

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

WRIT PETITION NO.4161 OF 2003

Anil Tulshiram Ingle

Resident of Shantaram Jadav Chawl,

Kojgaon, Ambarnath (W),

Dist. Thane

.. Petitioner.

Vs.

1. The Secretary

Shishu Vikas Sanstha

570, Smruti, Kher Section,

Ambarnath (W), Dist.Thane

..

2. The Head Master

Madhyamik Vidyalay,

570, Smruti, Kher Section,

Ambarnath (W), Dist.Thane

..

3. The Education Officer,

(Secondary)

Zilla Parishad, Thane

..

4. The Presiding Officer,

School Tribunal

Navi Mumbai

.. Respondents.

Ms.Sonali Humane for the Petitioner.

Mr.A.A.Garge for the Respondent Nos.1 and 2.

Ms.M.S. Bane AGP for the State.

CORAM : A.K. MENON, J.

DATED : 3RD JANUARY, 2019

JUDGMENT :

1. The challenge in this petition is to the judgment and order dated 3rd August, 2002 passed by the School Tribunal, Navi Mumbai in Appeal No.89 of 1999. The impugned judgment rejected the appeal of the petitioner.
2. The facts in brief and as summarised in the impugned judgment and order are as follows : The petitioner was holding qualification of B.Sc B.Ed and is believed to be a qualified teacher. He was belonging to OBC, Lewa Patidar caste. He was appointed as an Assistant Teacher apparently on leave vacancy by Respondent No.1, who manages the affairs of Respondent No.2 – school. The school is stated to be an aided school. The appointment of the petitioner was from 4th January, 1998 in the Respondent No.2- school with effect from 5th January, 1998 to 30th April, 1998 when his services were discontinued.
3. Thereafter, he was appointed on 18th June, 1998 for the academic year 1998-99. Thereafter the petitioner's services were terminated by an order dated 31st March, 1999.
4. According to the petitioner, he was to be continued in service during the academic year 1999-2000 as well. The impugned judgment and order records that the petitioner had filed Daily Diaries which showed entries upto 14th July, 1999. Although he worked in the school upto 14th July, 1999, his services were orally terminated with effect from 15th July, 1999. The petitioner being aggrieved by the order of termination dated 15th July, 1999,

filed an appeal before the School Tribunal being Appeal No.89 of 1999 on or about 26th July, 1999. The grounds on which he challenged the termination of 15th July 1999 are inter alia that the services of the petitioner are protected under section 4(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. He was appointed on a clear and permanent vacancy and was a deemed probationer under section 5(2) of the Act. As far as his work was concerned there were no adverse remarks and being a probationer, his services could not have been terminated without assigning any reasons. Moreover, by virtue the petitioner belongs to the OBC category which is listed under Rule 9(7) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, he became a deemed probationer from the date of appointment. His services could not have been terminated without holding an enquiry and without due notice or giving valid reasons especially since his services have been approved by the Education department.

5. The respondents had filed their say and had contested the petitioner's claim, who had been appointed till July 1999. It is the case of the respondents that the petitioner was not in service during the academic year 1999-2000 since his services have already been terminated on 29th April, 1999 and his services were approved by respondent no.3 only for the academic year 1998-99.

6. Learned counsel for the petitioner submitted that the appointment of

the petitioner was on permanent basis and not temporary appointment as contemplated. Ms.Humane, learned counsel for the petitioner invited my attention to Exhibit-B to the petition viz. under Rule 9(5) of the Rules. The order appears to be undated and reveals that it is addressed by the Respondent No.2 to the petitioner. Paragraph 2 states that the petitioner's appointment is purely temporary, however, order of appointment in form schedule "D" the period is not mentioned.

7. It was, therefore, submitted that a reading of the appointment order would indicate that the appointment was on probation for a period of two years and that services of the petitioner could not have been terminated prior to expiry of the period of probation especially since no enquiry has been conducted and there is no allegation made against him. Learned counsel for the petitioner therefore submitted that the Tribunal had erred in concluding that the appeal has no merit.

8. In the course of submissions and on perusal of the impugned order it was revealed that the petitioner's services had already been terminated on 29th April, 1999 and that even earlier, services of the petitioner were terminated not only on 29th April, 1999 but also on 30th April, 1998 and that both these instances of termination of services were not challenged at material time.

9. The first termination was referred to by the Tribunal which in its order records that when the petitioner was not appointed as the Assistant

Teacher, the question of termination of services on 15th July, 1999 does not arise. When the initial appointment came to an end by efflux of time, the subsequent appointment was made only for one academic year. The first appointment was against a leave vacancy and this point has not been disputed in the course of submissions made today.

10. The impugned judgment records the contention of the respondents that the appellant-petitioner had never applied for the post of Assistant Teacher for the academic year 1999-2000 and therefore the contention of the appellant-petitioner that he was in service in the academic year 1999-2000 was a baseless one and there was no documentary evidence in support of this contention. The respondent-management had produced the daily attendance muster which was required to be signed by each teacher attending the school and it is not in dispute before me that muster produced clearly discloses that the petitioner had not attended duties in school after 14th July, 1999. Obviously, the contention of the petitioner that he was in services till academic year 1999-2000 could not be sustained.

11. Furthermore, it is matter of record that on or about 5th July, 1999 the respondent-school had advertised in the newspapers inviting applications for the post of Head Master of School. The petitioner had applied to the respondents in response to the said advertisement and also appeared for the interview. Therefore, it is obvious that the petitioner was not in service during the academic year 1999-2000 having applied for the post of

Head Master during the said academic year. It was evident that the petitioner was not interested in working as Assistant Teacher since he had made an application for the post of Head Master in or about 5th July, 1999. The impugned order passed on the pleadings framed the following issues :

- | | |
|---|------------|
| 1. Whether the impugned order of oral termination | In the |
| dated 15.7.1999 is liable to be quashed and set aside ? | negative |
| 2. What order ? | Appeal is |
| | dismissed. |

In the course of passing the impugned order, the Tribunal had observed that it is not in dispute that the petitioner as a qualified teacher was appointed in a leave vacancy from 5th January, 1998 and 30th April, 1998 and thereafter considered for fresh appointment as Assistant Teacher with effect from 18th June, 1998.

12. Apropos contention of the petitioner that he was appointed on probation for a period of two years, it will be necessary to read clause (ii) in its entirety.

“2. Your appointment is purely temporary for a period of _____ months/years from _____ to _____ in the leave/deputation vacancy. After expiry of the above

period, your services shall stand terminated without any notice OR your appointment is on probation for a period of two years."

13. I may mention here that in the aforesaid paragraph 2 "leave/deputation" appear to be struck off but there is no authentication of this deletion. Moreover, the underlined portion above has been ticked but not authenticated. Prima facie it is not an authorised alteration.

14. It can be seen that the appointment although intended to be for an unspecified period, his services were to stand terminated without notice on expiry of that period. The fact, however, remains that after expiry of initial period from 5th January, 1998 to 30th April, 1998 the petitioner was considered for fresh appointment. However, his appointment could have been subject to approval of respondent no.3 and it is not in dispute that no such approval was forthcoming for the subsequent appointment. The contention that appointment of the petitioner was on probation cannot be accepted and rightly so as observed in the impugned order, which records that sufficient opportunity was given to the parties to file necessary documents and yet there is no documentary evidence produced in support of the petitioner's case that he was appointed as a probationer and therefore his services could not be terminated, save and except after holding an enquiry.

15. The parties also led evidence and the impugned order holds that the petitioner's deposition that he was employed during the academic year 1999-2000 was not believable since it was not corroborated by the documentary evidence. The daily diary entries sought to be produced were denied by the respondent. Furthermore, the appointment of the petitioner right from inception has not been approved on the basis of probationary period and the petitioner has not pursued his case with the respondent in respect of such approval on alleged probationary basis which is now been pressed into service. The petitioner also did not establish his daily attendance from the muster roll which he could have called for to establish the factum of having rendered services after 14th July, 1999.

16. In my view the impugned order correctly concluded that the petitioner has failed to prove that he has rendered services upto 14th July, 1999. Moreover, it is not in dispute that the petitioner himself applied for the post of Head Master pursuant to advertisement dated 5th July, 1999. Thus, taking an overall view, it cannot be said that the impugned order of the School Tribunal can be faulted. The conclusions of the Tribunal are, therefore, well founded.

17. In the course of submissions, learned counsel for the petitioner placed reliance on the observations of the Supreme Court in case of *Progressive Education Society and Anr. vs. Rajendra and Anr.*¹ and invited

¹ 2009 (3) SCC 310

my attention to paragraph 15 that the law regarding termination of the services of a probationer is well established and it has been repeatedly held that such a power of termination lies with the appointing authority which is at liberty to terminate the services of a probationer, if it finds that the probationer's performance is unsatisfactory during the period of probation, however, such assessment has to be made by the appointing authority itself. In the present case, I do not see how this judgment is of any assistance to the petitioner. Admittedly, the communication dated 31st March, 1998 issuing 30 days notice to be effective from 30th April, 1998 has not been called upon. The question of cessation of employment during leave vacancy which was for the period upto 30th April 1998 and subsequent notice dated 31st March, 1999 (Exhibit-C) to the petition have not been called into question. For the aforesaid reasons, the challenge to the impugned order cannot succeed. Hence, I pass the following order :

- (i) Writ petition is dismissed.
- (ii) No costs.

(A.K. MENON,J.)