

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6104 OF 2005
(Bhagwat S/o Santabuwa Puri Vs. The State of Maharashtra and
others)

Party in person - petitioner.

Mr.P.G.Borade, AGP for respondent Nos. 1 and 3

Mr.D.J.Choudhari, Advocate for the respondent No.2.

(CORAM : BHARATI H. DANGRE, J.)

DATE : FEBRUARY 17, 2022

PER COURT :

1. By the present writ petition, the petitioner raise a challenge to the impugned order passed by the School Tribunal, Aurangabad Division Aurangabad, thereby dismissing the appeal filed by him u/s 9 of the MEPS Act 1977 on the ground that his appointment is not in terms of Section 5 of the MEPS Act and also for the reason that his appointment was not approved by the Education Officer.

By upholding his termination order, his appeal is dismissed.

2. The writ petition came to be admitted on 05/05/2008 and is ready for hearing. It is pertinent to note that there is no stay granted to the impugned order while the petition was admitted.

3. I have heard the petitioner Shri Bhagwat s/o Santabuwa Puri in person. The learned AGP has advanced his submission of behalf of respondent No.1 and 3 whereas the respondent No.2 is represented by Adv.Mr.D.J.Choudhari. The party in person had submitted his written submissions and stated that his submissions may be referred to as his arguments. With the assistance of the learned AGP and Mr.D.J.Choudhari, I have perused the writ petition and the facts involved can be briefly discerned in the following manner :-

The petitioner claimed to be appointed in respondent No.2/School by order dated 26/08/1991 but it is the claim of the petitioner that he was not issued with any order of appointment since it is a practice of the Management not to issue the appointment order. His claim is to the effect that being satisfied with his performance and he was found eligible to be appointed to the post of Head Master, the resolutions were passed by respondent No.2 to appoint the petitioner on the post of Head Master and to the effect that there should be a bank account in his name, to enable him to run the administration of the school and operate the bank account after the school receives grant in aid. The petitioner claim that he worked on the establishment of the Secondary School run by respondent No.2 Society for the academic

year 1991-1992 and 1992-1993 and 1993-1994 for more than 3 years continuously and he completed his period of probation and was also eligible for getting permanency as Head Master in view of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 and its Rules 1981, but instead, the services of the petitioner were transferred to some other school and he was orally terminated from 14/11/1994 without giving any notice. This constrained him to approach the School Tribunal, Aurangabad by filing an appeal, bearing No.145/1995, which came to be dismissed ex-parte on 13/08/2001 and the petitioner approached this Court by filing WP No.966/2001 where the judgment and order passed by the Tribunal dated 13/08/2001 was set aside and the direction was issued to the Tribunal to decide the appeal afresh after affording an opportunity of hearing to both the parties.

In the wake of the aforesaid directions, the appeal was re-heard and by the impugned judgment dated 03/02/2005, the appeal was dismissed.

4. During the pendency of the writ petition, the petitioner carried an amendment and impleaded Mr.Pravin Deshmukh who was appointed

in the place of the petitioner and he also brought on record the information received by him under the Right to Information Act by inserting the same in the form of an annexure R-1 to the petition. Further, he also placed on record the Government Resolution in relation to promotion being granted to the Physical Education Teachers and their inclusion in category "C" of Schedule F of MEPS Act. The written submission would reveal that the petitioner possess the qualification of B.A. B.PEd. and he claim to be belonging to NT(B) Category. He claimed that he was appointed as a "Full Time Teacher" from 23/08/1991 and he completed his probation period on 14/11/1994 and he is eligible to be appointed as a Head Master.

5. On perusal of the order passed by the Tribunal and on hearing the learned Advocate for the respondent/Management, it can be seen that the claim of the petitioner in the appeal before the School Tribunal was to the effect that he was appointed as an "Assistant Teacher" in Yeshwant Chavan Vidyalaya, Chondi by respondent No.1 vide appointment order dtd.26/08/1991 since he possess the qualification of B.A.B.PEd. His appointment is claimed to be in the pay scale of Rs.1400-2600 on the establishment of Secondary School, but as per the

appellant, he was directed to work on the establishment of Primary School, which was an unaided school and this amounted to termination of his services as "Assistant teacher" in Secondary School as well as reduction in rank, was his argument before the School Tribunal. Further from July 1994, he was directed to work on the establishment of Vasant Primary School, Kaij and the appellant pleaded before the Tribunal that after receiving 50% grant-in-aid to Yeshwant Chavan Vidyalaya, Chondi, his name was deleted from the list of teachers sent for approval of the Education Officer and instead one Mr.Pravin Manikrao Deshmukh was appointed in his place. He made representations to the Education Officer (Secondary) Zilla Parishad, Beed, but since it was not considered, he approached the School Tribunal.

The claim as raised in the appeal was contested by the Management by submitting that the appellant was not qualified for appointment to the post of Assistant teacher in Secondary School as he was not possessing B.Ed. qualification and therefore he was appointed for a temporary period as a time gap arrangement for the academic year 1991-1992 and on completion of the said period, his services came to an end on 30/04/1992. In the next academic session, he was again

appointed in June 1992 till 30/04/1993. Thereafter as a stop gap arrangement, it is stated that his appointment was continued till August 1993. At that relevant time, the wife of the appellant was working as a Assistant Teacher in Zilla Parishad School at Hawargaon, Tal. Kalamb, Dist.Osmanabad and the said place was far away from village Chondi and therefore the appellant submitted an application to the Management and requested him to be accommodated in Vasant Primary School, Kaij and this request was granted and he worked there from 01/09/1993 till the end of academic session. The Management could not have appointed him permanently since he did not possess the requisite qualification, hence from year to year basis, his services were engaged till the qualified candidate to fill up the post, was available. The Management admitted that the appointment of the appellant was for a temporary period and lastly he worked in Vasant Primary School, Kaij till 1994 and thereafter he remained absent from duty without any reasonable cause and without intimating the Management. His services came to an end on 30/04/1995.

6. Respondent No.1 contended before the Tribunal that he did not possess the qualification of B.Ed. which was necessary for appointment

of Assistant Teacher in Secondary School and with his qualification as B.PEd., he could have been appointed as a Physical Education Teacher. This appointment was however subject to the strength of the students and could be effected only after obtaining sanction to the post of Physical Education Teacher from the Education Department and till the date 1998-1999 there was no sufficient strength of the students to accommodate a Physical Education Teacher. The post of Physical Education Teacher was first time sanctioned in Yeshwant Chavan Vidyalaya, Chondi in the year 2000-2001 at that time, Mr.Deshmukh came to be appointed on the said post after following the due procedure. The specific stand of the Management before the Tribunal is to the effect that on 14/11/1994, the appellant did not report to the School and that is how his services came to an end.

7. The Tribunal considered the claim of the appellant and determined the issue for consideration, as whether the appointment of the appellant was made as per Section 5 of the M.E.PS.Act and Rules thereunder and whether the appointment has been approved by the Education Officer . The Tribunal also determined the issue whether the respondent No.1 has otherwise terminated the services of the appellant

on 14/11/1994 illegally and without following the due process of Law and whether he is entitled for reinstatement on the post of Head Master or Assistant Teacher in the Yeshwant Chavan Vidyalaya Chondi with continuity of service.

Admitting that the Yeshwant Chavan Vidyalaya, Chondi is a recognized school, the Tribunal recorded that the qualifications possessed by the appellant was B.A.B.PEd. and after making reference to the stand of the Management about the temporary appointment orders in favour of the appellant, the School Tribunal record as under :-

"From the rival contentions of the parties, it is to be seen as to whether the appointment of the appellant was made as per Section 5 of the M.E.P.S. Act and the rules framed there under and his appointment has been approved by the Education Officer. A person can be said to be appointed as per Section 5 of the M.E.P.S. Act and rules framed there under, when there is clear and permanent vacancy and such vacancy is filled up by appointing a duly qualified person and the appointment of such is made on probation period of two years. The learned counsel Shri V.L.Dhobale for the appellant has argued that Yeshwantrao Chavan Vidyalaya is a Secondary School and the appellant possesses B.A.B.PEd qualification and in view of Rule 6 Schedule "B" of the M.E.P.S. Rules,

the appellant is fully qualified for the appointment on the post of Asstt. Teacher in Secondary School. On the contrary, the learned counsel Shri D.J.Choudhary for the respondent No.1, has argued that the person possessing graduate or postgraduate degree with B.P. Ed. qualification is not duly qualified for appointment on the post of general Assistant Teacher in Secondary School. But he can be appointed only as a Physical Education Teacher specifically on the basis of the strength of the students and after getting sanction to the post of Physical Education Teacher from the Education Department. He has further argued that Yeshwantrao Chavan Vidyalaya started in the year 1990 and till the year 1998-1999, there was no requires strength of the students in Yeshwantrao Chavan Vidyalaya to appoint a physical education teacher and the post of physical education teacher for the first time was sanctioned in the year 2000-2001 and from this fact, it is very clear that the appointment of the appellant was made purely on temporary basis as a time gap arrangement for the academic year 1991-1992 and 1992-1993 i.e. prior to the sanction of the post of physical education teacher. Neither the appellant has filed his single appointment order the respondent has filed any appointment order of the appellant on record to ascertain the nature of the appointment and

duration of the appointment of the appellant."

8. Recording the rival contentions of the parties, the Tribunal record that in terms of Section 5 of the M.E.P.S. Act, when there is a clear and permanent vacancy, it shall be filled up by appointing a duly qualified person and such appointment is to be made on probation of 2 years. Though an argument was advanced on behalf of the appellant to the effect that the appellant possessing the qualification of B.A.B.PEd in view of Rule 6 of Schedule B of the M.E.P.S.Rules, the appellant is duly qualified for the post of Assistant Teacher, the Tribunal recorded the contention of the respondent/Management that the person possessing a Graduate or Post Graduate degree with B.PEd. cannot be appointed to fill up the post of Assistant Teacher in a Secondary School, but the appointment can be made only as a Physical Education Teacher that too on the basis of strength of students, if the post is so admissible. In the backdrop of these facts, the Tribunal record as under :-

"It is not the case of the appellant that in the year 1991, the Management had appointed him in Yeshwant Chavan Vidyalaya, Chondi as a Physical Education Teacher. To substantiate his submission, the learned counsel for the respondent No.1, has invited my attention

to the copies of staff sanction letters for the years 1998-99, 1999-2000, 2000-2001 and 2001-2002 filed on record by the respondent No.1, alongwith the list of documents dated 21.12.2004 at Sr.No.2 collectively which clearly shows that till the year 1998-1999, there was no required strength of students to appoint physical education teacher in Yeshwant Chavan Vidyalaya and for the first time the post of physical education teacher came to be sanctioned in the year 2000-2001. From the abovesaid staff sanction letters, it is very clear that there was no sanctioned post of physical education teacher in Yeshwant Chavan Vidyalaya, from the year 1991-1992 till the year 2000-2001 i.e. during the period in which the appellant worked as Asstt. Teacher in Yeshwant Chavan Vidyalaya, Chondi and Vasant Primary School at Kaij. The appellant was possessing B.A. B.PEd. qualification and therefore, he was not also duly qualified for appointment on the post of Asstt. Teacher in Vasant Primary School, Kaij. Moreover, there is no even temporary approval to the appointment of the appellant from the Education Department either in Yeshwant Chavan Vidyalaya or Vasant Primary School. From the facts of the case and the documents filed on record, it is very clear that the appellant was appointed as Asstt. Teacher in Yeshwant Chavan Vidyalaya, Chondi temporarily as a time

gap arrangement for the temporary period of two years on year to year basis, and thereafter he came to be transferred to Vasant Primary School and worked in the said school on temporary basis till 14.11.1994 and his appointment was not made as per Section 5 of the M.E.PS.Act and the rules framed there under. In view of the fact of the case and documents filed on record, it is held that the appointment of the appellant was not made as per Section 5 of the Act and the rules framed thereunder, and his appointment has not also been approved by the Education Officer. Hence I answer Point Nos. 2 and 3 in the negative."

9. Since the appointment of the petitioner was not made as per Section 5 of the M.E.PS.Act and the same was not approved by the Education Officer, the appeal filed by the appellant came to be dismissed.

10. The petitioner has placed on record the information obtained by him under the Right to Information Act about the Yeshwant Chavan Vidyalaya, Chondi and the information disclose that the said school was being run on no grant-in-aid basis from the year 1991-1992 to 1994-1995 and during that period, staff approval was not sanctioned. The

staff approval was sanctioned for the subsequent years and the copies of the same were obtained by the petitioner under Right to Information Act. As far as Mr.PM.Deshmukh is concerned, the information reveal is that from the year 1993-1994 to 1997-1998, he was appointed as "Head Master".

About the appointment of the petitioner, the information supplied is, Mr.Bhagwat Santabuwa Puri was appointed on temporary basis as an Incharge Head Master in the year 1992-1993 and in the year 1991-1992 he was appointed as an Assistant Teacher on a temporary basis. However, in the year 1993-1994 and 1994-1995, Mr.PM.Deshmukh was appointed as an Incharge Head Master and the relevant documents were also forwarded to the petitioner. The information has also provided to the petitioner that since the Yashwant Chavan Vidyalaya was on no grant basis, the proposal of the petitioner was not forwarded to the Zilla Parishad, Beed and no approval was ever obtained.

The aforesaid information fortify the stand of the Management that the appointment of the petitioner was purely on year to year basis and it was a temporary appointment. The petitioner has not proved to the contrary as throughout the proceedings, he has not produced on record his order of appointment. In contrast, the Management has

placed on record his temporary appointment orders and the fact that Mr.P.M.Deshmukh that is respondent No.4 was appointed as a Physical Education Teacher and the Incharge Head Master, the appellant did not made out any case before the Tribunal. The documents on record which include the proposal being forwarded to the Education Officer include the proposal of Mr.P.M.Deshmukh as Incharge Head Master in the year 1995-1996 and his qualification being B.A.B.PEd and this proposal is granted by the Education Officer.

11. In the wake of the above, the order passed by the Tribunal cannot be said to suffer from any legal infirmity and by upholding the same, the writ petition filed by the petitioner is dismissed.

(BHARATI H. DANGRE, J.)