

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

WRIT PETITION NO.9141 OF 2017

Shirur Shikshan Prasarak Mandal Petitioners
and Ors.

Vs.

Shri. Amrapal Ramesh Nitnavare Respondent

Mr. Vilas Babanrao Tapkir for the Petitioners.

Ms. Vaishali Nimbalkar, AGP for Respondent no.1.

Mr. V.S. Kapse I/by Mr. Pramod G. Kathane for Respondent no.2.

Coram : SMT. SADHANA S. JADHAV, J.

Date : 8th October 2018.

P.C.:

1 Heard. Rule. Rule made returnable forthwith with the
consent of the parties.

2 The petitioners herein impugns the judgment and order
dated 21st April 2017 passed by the School Tribunal, Pune thereby
allowing the appeal filed by the respondent herein.

3 By the said judgment, the learned School Tribunal has set aside the order of termination of the appellant and had further directed the petitioner to reinstate the appellant with full back-wages. The present petitioner was directed to comply with the order within one month from 21st April 2017. The present writ petition has been filed on 13th July 2017. The matter was adjourned at the request of learned counsel for the petitioners on 14th August 2017 and on 11th September 2017, this Court (Coram : Prasanna B. Varale, J.) had granted interim relief in favour of the petitioners on condition that they shall deposit an amount of Rs.1,00,000/- within three weeks. The said order has been complied with. The matter has remained pending for one and the other reason and mostly at the request of the learned counsel for the petitioner.

4 It was the case of the respondent before the Tribunal that the appellant therein i.e. the present respondent was otherwise terminated by the Management. The appellant had joined the

services w.e.f. 9th August 2007 on Clock Hour Basis. Thereafter he was appointed as Assistant Teacher on probation for a period of three years. He was teaching Physics. According to respondent no.2, he had become permanent in the service. The proposal was sent for confirmation as permanent teacher. That on 15th June 2016, the respondent no.2 was restrained from signing the muster-roll without showing any reason for the same. Since the same amounted to otherwise termination, the respondent no.2 had approached the School Tribunal. According to the petitioner, the respondent no.2 was appointed on Clock Hour Basis and his services were consolidated as and when exigencies had arisen. It was denied before the Tribunal by the Management that the respondent no.2 had put in continuous service for three years. It was also contended before the Tribunal that the respondent no.2 was not even appointed on probation and therefore, there is no question question of sending proposal for approval of appointment of the respondent no.2. Learned School Tribunal had meticulously gone through the reply and had considered all the documents on record and had allowed the

appeal holding that the otherwise termination is *void ab initio* and that the appellant i.e. the present respondent no.2 deserves to be reinstated.

5 It appears that in fact the Management-Petitioners had sent a proposal for approval of the post of the respondent no.2 to the Director of Education. The proposal was for individual approval. The proposal clearly indicated that the respondent no.2 was working as full-time teacher and teaching Physics on regular basis from 8th September 2010.

6 Learned AGP, upon instructions, submits that the Management i.e. the present petitioner has informed the Deputy Director of Education that the proposal, which was sent for approval of the present respondent no.2 in the first week of January 2016 need not be considered as the petition is pending in this Court. On one hand the order of the Tribunal has not been complied with and on the other hand, the petitioner is taking inconsistent stand at all

levels. The stand taken by the petitioner is not substantiated. In the eventuality of the respondent no.2 was not working as a permanent teacher teaching Physics, the proposal would not have been sent to the Deputy Director of Education. Learned AGP has further submitted upon instructions that the Management-petitioner had informed the Deputy Director of Education vide letter dated 28th March 2018 that in view of the fact that the petition is pending, the proposal for approval need not be considered.

7 Learned counsel for the respondent has vehemently submitted that as on today, the sanctioned posts in the petitioner's institution are 33 posts, whereas the 24 posts have been filled and as on 25th July 2017, 9 posts were vacant. The present respondent was appointed in the reserved category, which was vacant on the date of the appointment. Taking into consideration the above aspects, this Court is of the opinion that the petition being sans-merits deserves to be dismissed.

8 The respondent no.2 would be at liberty to file an application seeking withdrawal of the amount of Rs.1,00,000/- towards back-wages and the remaining back-wages shall be adjusted alongwith regular salary.

9 Respondent no.2 be reinstated by 22nd October 2018.

10 Respondent no.2 shall be accompanied by some representative of the office of the Deputy Director of Education, Pune on 22nd October 2018.

11 The petitioners shall reinstate the present respondent no.2 forthwith on 22nd October 2018 with full back-wages and regular salary to be paid.

12 The Deputy Director for Education, in view of the above discussion and the judgment of the Tribunal, which is being upheld shall consider the proposal of approval on-or before 31st October 2018.

13. Rule is discharged. The petition stands disposed of.

(SMT. SADHANA S. JADHAV, J.)