

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

**LETTERS PATENT APPEAL NO.25 OF 2011
IN
WRIT PETITION NO. 4862 OF 2008 (D)**

APPELLANTS :

1. Yashwantrao Chavan Secondary Education School through its President, Rajegaon, Tahsil Sindkhed Raja, District Buldhana.
2. The Principal, Yashwantrao Chavan Secondary & Higher Secondary School and late Bhaskarrao Shingne Junior College, Rajegaon, Tahsil Sindkhed Raja, District Buldhana.

VERSUS

RESPONDENTS :

1. The Deputy Director of Education, Amravati Division, Amravati.
2. Laxman s/o Damodhar Morey, Resident of Bibi, Tahsil Lonar, District Buldhana.

Shri Kalyan Chiwarkar, Advocate h/f Shri Anand Parchure, Advocate for appellants.

Ms. S. S. Jachak, Assistant Government Pleader for respondent No.1.

Shri P. S. Patil, Advocate for respondent No.2.

**CORAM: A.S. CHANDURKAR AND
G. A. SANAP, JJ.**

DATE ON WHICH ARGUMENTS WERE HEARD : 04/10/2021

DATE ON WHICH JUDGMENT IS PRONOUNCED : 26/10/2021

JUDGMENT : (PER G. A. SANAP, J.)

1. In this Letters Patent Appeal, challenge is to the Judgment and order dated 20/12/2010 passed by the learned Single Judge in Writ Petition No.4862/2008, whereby the learned Single Judge set aside the Judgment and order dated 18/08/2008 passed by the Presiding Officer of the School Tribunal, Amravati. The School Tribunal, Amravati had rejected the appeal filed by the respondent No.2 for setting aside his termination and for his reinstatement.

The facts leading to the filing of this appeal are as follows :-

2. The respondent No.2 was initially appointed as an Assistant Teacher in the school by the appellant - management vide order dated 01/07/2000 for one academic session namely; 2000-2001 to teach the students of 11th Standard in the newly opened Junior College of the respondent No.1. On 14/06/2001 for the next academic session 2001-2002, the fresh appointment order was issued for one year. On 20/06/2002, third appointment order appointing the petitioner for academic session 2002-2003 was issued. The petitioner acquired B.Ed. qualification in the year 2005. It is the case of the respondent No.2 that thereafter, the

management of the appellant No.1 vide resolution dated 18/06/2005 resolved to appoint the respondent No.2 on probation for a period of two years. Pursuant to the resolution dated 18/06/2005 by an order dated 20/06/2005, the respondent No.2 was appointed on probation for period of two years in a clear vacancy. The respondent No.2 at the relevant time possessed the qualification of M.A. (Political Science with B.Ed.). The respondent No.2 worked on the said post. It is the case of the respondent No.2 that the management of the appellant No.1 prevented him from signing the muster roll w.e.f. 07/10/2007. According to the respondent No.2 on successful completion of probationary period, he attained the status of deemed employee of the respondent No.1. The respondent No.2, therefore, preferred an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "MEPS Act").

3. It is the case of the respondent No.2 that he was appointed on probation for a period of two years w.e.f. 20/06/2005. The management of the appellant No.1 without assigning any reason or without issuing order of termination did

not allow the respondent No.2 to sign the muster roll w.e.f. 07/10/2007. The grievance of the respondent No.2 is that on completion of period of probation successfully, he had acquired the status of deemed confirmed employee and therefore, his services could not have been terminated without following the procedure prescribed under the MEPS Act and the Rules.

4. The appellants filed their reply in the appeal filed by the respondent No.2 before the School Tribunal. In sum and substance, the appellants denied the contention of the respondent No.2. According to the appellants, the resolution produced on record dated 18/06/2005 was not signed by any of the members of the management committee. It was a bogus document. It is the further case of the appellants that the respondent No.2 was not appointed by following due procedure prescribed under the MEPS Act. There was no post available for continuing the petitioner in service. There was no sufficient workload in the college. Against the workload of 18 hours, only 8 hours workload for a week was available. The appointment of the respondent No.2 according to the appellants was on clock hour basis. The post on which the respondent no.2 was appointed was not permanent and

sanctioned post having full workload. The appellants, therefore, could not have appointed respondent No.2 as Junior College Lecturer on permanent basis to do the work on clock hour basis.

5. As stated above, the learned Single Judge did not agree with the finding of fact recorded by the learned Presiding Officer of the School Tribunal. The learned Single Judge by setting aside the order passed by the learned Presiding Officer of the School Tribunal granted reinstatement of the respondent No.2 in the service with continuity. Being aggrieved by this order, the appellants have come before this Court in Letters Patent Appeal.

6. We have heard learned Advocates for the parties. We have perused the record and proceedings.

7. The learned Advocate for the appellants submitted that the workload was not available in the Junior College of the appellants to appoint the respondent No.2 on probationary period of two years. There was no clear and permanent vacancy for appointment of the respondent No.2 on probation for a period of two years. The appointment of the respondent No.2 was

temporary inasmuch as it was on clock hour basis. The learned Advocate submitted that in order to get the benefit of a deemed permanency in service, the respondent No.2 has failed to establish that the procedure prescribed before his appointment as provided under the MEPS Act and MEPS Rules was strictly complied with. The learned Advocate further submitted that the respondent No.2 on his own abandoned the service w.e.f. 07/10/2007. In the submissions of the learned Advocate for the appellants, it was therefore, not necessary to terminate the services of the respondent No.2. The learned Advocate submitted that the learned Single Judge has failed to consider the above aspect and came to a wrong conclusion.

8. The learned Advocate for the respondent No.2 submitted that there is ample documentary evidence to establish that the management of the appellant No.1 before making the appointment of respondent No.2 followed the required mandatory procedure. The learned Advocate took us through the record and particularly, the contents of the resolution passed by the management of the appellants dated 18/06/2005 as well as the contents of the appointment order dated 20/06/2005. The learned

Advocate further submitted that the appellants have neither pleaded the defence of the abandonment of the services by the respondent No.2 nor placed on record the ground for termination of the services of the respondent No.2. The learned Advocate submitted that in the absence of workload, the appointment dated 20/06/2005 could not have been issued by the management of the appellants. In order to substantiate his contention that there was permanent and clear vacancy, the learned Advocate has placed reliance upon the advertisement dated 12/09/2007 issued by the management of the appellants for filling up three posts of the Lecturers in the Junior College. The learned Advocate pointed out that in the year 2005, the respondent No.2 acquired M.A. Degree and therefore, he was equally qualified to teach Marathi subject. The learned Advocate further submitted that after obtaining M. A. Degree in Marathi, the respondent No.2 was given the workload of the subject of Marathi, in addition to subject of Political Science. In order to substantiate this contention, the learned Advocate has placed reliance on the Government Resolution dated 01/12/2005.

9. The learned Advocates for the parties relied upon the reported decisions of the Hon'ble Supreme Court and of the High Court to substantiate their submissions. We shall consider the same after dealing with the facts, evidence and the possible conclusion on the basis of the same. It is undisputed that initial three appointment orders commencing from 1st July were on year to year basis and temporary. The Junior College was newly opened in the year 2000. It is undisputed that the Government provided the grant-in-aid to the college from 24/01/2004. It is therefore, undisputed that till the receipt of the grant-in-aid from the Government, the expenses were required to be borne by the management of the appellants, including the salary of the Lecturers. It, therefore, goes without saying that for three academic sessions prior to the order in question dated 20/06/2005, the respondent No.2 was appointed temporarily on year to year basis. The appellants have taken a stand in the reply that the resolution dated 18/06/2005 purportedly approving the appointment of the respondent No.2 was not signed by the managing committee and as such, it is bogus. The appellants have not disputed the issuance of the order dated 20/06/2005, however, it is contended that pursuant to this order, the

respondent No.2 was appointed temporarily on clock hour basis. It is not out of place to mention that in such a matter, certain proved and admitted facts and circumstances assume great importance while fixing the burden of proof. While recording finding of fact on the disputed issue on the basis of the proved and admitted facts and circumstances, the Court can draw a reasonable judicial inference to come to a conclusion.

10. We have minutely perused the resolution dated 18/06/2005 and the appointment order dated 20/06/2005. In our opinion, the case of the appellants that the resolution is bogus, cannot be accepted. According to us, the contents of the appointment order are explicitly clear to reject this stand of the appellants. The orders issued for the earlier 3 academic sessions on year to year basis have been placed on record. The said orders clearly mentioned that the appointment was for an academic session and on temporary basis. In the background of the resolution as well as earlier three orders on year to year basis, the appointment order dated 20/06/2005 becomes significant. The photocopy of the appointment order dated 20/06/2005 has been placed on record. The Clause No.2 of the order is very relevant for

our purpose. The Clause No.2 is in two parts. The first part is required to be filled in, if the appointment is for a particular duration in the leave / deputation vacancy. As against this, second clause pertains to the appointment on probation for a period of two years. As per the requirements depending upon the nature of the appointment, the relevant part of the Clause No.2 is required to be tick marked. The perusal of this order would show that the second part of Clause No.2 which deals with the appointment on probation for a period of two years was tick marked. It is pertinent to mention that if the second part of Clause No.2 of the appointment order had not been tick marked, then it would have made the defence of the appellant that the resolution dated 18/06/2005 was bogus and not signed by the members of the committee probable. Perusal of this order would show that it was signed by the Secretary of the Selection Committee.

11. In view of the resolution dated 18/06/2005 and specific appointment order dated 20/06/2005 issued consistent with the tenor of the resolution, the management of the appellants was required to rebut first the resolution and second the order dated 20/06/2005. In the absence of any evidence in rebuttal, a

reasonable judicial inference which can be drawn is that there was clear vacancy and therefore, after following the procedure, the management of the appellants took a conscious decision to appoint the respondent No.2 for a period of two years on probation. In our opinion, in view of the documentary evidence in the form of appointment order, it was necessary on the part of the appellants to terminate the services of the respondent No.2 by stating the specific ground. Instead of undertaking such exercise, the management of the appellants has taken easier course and contended that the respondent No.2 has abandoned his service w.e.f. 07/10/2007. This contention cannot be accepted inasmuch as there is no pleading in the written statement filed before the School Tribunal. This contention would further show that even after completion of two years period mentioned in the appointment order, the respondent No.2 continued to work till 07/10/2007. It is a specific case of the respondent No.2 that w.e.f. 07/10/2007, he was not allowed to sign the muster roll.

12. The statement made by the respondent No.2 that there was clear and permanent vacancy can further be fortified on perusal of the fresh advertisement issued on 12/09/2007 by the

management of the appellants. Perusal of this advertisement would further make it clear that one vacancy was advertised for a qualified Lecturer for Marathi and Political Science subjects. It has come on record that in the year 2005 itself, the respondent No.2 acquired M.A. Degree in Marathi subject. It is the case of the respondent No.2 that he was sharing the workload of Marathi subject inasmuch as he was qualified to teach the Marathi subject. The management of the appellants has failed to establish that any other Lecturer was appointed to teach the Marathi subject. On the basis of this advertisement, number of facts have been crystallized. First and foremost, there was a clear and permanent vacancy available once the grant-in-aid was provided by the Government. Second, the management required one Lecturer with requisite qualification to teach the Marathi and Political Science subjects. It is the case of the respondent No.2 that he was allowed to appear for the interview but after his selection, he was not allowed to join again. In our opinion, this fresh selection process vis-a-vis the respondent No.2 is of no significance. There is ample evidence on record to establish that the respondent No.2 attained the permanency in employment after completion of two years of service on probation. His services were not terminated by stating

any of the grounds pleaded in the reply / written statement filed by the appellants. In view of the above, the contention of the appellant - management that the appointment of the respondent No.2 was not strictly according to law, cannot be accepted. The management of the appellants committed a wrong initially by appointing the respondent No.2 on probation of two years by passing a legal and valid resolution. The management, therefore, cannot be allowed to take advantage of its own wrong. It is pertinent to mention that at the relevant time, the management was in a dominant position and therefore, in the absence of clear and permanent vacancy and the intention to appoint the respondent no.2 on probationary period of two years, the management would not have undertaken this exercise. For this reason, we are unable to accept the submissions on the facts.

13. In the backdrop of the aforesaid finding of fact on the basis of the material placed on record, it would be necessary to consider the decisions cited by the learned Advocates for the parties. The learned Advocate for the appellants in support of his submissions that before appointment of respondent No.2, the mandatory provisions of Section 5 of the MEPS Act and Rule 9 of

the MEPS Rules were not followed, has placed heavy reliance on the decision in the case of Priyadarshini Education Trust and others Vrs. Ratis (Rafia) Bano d/o Abdul Rasheed and others, reported in 2007 (6) Mh.L. J. 667 and the decision in the case of Sanjay Lalbahadur Divedi Vrs. Shrikrishna Vyayam Shala, Amravati and others, reported in 2010 (3) Mh.L.J. 666. In the case of Priyadarshini Education Trust (supra), the appointment of a teacher was on temporary basis for a period of one year. The teacher had failed to prove that he was appointed by following due selection process. It is held that in order to claim the benefit of permanency after completion of two years probationary period, it must be established that the required mandatory provisions including publication of advertisement and inviting the applications from the candidates eligible and desirous had been called. In the case of Sanjay Lalbahadur Divedi (supra), it is held that in order to establish the right to the post, it must be shown that there existed a permanent vacancy and the candidate possessed the requisite qualification and was selected after open selection process.

14. The learned Advocate for the respondent No.2 in order to substantiate his submissions relied upon the Full Bench decision of this Court in the case of **Ramkrishna Chauhan Vrs. Seth D.M. High School and others**, reported in **2013 (2) Mh.L.J. 713**. In this case, the Full Bench has considered the provisions of Section 5 of the MEPS Act and Rule 9 and 8 of the MEPS Rules. In this case, it is held that against the permanent vacancy, the management receiving grants-in-aid can make appointment on temporary basis. However, it must be for a limited period and the management must contemporaneously record tangible reasons as to why the selected candidate is not suitable to the appointment on probation against the permanent vacancy so that the authority can consider the same when the challenge is raised to the said appointment. It is further held that the other legal principle indisputably is that where the parties accept the terms and conditions stipulated in the appointment order, later on, it is not open to the employee to challenge that appointment being contrary to the rules or on the ground that the terms and conditions stipulated therein were not legally valid. The same would equally apply to the employer. It is held that the terms and conditions of the appointment order need

to be given primacy while deciding the question of attaining the status of permanency or otherwise.

15. In our opinion, the proposition of law laid down in the case of Ramkrishna Chauhan (supra) would squarely apply to this case, on the basis of evidence, particularly the decision of the management to appoint the respondent No.2 on probation for a period of two years and the appointment order dated 20/06/2005. On the basis of the documentary evidence and other circumstances, we have recorded a finding that the appointment of the respondent No.2 was on probation for period of two years against the permanent and clear vacancy. We have also recorded the finding that the conscious decision & resolution of the management is sufficient to draw the inference that the required procedure had been followed before taking the decision. The decision in the case of Priyadarshini Education Trust (supra) has been considered by the Full Bench in the case of Ramkrishna Chauhan (supra). In our opinion, the proved facts in this case by the respondent No.2 would make it clear that the proposition of law laid down in the case of of Priyadarshini Education Trust and Sanjay Lalbahadur Divedi (supra) relied upon by the learned

Advocate would not be squarely applicable to this case. It is seen that the decision in the case of Priyadarshini Education Trust (supra) was cited before the learned Single Judge. The learned Single Judge has held that it is not applicable to the facts of this case inasmuch as the plea of abandonment of the service by employee was not taken. Besides on going through the record, we have concluded that in this case, a reasonable inference of following the requisite procedure can be drawn against the appellant - management, in view of the resolution passed by the management on 18/06/2005 and the appointment order dated 20/06/2005 issued consistent with the said decision on probation for period of two years. We are, therefore, not prepared to accept the submissions of the learned Advocate for the appellants in view of the clinching evidence in the form of resolution passed by the management and specific appointment order on probation for a period of two years. We have also found that the respondent No.2 continued to discharge his duties up to 07/10/2007 though two years expired in June, 2007. There was no termination of his services on the ground permissible under the MEPS Act and Rules. We, therefore, agree with the learned Single Judge that on completion of two years probation, respondent No.2 has attained

the status of deemed confirmed employee. In our opinion, the decision in the case of Ramkrishna Chauhan (supra) would be applicable in this case. In view of the facts and evidence brought on record, we conclude that there is no substance in the appeal. The appeal, therefore, deserves to be dismissed. Hence, the following order :

ORDER

- I] The Letters Patent Appeal stands dismissed.
- II] In the peculiar facts and circumstances of the case, the parties shall bear their own costs.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)

Later on :

The learned Advocate for the appellants submits that vide order dated 26.07.2011, the interim order granted earlier was to remain in force during the pendency of the appeal. The learned Advocate submits that the said order may be continued for a period of six weeks.

Considering the nature of the dispute, the interim order, which was directed to remain in force during the pendency of the appeal to continue for a period of six weeks from today.

(G. A. SANAP, J.)

(A.S. CHANDURKAR, J.)