completion of the period of probation or even assuming the completion of three years period as Shikshan Sevak and he is entitled for being treated as a confirmed teacher in the respondent no.2 school from the date of his appointment. The petitioner was not conferred with the said benefits, in light of the wrong which compelled him to be entangled in a legal battle which he initially fought in the School Tribunal, which rejected his claim on two occasions by dismissing the appeal. However, the judgment passed by the School Tribunal on 19th

January 2010 came to be set aside by this Court on 26th August 2011 and the matter was re-directed to the Dy. Director of Education who also partly redressed his grievance. It is however, informed by Shri Bandiwadekar that the said order is not yet complied with though we are in the year 2018 and for no fault of the petitioner, he has been deprived of the benefits of the said order. The petitioner, in any case, cannot be said to be at fault and we would not have normally directed the State Government to pay the wages for the said period. However, this is a peculiar case where the petitioner, for no fault of his has been deprived of a gainful employment and we are constrained to fasten the liability on the Education Department for paying the back wages with all the consequential benefits accruing from his initial date of appointment i.e. 12th June 2003. The respondent no.3 is directed to release the grant in favour of the management so as to disburse the said salary of the petitioner and respondents are directed to clear the arrears of salary within a period of three months from today.

Writ Petition is allowed in the aforesaid terms.

Rule is made absolute accordingly.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)