

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.8683 OF 2018

Brothers of St. Martin through its President Mr. Sujeet Kumar C/o St. Martin Hindi High School
and another.

Vs.

Ratnaprabha Bharatrao Deshmukh and another.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. Zia Quazi, Advocate for petitioner.
Mr. P. N. Shende, Advocate for respondent no.1.
Mr. H. D. Dubey, AGP for respondent no.2.

CORAM : AVINASH G. GHAROTE, J.

DATE : MARCH 05, 2020.

1. I have heard Mr. Quazi, learned counsel for the petitioner and Mr. Shende, learned counsel for the respondent.

2. The present petition challenges the judgment dated 3rd of December, 2018 passed by the School Tribunal, Nagpur in Appeal No.11/2017, on an application filed under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 whereby the termination dated 01.08.2015 of the respondent, was set aside and direction to reinstate the respondent with continuity and back-wages has been issued.

3. There is no dispute that the respondent was appointed on 30.06.1999 as an Assistant Teacher with the

petitioner, and was in employment till her oral termination on 01.08.2015, which is nearly a period of 16 years.

4. It is contended that the appointment of the respondent was not in a clear permanent vacancy due to which approval was not granted by the Education Officer, however, the fact remains that the petitioner continued with the services of the respondent, for nearly 16 years as indicated above, therefore, the contention in this regard, does not hold any water. It is an admitted position, that the petitioner is a minority institution, which being the case, the law permits a lot of leeway in the matter of appointment and the service conditions.

5. It is further contended that the appointment of the respondent was not by the school committee but was by the president of his own, in light of which, there is violation of the mandate of Rule 9(2) of the M.E.P.S. Rules. The petitioner, cannot be permitted to approbate and reprobate. The petitioner having appointed the respondent, by the appointment order dated 30.06.1999, at Annexure – 3, and having continued such employment for a period for 16 years cannot now be heard to raise a plea, that the appointment was not within the knowledge of the school committee, more so when the appointment was as a teaching staff, in which capacity the respondent, was taking classes of the students.

6. It is further contended that the appointment was without an advertisement and consequent interview, in light of which, also the appointment was illegal and therefore, was rightly terminated. As already observed above, the petitioner being an un-aided minority institution, the strict rigor as contained in the provision of Rule 9 (7) to 9 (10) of the M.E.P.S. Rules, are not applicable to the same. This view is fortified by the dictum in **Dr. Antonio Da Sil Va Technical High School and Junior College, Mumbai and another Vs. State of Maharashtra and others 2015 (6) Mh, L.J. 399**, in light of which, the plea as advance in this regard is clearly unsustainable in law.

7. The further contention, that the burden of establishing that the appointment was as per the Rules was on the respondent, by relying upon **Rayat Shikshan Sanstha and others Vs. Yeshwant Dattatraya Shinde 2009 (6) Mh. L.J. 476**, is clearly misplaced, for the same reason as above, that the petitioner is an un-aided minority institution, apart from which in the instant case, the order of appointment dated 30.06.1999, appoints the respondent on probation for a period of two years, on the expiry of which the regularisation, is deemed to be consequential, as provided Section 5(2) and (2A) of the M.E.P.S. Act.

8. It is to be noted that in the instant case there is no dispute as to the qualifications of the respondent, entitling her

to be appointed to the post of Trained Graduate Teacher.

9. The School Tribunal in his judgment has therefore rightly considered the entire position, in light of which the impugned judgment cannot be faulted with. The petition is therefore dismissed without any costs.

JUDGE

Sarkate