

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

CIVIL WRIT PETITION NO.373/2018

PETITIONER : Nusrat Yasmeen W/o Ashfaq Ahmad,
(Ori. Appellant) Aged about 34 years, Occu : Service,
Resident of 34/B, Rathor Layout,
Anant Nagar, Nagpur.
Mob. No.8329503419.

...VERSUS....

RESPONDENTS : 1. Central Tanzeem Committee, A
(Ori. Respondents) registered Public Trust, having
its office at Mohammad Ali Sarai,
Mominpura, Nagpur represented
through its Secretary Haji Mohd.
Abdul Kalam.

2. Urdu Upper Primary School,
Mohd. Ali Sarai, Mominpura,
Nagpur through its Headmistress.

3. The Education Officer (Primary),
Zilla Parishad, Nagpur.

Mr. A.R. Abhyankar, Advocate for petitioner
Mr. A.D. Mohgaonkar, Advocate for respondent no.1
Mr. A.M. Quazi, Advocate for respondent no.2
Mr. Gopal G. Mishra, Advocate for respondent no.3

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 08/03/2021

Judgment pronounced on : 17/03/2021

J U D G M E N T

1. Rule. Rule made returnable forthwith.

2. The petition challenges the judgment of the learned School Tribunal, dated 27/11/2017, dismissing the appeal as filed by the petitioner, against her termination dated 25/6/2015 from the post of Assistant Teacher with the respondent no.2 – School, run by the respondent no.1.

3. Mr. Abhyankar, learned Counsel for the petitioner, in so far as the finding that the petitioner had failed to produce advertisement on record, whereby the filling up of the vacant seats in the permanent non-grant section of the respondent no.2 – School were advertised, he submits that the same is contradictory to what has been found in para 16 of the impugned judgment. Even otherwise, learned Counsel submits that the entire record relating to the advertisement as well as Resolution was in custody of the respondent no.1 and when it is prima facie proved that such a record existed, then it was the bounden duty of the respondent no.1, who had its custody, to place the same on record, failure to do which, invites an adverse inference to the effect that the record was not being produced as it would go against the respondent no.1. Learned Counsel therefore submits that the impugned judgment cannot be

sustained in law, as the lack of advertisement is the only ground, upon which, the appeal has been dismissed.

4. Mr. Mohgaonkar, learned Counsel for the respondent no.1 contends, that the Principal of the respondent no.2 at the relevant point of time, was the mother of the petitioner, who managed to create the record regarding the appointment of the petitioner. Inviting my attention to the communication dated 7/9/2008 (pg.155), he submits, that the communication has been issued by the mother of the petitioner, who was then the Headmistress of the respondent no.2 – School, due to which no reliance can be placed. He further submits, inviting my attention to the judgment of this Court in the earlier litigation between the parties, namely, Writ Petition No.2086/2014, that even therein, the appointment of the petitioner was seriously disputed. He further submits that though there was a compromise between the parties, the approval to the same was refused by the Education Officer, due to which the same was *non est*. He submits that the appointment of the petitioner, was on a post, which was on permanent no grant basis, which has been withdrawn and as such as of date, no post is in

existence. He therefore submits that the petition needs to be dismissed and the judgment of the School Tribunal requires to be maintained.

5. Mr. Quazi, learned Counsel for the respondent no.2 adopts the arguments of Mr. Mohgaonkar, learned Counsel for the respondent no.1.

6. Mr. Gopal Mishra, learned Counsel for the respondent no.3, submits, that the approval granted to the petitioner was in respect of her appointment on a post which was sanctioned on a permanent no grant basis, and the dispute would be purely between the petitioner and the Management.

7. Mr. Abhyankar, learned Counsel for the petitioner, in rebuttal, submits, that even if the post on which the petitioner was appointed, has since been withdrawn, still the petitioner being a deemed permanent employee, would be entitled to the benefit of Rule 24/26 of the Maharashtra Employees of Private Schools

(Conditions of Service) Regulation Rules, 1981, of being declared surplus and thereby being absorbed in some other School.

8. The impugned judgment, which comprises of 24 paras in my considered opinion, cannot be sustained for the simple reason that paras 11 to 22 of the same, are an *ad verbatim* reproduction, of paras 3 to 13 of the written notes of arguments, as filed, by the present petitioner, before the learned School Tribunal, on 14/08/2017, whereas in para 23, the learned Tribunal merely records the argument of Mr. Mohgaonkar, learned Counsel for the respondent no.1 and renders a finding that the appellant failed to prove that her appointment was made by following due procedure of law, for which there does not appear to be any assessment of the rival contentions and the documents on record. The entire judgment, therefore, is a clear case of non-application of mind, as the learned Tribunal, neither discusses the facts on record, nor records any reasons for not believing them. Though in para 23, the learned Tribunal, states, that the respondent no.1 being a Minority Institution, it can appoint the staff as per their choice and there is no need to obtain prior permission of the Education Officer, but other

provisions of the Act and Rules are required to be followed by the Management, it does not make any discussion in this regard at all, neither does it record any finding as to what was required to be proved and how there was failure, or what procedure was to be followed and has not been followed. Considering the nature of the grievance raised in the appeal, it was, in my considered opinion, necessary for the learned Tribunal, to consider and discuss the factual position in light of the law applicable, which it has utterly failed to do, resulting in vitiating the entire judgment. The impugned judgment, therefore, on this count alone cannot be sustained and accordingly quashed and set aside. The matter is remanded back to the School Tribunal, Nagpur, to render a judgment by recording appropriate reasons, after hearing the learned Counsel for the respective parties. Such an exercise, be done within a period of three months from the date of this order. The parties shall appear before the School Tribunal on 25/03/2021.

Rule is made absolute in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar

**Shailendra
Wadkar**

Digitally signed by
Shailendra Wadkar
Date: 2021.03.17 14:49:32
+0530