

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

WRIT PETITION NO. 3427 OF 2019

- 1] The Suwarta Alliance Ministries Trust
Nandurbar, Near Panchayat Samiti
Girls Hostel, Church Compound,
Dist.Nandurbar through its Chairman.
- 2] The Principal
S.A. Mission Primary School,
Nandurbar, Tq. and
District Nandurbar

**..PETITIONERS
[Orig.Res.Nos.1 and 2]**

VERSUS

- 1] Shri Shweta Shrish Dalage,
Age : 34 years, Occu. Service,
R/o : S.A.Mission High School
Compound, Ashirwad Colony,
Nandurbar, Tq. & Dist.Nandurbar
- 2] The Education Officer (Primary)
Zilla Parishad, Nandurbar,
Tq. and District Nandurbar.
- 3] Archana Shamuvel Charvatur,
Age : 38 years, Occu : Service
R/o : S.A.Mission Primary School,
Bungalow, Khetiya Road, Shahada
Tq.Shahada, Dist.Nandurbar

[Orig.Appellant]

[Orig.Res.No.3]

[Orig.Res.No.4]

..RESPONDENTS

...

Mr. A.B.Girase h/f Y.B.Golkar, Advocate for the petitioners

Mr. Sachin Deshmukh, Advocate for respondent No.1

Mr.V.S.Choudhari, Advocate for respondent No.2

Mr. L.S.Mahajan, Advocate for respondent No.3

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CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 26.08.2021

JUDGMENT PRONOUNCED ON : 07.09.2021

JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. The learned advocates for the respondents waive service. With the consent of both the sides the matter is heard finally at the stage of admission.

2] The petitioners, a Management and its school, are invoking the powers of this Court under Article 227 of the Constitution of India to question the judgment and order passed by the School Tribunal, Nashik Region, Nashik in an Appeal preferred by the respondent no.1 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as Act) whereby her appeal was allowed. The order of her termination issued by them was quashed and set aside with a further direction to reinstate her with consequential benefits.

3] In nutshell the dispute is only as regards the inter se seniority of the respondent no.1 and the respondent no.3, the junior between them being liable for termination in view of reduction of classes due to fall in number of pupils as contemplated under Rule 26 of the Maharashtra Employees of

Private Schools (Conditions of Service) Regulation Rules, 1981 (hereinafter referred to as the Rules). There is not much of a dispute in respect of the rest of the facts.

4] The respondent no.1 was appointed as a Shikshan Sevak by the appointment order dated 17/11/2011 and she joined in the school being run by the petitioners at Mulandwad on 18/11/2011. The respondent no.2 Education Officer also granted approval to her appointment on 27/3/2012. The respondent no.2 was appointed on 25/4/2012 and the respondent no.2 granted approval to her appointment as Assistant Teacher on 27/4/2012. There is also not dispute about the fact that due to fall in the number of pupils one post of Assistant Teacher had to be reduced and by the order of the Management dated 18/2/2013 served upon the respondent no.1 on the same day her services were terminated with immediate effect. It is this order that was challenged before the School Tribunal in the Appeal.

5] The stand of the respondent no.3 in that Appeal was to the effect that though she was given a fresh appointment on 25/4/2012, she was already in the employment of the same Management but in a different school, since 15/6/2005. She had already completed her probation period and the probation period of the respondent no.1 was still to be completed before approval was granted to the appointment of the respondent no.3 on 27/4/2012.

6] The learned advocate Mr.Girase would submit that the petitioners run several schools at different locations, some of the schools are being run on permanent non-grant basis whereas some of the schools receive grants. Since

respondent no.3 has been appointed in one such schools of the petitioners since 2005, she was indeed senior to the respondent no.1 and when one post of Assistant Teacher was reduced, the respondent no.1 being the junior most, she was liable to be retrenched, and there was no error. He would submit that the learned Presiding Officer of the School Tribunal has not appreciated the facts and circumstances and has deduced inferences without any basis. The respondent no.1 was still to complete her probation period of 3 years and could not have been treated at par with the respondent no.3 who was in the permanent employment. He would submit that even if a combined seniority list is prepared in respect of the employees of all the schools being run by the petitioner No.1 Management, still the scenario would not change as the respondent no.3 was appointed in the year 2005 much before the appointment of the respondent no.1. He would submit that the impugned order is grossly erroneous and is liable to be quashed and set aside.

7] The learned advocate for the respondent no.3 adopted the submissions of the learned advocate for the petitioners.

8] The learned advocate Mr.Deshmukh for the respondent no.1 submitted that she was duly appointed against a vacant post by following due procedure and after undergoing regular recruitment process. He would submit that in the seniority list which was brought on the record for the years 2009-2010 and 2010-2011, name of the respondent no.3 never appeared. However, with a *mala fide* intention, by resorting to forgery an order of approval of her was procured and on that basis her name was included in the seniority list of the year 2012-2013. Even in that seniority list her date of appointment is shown to be 25/4/2012 whereas the respondent no.1 was appointed prior thereto

on 18/11/2011. Therefore, the action of the petitioners to terminate the respondent no.1 by pretending that the respondent no.3 was senior to her, was absolutely illegal and has been rightly noticed and remarked by the learned Presiding Officer.

9] The learned advocate Mr.Deshmukh would also submit that even if it is held that the petitioners were entitled to retrench the respondent no.1, they ought to have followed the mandate of the Rules and particularly Rule 26, however even without giving any notice or salary in lieu of the minimum period, the services have been terminated abruptly. He would therefore submit that having considered all the facts and circumstances and the record, the Presiding Officer has reached an appropriate conclusion which cannot be questioned and the Writ Petition may be dismissed and an action be directed to be initiated against the petitioners and the respondent no.3 for indulging in forgery.

10] I have carefully considered rival submissions, the impugned judgment and order and the record and proceedings. As is mentioned earlier except the inter se seniority, the rest of the facts stand admitted. So far as that dispute is concerned, the whole reliance of the petitioners and the respondent no.3 is on the basis of the fact that the respondent no.3 was already in the employment of the petitioners in a school that was being run on permanent non-grant basis since the year 2005. However as can be seen from the seniority list, which was produced before the School Tribunal, name of the respondent no.3 never appeared in the seniority list of the years 2009-2010, 2010-2011 and 2011-2012. If really she was in the employment of the petitioner No.1 Management at some school since 2005, her name would have certainly appeared

somewhere in these seniority lists. For the first time her name appeared in the seniority list of the year 2012-2013 and even in that her date of appointment is shown to be 25/4/2012 whereas admittedly the respondent no.1 has been in the employment since 18/11/2011.

11] Again, even in the letter issued by the respondent no.2 granting approval to the appointment of respondent no.3 date of appointment is shown to be 23/2/2012 even though the Head Master of the petitioner no.2 had forwarded the letter for approval by mentioning that she was in the employment of the petitioners since 15/6/2005. As has been carefully noticed by the learned Presiding Officer two orders apparently issued by the same Education Officer were produced on the record, in one of which her date of appointment is shown as 25/6/2005 and in another it was shown as 27/4/2012. It was rightly noticed that the scale of the two posts mentioned in both these approval lists was also different. It was also noticed that in the disputed approval letter dated 23/2/2012 there was no reference to any proposal having been received from the petitioners for granting approval. The learned Presiding Officer has therefore rightly expressed a serious doubt about genuineness of the approval dated 23/2/2012, referring to the date of appointment of the respondent no.3 as 15/6/2005.

12] Again the learned Presiding Officer also rightly considered as to how the respondent no.3 has been coming with inconsistent version regarding the date of her initial appointment. The Presiding Officer has referred to the application of the respondent no.3 dated 7/4/2012 wherein she mentioned that she was appointed as an Assistant Teacher on 13/6/2006. It was also correctly remarked that if the respondent no.3 was already in the employment

of the petitioners there was no reason why she had to appear for an interview on 23/4/2012. All her documents were also verified in the year 2012. If she was already in the employment there was no need of such reverification of the documents. It is based on all such facts and circumstances that the Presiding Officer has reached quite reasonable and sustainable conclusion that there is a serious loophole and doubt in the case being put forth by the petitioners and the respondent no.3 about the latter being senior to the respondent no.1. Once having reached such conclusion, the ultimate conclusion drawn by the learned Presiding Officer was inevitable.

13] Besides, even if it is assumed that by virtue of fall in the number of pupils and reduction of establishment the petitioner was entitled to retrench the respondent no.1, still as pointed out by the learned Presiding Officer it was imperative for the petitioners to have followed the mandate of Rules 26 to 28 which they have miserably failed to follow. Therefore the impugned order of termination by which the respondent no.1 was terminated with immediate effect on the date of the letter/order itself is illegal even on this count. Irrespective of the dispute regarding inter se seniority, the impugned order terminating the services of the respondent no.1 without following the Rules was indeed liable to be quashed and set aside and was rightly done so.

14] There is no perversity or arbitrariness in the impugned order passed by the Presiding Officer of the School Tribunal and in the absence of which, this Court cannot intervene in exercise of writ jurisdiction.

15] The Writ Petition is dismissed.

16] The Rule is discharged.

[MANGESH S. PATIL, J.]

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