

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

WRIT PETITION NO. 606 OF 2017

Sou. Shilpa Rajesh Patil	]	
Age adult, Occupation Service,	]	
Address : At A-1/1004,	]	
Vasant Kabbyadwara Complex,	]	
Dhokali, Thane	]	<u>... Petitioner.</u>

Versus

- | | | | |
|----|---------------------------------------|---|--------------------------------|
| 1. | Vidya Prasarak Sanstha |] | |
| | Balkum, Thane, |] | |
| | Through its Chairman/Secretary, |] | |
| | Having office at - Balkum Naka, |] | |
| | Balkum, Thane. |] | |
| | |] | |
| 2. | The Headmaster |] | |
| | Vidya Prasarak Sanstha School, |] | |
| | Balkum Naka, Balkum, Thane. |] | |
| | |] | |
| 3. | The Education Officer |] | |
| | Secondary, Zilaprarisad Thane (West). |] | <u>... Respondents.</u> |

- Mr.Sandeep Mshra a/w. Mr.Prakash Mishra for the Petitioner.
- Mr.Sanjeev A. Sawant a/w. Mr.Abhishek Matkar for Respondent Nos.1 and 2.
- Mrs.Vaishali Nimbalkar, AGP for Respondent No.3-State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 7th DECEMBER, 2018.

JUDGMENT :

1] Heard learned counsel for the parties.

2] This Writ Petition takes an exception to the order dated 18/10/2016 passed by the Presiding Officer of the Addl. School Tribunal, Navi Mumbai, thereby dismissing Appeal No.27 of 2016 which was preferred by the present Petitioner under Section 9(1)(a) of *The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and Rules 1981* framed thereunder.

3] The Appeal was preferred by the Petitioner to challenge the order dated 30/11/2015 whereby her services were terminated by Respondent No.1-Education Trust in whose school she was working as "Assistant Teacher". According to her, her appointment was made in the year 2002-03 itself as against a clear and permanent vacancy in Respondent No.2, which is a recognized and aided school. The proposal for approval of her appointment was also sent to Respondent No.3-Education Officer on 23/05/2012. Despite that, her services came to be terminated by the letter dated 30/11/2015. Hence, being aggrieved she challenged the said order before the School Tribunal.

4] The stand taken by Respondent Nos.1 and 2, since beginning before the School Tribunal was that the appointment of the Petitioner was never made against the clear and permanent vacancy. Her appointment was also not of a permanent nature as such. Her services were engaged only on a temporary basis as and when required. It was submitted that she was also not qualified for the appointment in the primary section. Her services were also not continuous. They were only intermittently availed, as and when required as “Badli” employee. There was no procedure followed for her appointment *like* the advertisement, interview, selection etc. Moreover, for the period in between 2006-07 to 2009-10 she was working in another school by name Shri Halari Visa Oswal Vidyalaya and Junior College, Bhiwandi; whereas for the year 2010-11 and 2011-12 she was worked in the Junior College run by the Respondents.

5] Thus, it was submitted that every time when she was taken on temporary basis, her services were terminated by issuing due notice and as such she cannot challenge the termination letter dated 30/11/2015, which was issued as she even not turned up in the school from 30/08/2015 though on her application dated 15/06/2015 she was allowed to work in the school for the academic year 2015-16. According to the Respondents, she was also never appointed in the

recognized division of the school, as there was sufficient sanctioned staff for the said school. In the sum and substance, the contention of the Respondents is that as she was appointed merely on temporary basis and not continuously or against permanent vacancy and that too, in a un-recognized division, her appeal against termination of her services being without merits, needs to be dismissed.

6] The School Tribunal has accordingly accepting the contention of the Respondents and relying upon the decision of this Court in the case of *Ramkrishna Chauhan & Ors. V/s. Seth D.M. High School & Ors., 2013 (2) Bom. C.R.481*, dismissed her appeal.

7] Learned counsel for the Petitioner has challenged this order by submitting that the Petitioner has worked in the school of Respondents from the year 2002-03 till 2015. At one stage, the proposal for her appointment was also sent to Respondent No.3. The copy of the said proposal is also produced on record. It is urged that these two facts sufficiently establish that she is entitled to be made permanent in the said school and hence, her order of termination of her services cannot be called as legal and valid.

8] However, as rightly held by the Tribunal here in the case

the very appointment of the Petitioner to the said post is not at all against the clear and permanent vacancy. It was merely of a temporary nature from 2002-03. As and when there was requirement, her services were engaged and then at the end of academic year or in between, her services were terminated. She has accepted this appointment on temporary basis from year to year. In between for the year 2006-07 to 2009-10 she was not at all working in the school of the Respondents, but there is evidence on record to show that during that period she was working in Shri Halari Visa Oswal Vidyalaya and Junior College, Bhiwandi. Thereafter, may be she was taken on temporary basis but, that too, in the Junior College of the Respondents in academic year 2010-11 and 2011-12; and for the academic year 2012-13 to 2015-16 in secondary section of Respondents' school.

9] In view thereof, when she has accepted her appointment on temporary basis and worked there only intermittently and not continuously and in between for more than three to four years she had not worked there at all, then now it is not open to the Petitioner to contend that her appointment was on permanent basis or it was against the clear and permanent vacancy and hence, the termination of her service is illegal.

10] It is pertinent to note that her appointment was also not made by following due procedure *like* issuance of advertisement, interview and then the selection, so it was merely of an *Adhoc* basis as and when her services were required. In case of such employee who is engaged on temporary basis and not against the permanent vacancy, the law is well settled which is laid down by the Full Bench of this Court in the case of *Ramkrishna Chauhan (supra)*. In para No.24 thereof, it was held as follows:

“24) The other legal principle, which is indisputable, is that, if the parties accept the terms and conditions stipulated in the appointment order, later on, it is not open to the employee to challenge that appointment, being contrary to the Rules or on the ground that the terms and conditions stipulated therein were not legally valid. This legal position is restated in para 8 of Kalpataru Vidya Samasthe (supra). In the facts of the present case, it is noticed that the initial appointment of the Writ Petitioner, in the leading Writ Petition, was on temporary basis for a limited period. After his service was terminated, once again he was appointed in the following academic year, on the same post but, on temporary basis. When the said Petitioner was appointed in the succeeding academic years, he

had become fully aware about the terms and conditions of his initial appointment, yet he continued to be in the employment, without any demurer. Suffice it to observe that if the appointment order mentions that the appointment is on temporary basis or for a limited period, it is not open to the employee to assume that he was appointed on probation against permanent vacancy, nor it is open to the School Tribunal or the Court of law to assume that fact. That is a question of fact to be pleaded and proved in appropriate proceedings, on case to case basis. We hold that there is no legal fiction or deeming provision that every appointment made against the permanent vacancy, is deemed to be on probation, though the Management makes that appointment on temporary basis, having found that the candidates appeared in the selection process were unsuitable.”

11] It is pertinent to note that in this reported judgment even though the appointment was made may be on temporary basis but against the permanent vacancy, despite that it was held that if a person accepts the conditions stipulated in the appointment letter, later on, it is not open to such employee to challenge that appointment, on the ground that the said appointment was against the Rules and it

was not on a temporary basis.

12] In this judgment, the Full Bench of this Court has also held that the scheme of MEPS Act and the Rules in no way forbid the Management to appoint a duly qualified person on temporary basis for a limited duration. It was held that inherent powers of the Management to make appointment on contractual basis is neither expressly nor impliedly taken away by law. Moreover, there is no presumption that every appointment made against the permanent vacancy is to be regularized or absorbed, as the Management can appoint a person on contractual basis, even against a permanent vacancy. Here in the case, if the appointment of the Petitioner was clearly on a temporary basis, as a “Badli” employee, she cannot be treated as a permanent employee and hence, she cannot be entitled to contend that the termination of her services was illegal.

13] Learned counsel for the Respondents has also relied upon the judgment of this Court in the case of *Bhartiya Adiwasi Shiv Shikshan Sanstha, Garada & Anr. V/s. Premdip s/o. Sahdeo Bodele & Ors., 2010(6) All MR 302*, wherein it was reiterated that, if the appointment is not made by following due procedure laid down in the Act and if the employee does not fulfill the criteria in respect of

securing the appointment as laid down under the provisions thereof, then he is not entitled to seek protection of his service.

14] In the another judgment of this Court in the case of *Anna Manikrao Pethe V/s. Presiding Officer, School Tribunal Amravati & Ors., 1997(3) Mh.L.J.697*, also it was held that temporary appointees are not entitled to claim permanent status unless such permanent vacancy is filled in as per Section 5 of the Act. Such temporary appointees cannot have any grievances.

15] Thus, the law is fairly well settled that when the appointment is made purely on temporary basis and without following the due procedure for recruitment, such employee who has accepted the appointment cannot claim the protection of his service.

16] Here in the case, it is pertinent to note that neither the appointment of the Petitioner was made against the permanent vacancy, nor it was made by following due procedure, nor the Petitioner possesses the requisite criteria, nor her services were also continuous. In such circumstances, there is hardly any substance in the grievance raised by the Petitioner against the termination of her service.

17] Writ Petition, therefore, being without merits, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]