

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

901 WRIT PETITION NO.6006 OF 2019

AURANGABAD SILK MILLS EDUCATION SOCIETY THROUGH SECRETARY
ZIA AHMED KHAN GULAM ALIKHAN AND ANOTHER
VERSUS

SHARADKUMAR BHASKAR MAHAJAN AND ANOTHER

...
Advocate for Petitioner : Shri Nikam Prashant K

CORAM : ANIL S. KILOR, J.

DATE : 30th August, 2019

ORDER:

1. Heard Shri Nikam, learned counsel for the petitioners.

2. In the present matter, the petitioners have challenged the judgment and order dated 02.11.2016 passed by the Presiding Officer, School Tribunal, Aurangabad Division Aurangabad in Appeal No.01/2016, allowing the appeal preferred by respondent No.1 herein challenging his otherwise termination as Assistant Teacher dated 27.11.2012 based on resolution passed by the petitioner management dated 26.11.2012, taking into consideration complaints of a girl student and the teachers.

3. Shri Nikam, the learned counsel for the petitioners submits that behaviour of respondent no.1, who was absorbed in the petitioner's school, was not good and there were complaints by the staff members of the school and even there was serious complaint of a girl student. He further states that considering the behaviour and

complaints against respondent no.1, the action of relieving respondent no.1 was taken by the petitioner management. He further points out that the management thereafter, vide letter dated 26.09.2013, requested the Education Officer to absorb some other teacher in place of respondent no.1 in the petitioner's school.

4. The learned counsel for the petitioners fairly admits that there are two categories of teachers under Rule 10 of the Maharashtra Employees of Private School (Condition of Service) Rules, 1981, namely, permanent and non permanent and as far as respondent no.1 is concerned, he is a permanent teacher.

5. That since respondent no.1 is a permanent teacher and there is no dispute about it, the management ought to have followed the procedure before terminating services of respondent no.1, more particularly, the procedure prescribed under Rules 36 and 37 of the MEPS Rules. Admittedly, no enquiry was conducted by the petitioner management and without holding any enquiry and without giving opportunity to respondent no.1 to disprove the charges levelled against him, the petitioner management directly terminated the services of respondent no.1 which is not permissible in the eyes of law.

6. The learned counsel for the petitioners further argues that respondent No.1 is not interested in working in the petitioner school and he himself requested to the Education Officer to absorb him in some other school. In the present matter, this Court cannot consider this argument because, it is the prerogative of the Education Officer whether to accept the request of respondent no.1 for absorption or not.

7. The School Tribunal, while dealing with the matter, has passed reasoned order and observed in clear terms that respondent no.1 is permanent employee and no procedure was followed by the management while terminating services of the permanent employee as prescribed under the MEPS Act and Rules. In the said backdrop, I am of the considered view that there is no legal infirmity or error committed by the School Tribunal while allowing the appeal preferred by respondent no.1 against the petitioner management and the school.

8. The writ petition is accordingly dismissed. No order as to costs.

(ANIL S. KILOR, J.)

JPC