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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 458 OF 2019**

The Poona Shaikshan Sanstha

.....Petitioner

V/s.

Mr. Ramu Thavru Chavan and others

.....Respondents

Mr. Vipul K. Bodhare for the Petitioner

Mr. S. B. Deshmukh for respondent no. 1

CORAM : NITIN W. SAMBRE, J.**DATE : JULY 16, 2019.****P.C.**

Heard the learned counsel for the petitioner and respondent no. 1.

2 Petition is directed against the Judgment dated 22/11/2018 passed in exercise of powers under Section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (Hereinafter referred to as 'the Act' for the sake of brevity) and the Rules framed thereunder. School Tribunal Pune in Appeal No. 42

of 2015 directed the petitioner-management to reinstate respondent-employee on the post of peon thereby setting aside the termination dated 02/01/2013 of the respondent with full back wages. As such, this petition.

3 The learned counsel for the petitioner has made two fold submissions; (i) that respondent employee who claimed to have been appointed on 16/06/2008 tendered his resignation on 30/04/2009 and as such, there is no question of his oral termination and consequential order of reinstatement with full back wages; (ii) Even if presuming that respondent was appointed as Peon, the Full Bench of this Court in the matter of **Ramkrishna Vs. Seth D. M. High School and others [2013 (2) Mh.L.J.]** has held that even against a clear vacancy, management has every authority to appoint a person on temporary period. As such, appointment of the respondent has to be considered for a temporary period and as such there is no question of termination of service. According to learned counsel for the petitioner, in view of above, order impugned is not sustainable.

4 *Per contra* the learned counsel for respondent submits that Tribunal has considered rival submissions of the parties and has recorded finding of fact that recruitment of the petitioner was for a period from 2004 and his services were terminated on 02/01/2013. According to him, once it was demonstrated that respondent was an approved employee, termination should have been preceded with an enquiry whereas in the case in hand, services are simplicitor terminated. As such, order in Appeal is just and proper.

5 Considered rival submissions.

6 The petitioner-management has produced on record the approval letter issued by the Education Officer, Secondary, Zilla Parishad, Pune dated 21/10/2008. The said approval was issued pursuant to proposal submitted by the petitioner-management on 21/10/2008 seeking approval to the appointment of various teaching and non-teaching staff. Some of the staff whose approval are sought are working since 2005 whereas respondent-employee is shown to have been working from 16/06/2008. Alongwith

respondent-employee, there are other three teaching staff shown to have been working to whom approval was granted by the Education Officer. The approval in question is against a clear vacancy.

7 The fact remains that, had it been a case that the respondent would have been appointed by the petitioner, either on a contract or on temporary period, same would have been reflected in the order of grant of approval thereby restricting the period of approval.

8 The fact remains that the petitioner since intended to canvass that the post on which the petitioner was appointed, was on temporary basis, the burden is on the petitioner to prove the same. Admittedly the petitioner has not produced or demonstrated from the office copy of the appointment order which is in their custody thereby demonstrating that the petitioner was appointed either on contract basis or only for a temporary period.

9 In the aforesaid background, the Tribunal has proceeded to analyse the evidence which was brought on record and has noticed

that on 19/09/2009, respondents issued a memo thereby calling upon him to remain present before Head Mistress in the matter of certain complaints preferred by him. That being so, there is sufficient material on record of the Tribunal which has prompted to form an opinion that appointment of the petitioner was against a clear vacancy and he was in the permanent employment of the petitioner.

10 In the aforesaid background, the contention that appointment of respondent was on a temporary basis is rightly rejected by the Tribunal. The next submission of the learned counsel for the petitioner is, though respondent-employee has tendered resignation on 30/04/2009. Section 7 r/w Rule 40 of the Act prescribed procedure in case if an employee of recognized school intend to tender resignation, particularly in case if, he is an approved employee.

11 The rituals provided under the said provisions are not at all adhered to by the management. The petitioner-management has

neither issued notice nor paid him salary thereby compensating notice period before accepting the resignation. The resignation was claimed to have been received by-hand whereas Rule contemplates that such resignation be forwarded by registered post.

12 All these shortfalls prevailed before the Tribunal in rejecting the theory put forth by the petitioner-management.

13 In the wake of above, in my opinion, no interference is called for in supervisory jurisdiction.

14 As such, petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]