

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION 1997 OF 2002

Smt. Vidya Shantilalji Patni
Aged 39 years, occu: service
R/o C/o P.M. Fursule
'Bhushan' Plot No.16, Shilpa nagar,
Padampura,
Aurangabad

Petitioner

versus

- 1 Marathwada Shikshan Prasarak Mandal,
(Through Its Secretary:
Shri Madhukarrao Mule)
Nedar Chelipura School,
Railway Station road,
Aurangabad
- 2 The Principal,
Deogiri Mahavidyalaya,
Aurangabad
- 3 The Deputy Director,
Vocational Education and Training,
Aurangabad Division,
Aurangabad
- 4 The State of Maharashtra
High Court of Judicature
of Bombay Bench at
Aurangabad

Respondents.

Ms. P.S. Talekar advocate for the petitioner
Mr. S.A. Patil h/f Mr. V.D. Salunke advocate for respondents No.1 & 2
Mr. A.S. Shinde, Assistant Govt. Pleader for respondents No.3 and 4.

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CORAM: ROHIT BABAN DEO, J.

Date: FEBRUARY 14th, 2020

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ORAL JUDGMENT

1 The petitioner is assailing the Judgment dated 24.4.2002 rendered by the Presiding Officer, School Tribunal, Aurangabad (tribunal) in appeal No.124/1998 whereby the appeal preferred

by the petitioner, challenging her termination w.e.f. 2.7.1998 is dismissed.

2 At the very outset, the learned counsel for the petitioner Miss Talekar fairly states that, the petitioner secured a suitable employment during pendency of the petition and that she would not, therefore, claim either reinstatement or back-wages. The submission is, that the petitioner is interested in a declaration that the termination is illegal and relief of continuity of service.

3 The petitioner contends that she holds the qualification M.Sc.(Physics) with Electronics in addition to B.Ed. and I.T.I. The petitioner applied for the post of Instructor in vocational course in response to the advertisement in the daily Lokamat. She was interviewed and appointed as Instructor in Electronics vide order dated 22.7.1987. The petitioner contends that she worked for more than 10 years as Instructor in vocational course in Electronics in the permanent and clear vacancy. The petitioner contends that since she was appointed in permanent and clear vacancy and is duly qualified, in view of the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulations Act 1977 (MEPS Act) and Rules framed thereunder, she is deemed to be a permanent employee.

4 Perusal of the written statement filed on behalf of the management would reveal that the appointment of the petitioner

is not in dispute. The management contends that, the appointment was purely temporary and that the petitioner was not appointed in permanent sanctioned post. The further submission is that the post to which the petitioner was appointed is non-aided. The management further submits that the petitioner was not terminated as is alleged and as a fact, she remained absent.

5 Perusal of the judgment of the tribunal would reveal that the tribunal made out a case which is not even pleaded or argued by the management. The tribunal perused the copy of the appointment order dated 22.7.1987 and observed that the said document did not bear the signature of the Principal. Surprisingly, the tribunal observed that the appointment letter did not appear to be genuine. This is the main ground, on which the appeal is dismissed. Additionally, the tribunal noted that the petitioner has not placed on record approval to her appointment.

6 The judgment of the tribunal is manifestly erroneous. The management did not dispute the appointment of the petitioner. *Au contraire* the record reveals that the management, as a fact submitted a proposal, seeking approval to the appointment of the petitioner. The issue is not whether the proposal is forwarded or whether the approval ought to have been granted. Obviously, if the post is not receiving grants, there is no

requirement of obtaining an approval. It is well settled that neither the Act nor the Rules envisage approval. Seeking approval is a requirement to demonstrate the entitlement to grant. It is further well settled that the service of an employee cannot be terminated for want of approval.

7 The management contends that the petitioner remained un-authorizedly absent. However, if the petitioner did remain absent, a departmental enquiry ought to have been conducted.

8 Viewed from any angle, the judgment impugned is unsustainable and is set aside.

9 The termination of the petitioner w.e.f. 2.7.1998 is declared illegal. The petitioner shall be entitled to continuity in service. However, no relief of reinstatement or back-wages is granted since the said relief is given-up by the petitioner.

10 Rule is made absolute in the afore-stated terms.

(ROHIT BABAN DEO, J)