

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

WRIT PETITION NO.1890 OF 2020

1. Shrigonda Taluka Krishi Seva Sangh
At and Post Chikhali, Tq. Shrigonda
District Ahmednagar
Through its President
Shri Ashok s/o Shankarrao Karle
Age 65 years, Occ. Agriculture
R/o. Chikhali, Tq. Shrigonda
District Ahmednagar

2. Bibishan s/o Raghunath Parkale,
Age 45 years, Occ. Service
Head Master of the Mhase
Secondary School at Mhase
Tq. Shrigonda, District Ahmednagar

... Petitioners

Versus

1. The Education Officer (Secondary)
Zilla Parishad, Ahmednagar
District Ahmednagar
2. Arun Bhausahab Karlekar
Age 52 years, Occ. Agriculture,
R/o. Chikhali, Tq. Shrigonda,
District Ahmednagar
3. Anil Eknath Shinde
Age 34 years, Occ. Service
R/o. Mhase, Tq. Shrigonda,
District Ahmednagar

... Respondents

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Advocate for Petitioners : Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon
AGP for Respondent – State : Mrs. V. S. Chaudhari
Advocate for Respondent No.2 : Mr. S. V. Nattu h/f Mr. V. P. Golewar
Advocate for Respondent No.3 : Mr. A. T. Kanawade

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CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 30th MARCH, 2022

PRONOUNCED ON : 12th APRIL, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. This petition is directed against the judgment and order dated 19-12-2019, passed by the Presiding Officer, School Tribunal, Pune Region, Solapur, in Appeal No.43/2016, thereby allowing the appeal filed by respondent No.2.
3. Respondent No.2 filed the appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'the Act, 1977') contending that he is having B.Com degree and is eligible to be appointed on the post of Clerk. Petitioner No.1 appointed him on the post of Junior Clerk by order dated 21-11-2001, with effect from 26-11-2001. Accordingly respondent No.2 joined as Junior Clerk in Petitioner No.1 school. His appointment was on permanent and vacant post. He continuously worked for more than six years on the said post. His service was continuous and unblemished. Though he was entitled for the salary which was being paid to permanent employees, however, he was never

paid regular salary of permanent employees. On 24-08-2007 petitioner No.1 School received 60% grant-in-aid. Thereafter the petitioners prohibited respondent No.2 from signing the muster roll. After 31-05-2005 the petitioners tried to modify the muster roll. He, therefore, sought information under Right to Information Act from the petitioners, which was not given to him. Left with no alternative he filed complaint bearing ULP No.96/2007 before the Industrial Court, Ahmednagar. However, the same was dismissed. The said decision was questioned in the Writ Petition No.4642/2013. In terms of the order passed by this Court in the said writ petition, Appeal No.43/2016 is filed before the School Tribunal. He claimed that the oral order of his termination of service be set aside and he may be reinstated with continuity in service and full back wages.

4. The petitioners resisted the said appeal by filing a detail say. They contended that the Managing Committee has never passed resolution giving appointment to respondent No.2. Even the school committee did not pass resolution to appoint respondent No.2 prior to 21-11-2001 or thereafter. No prescribed procedure was followed before appointing respondent No.2. Therefore, appointment order of respondent No.2 dated 21-11-2001 is illegal and the same is not in accordance with Section 5(1) of the Act, 1977. It is further contended

that at no point of time proposal for approval of service of respondent No.2 was ever forwarded to the Education Officer. By relying on the statement of respondent No.2 in complaint ULP No. No.96/2007 that he was given appointment order on 21-11-2001, however, he is not in a position to file the said order on record, the petitioners contended that respondent No.2 did not have valid appointment order. By relying on various citations including *Secretary, State of Karanataka Vs. Umadevi [AIR 2006 SC 1806]*, *Chatrapati Shivaji Shikshan Prasarak Mandal Vs. Dattatraya Rupa Pagar [(2012) 13 SCC 534]*, *Priyadarshani Education Trust and others Vs. Ratis (Rafia) Bano d/o Abdul Rasheed and others [2007 (6) Mh.L.J. 667]*, *Hindustan Education Society Vs. S. K. Kaleem S. K. Gulam Nabi [1997 B.L.R. 641]*, *Sanjay Lalbahadur Divedi Vs. Shrikrishna Vyayam Shala, Amravati [2010(3) Mh.L.J. 666]* the petitioners contended that, since the appointment of respondent No.2 is not made after following proper procedure, the same is illegal. They further contended that respondent No.2 did not have necessary qualification for appointment on the post of clerk i.e. typing, computer and other necessary educational qualifications. There is no cause of action for respondent No.2 to file the complaint.

5. The School Tribunal after hearing the parties and considering the material placed on record partly allowed the appeal by

declaring the oral otherwise termination of respondent No.2 dated 20-12-2007 illegally and setting aside the same. The petitioners were directed to reinstate respondent No.2 on his original post and pay back wages from the date of termination. Petitioners are aggrieved by this decision. Hence, this petition.

6. Heard learned senior advocate Mr. V. D. Hon i/b Mr. A. V. Hon learned advocate for petitioners, learned advocate Mr. S. V. Natu h/f Mr. V. P. Golewar learned advocate for respondent No.2, learned advocate Mr. A. T. Kanawade for respondent No.3 and Mrs. V. S. Chaudhari, learned Assistant Government Pleader for respondent – State.

7. The learned senior advocate for petitioners submitted that the appointment order dated 21-11-2001 produced by respondent No.2 on record is a photo copy and not the original. Also, the same is not signed by the Headmaster of petitioner School. By pointing out the appointment order issued in favour of other employees dated 24-11-2001, he submits that outward number of the same is 31/2001, whereas the outward number mentioned on appointment order of respondent No.2 dated 21-11-2001 is 32/2001. Therefore, outward number of appointment order of respondent No.2 is in variance with the record.

According to him, this fortifies the contention of the petitioners that appointment order placed on record by respondent No.2 is fabricated. He submits that in resolution No.2 (Exhibit-R-1) (page No.95) passed in the meeting of Managing Committee dated 01-04-2001, the proposer is not a trustee or member of petitioner No.1 Trust. Therefore, the said resolution cannot be relied upon. According to him, as per Rule 9(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, resolution has to be passed by the School Committee and letter of appointment order in the Form in Schedule 'D' is to be issued, which is to be signed by the Headmaster and Secretary of the School Committee. Since in the present case the appointment order relied on by respondent No.2 is not signed by the Headmaster and Secretary of the School Committee, the same is a created piece of evidence and the Tribunal has failed to appreciate these aspects and has recorded perverse findings in the impugned judgment. On the date of appointment respondent No.2 was 33 years old, hence, he was over aged and he could not have been appointed on the said post. He, therefore, submitted that the Tribunal has erred in allowing the appeal.

8. The learned advocate for respondent No.2 on the other hand supported the impugned order by pointing out the joining report of respondent No.2 which is signed by him. The learned advocate

submitted that this report is never denied by the petitioners, which corroborates the appointment order. By relying on the application filed by petitioner No.1 for forwarding the appointment order to the handwriting expert to ascertain the signature on the same, he submits that the said application was rejected by the Tribunal and the rejection order was questioned in Writ Petition No.12159/2019. In the order dated 04-11-2019 passed in the said writ petition, this Court asked the petitioners to state the manner of making the payment of monthly wages of the employee (respondent No.2) and whether, his provident fund contribution was being deposited with the concerned authorities. Since the petitioners were not willing to disclose the said information as they would be placed in awkward situation, they withdrew the petition on the next date i.e. on 11-11-2019. He then pointed out the admission of the petitioners that respondent No.2 was in service from 2001 to 2005. Further submission is that since the petitioner No.1 School started receiving grants from 2006, they terminated service of respondent No.2 and appointed respondent No.3. He further pointed out that approval to the appointments of other employees was sought only in the year 2007, i.e. after the grant-in-aid was received. By pointing out the reply filed on behalf of respondent No.1 Education Officer he submits that there is no authorization given to the person, who has filed reply on behalf of the

Education Officer, to file the same. The Deputy Education Officer was authorised to file the reply. He further pointed out the appointment orders issued to the other employees of the petitioner School, which are signed by the President and Headmaster. By relying on *Shailesh Anand Kulkarni Vs. Khandesh College Education Society and Others [2020(6) Bom.C.R. 152]*, *Bhartiya Seva Samaj Trust through President and Another Vs. Yogeshbhai Ambalal Patel and Another [(2012) 9 SCC 310]* and *Shikshan Prasarak Mandal Vs. Presiding Officer, School Tribunal and Another [2005(6) Bom.C.R. 311]*, he submitted that since the petitioner No.1 School was on no-grant basis till 2006 there was no need to get approval to the services of the employees.

9. According to him, the approval for services of respondent No.3 is obtained by fraud and complaint to that effect was filed in police station by the Education Officer, Zilla Parishad, Ahmednagar. The statement of the then Education Officer (page No.130) was recorded wherein he has stated that he has not signed the order granting approval to the services of respondent No.3. The proposal for approval of service of respondent No.3 was not placed before him and remark on the said proposal is not by him, also, the signature below approval is not his. He, therefore, submitted that, this reflects on the conduct of the petitioners as to what extent the petitioners have gone and that the petitioners have

fabricated documents and forged the signature of the then Education Officer to show that services of respondent No.3 are approved. He submitted that tribunal has properly appreciated the material on record and rightly allowed the appeal. There is no merit in the petition and the same is liable to be dismissed.

10. The learned advocate for respondent No.3 submits that respondent No.3 is appointed after following due process and is working since 01-11-2006. His services are approved. Therefore, no order adverse to the interest of respondent No.3 be passed.

11. The learned Assistant Government Pleader by relying on the affidavit-in-reply filed on behalf of the Education Officer submitted that appropriate orders as per record be passed.

12. The petitioners have claimed that at the time of appointment of respondent No.2 no procedure prescribed under Section 5 of the said Act, 1977 was followed and he was appointed on purely temporary basis on daily wages. However, the petitioners have failed to produce on record any document to show that before issuing appointment order to respondent No.2 any correspondence was made to the Education Department seeking names of the surplus employees. The petitioners have failed to substantiate their contention that respondent

No.2 was appointed on temporary basis. Admittedly no document is placed on record by the petitioners to substantiate said stand. On the contrary the muster roll produced by respondent No.2 proves his case that he was working as clerk and payment was drawn in his name in the record maintained by petitioner No.1 School. The ledger account also establish that respondent No.2 received payment till March 2005.

13. Admittedly, the appointment order dated 21-11-2001 issued to respondent No.2 does not specify that he was appointed on temporary vacancy for a fixed period. On the contrary the said appointment is made on two years probation period. Thus, it fortifies the contention of respondent No.2 that he was appointed on clear permanent vacancy. The joining report dated 26-11-2001 (Exhibit-4/2) produced on record before the Tribunal refers the appointment order and is signed by the headmaster – petitioner No.2. This also substantiates the contention of respondent No.2 that he was appointed on clear permanent vacant post for a period of two years as per Section 5 of the Act, 1977 and since he continued in services beyond a period of two years, after completion of probation period, he is deemed to be confirmed.

14. There is no substance in the contention of the petitioners

that since there is no approval to the appointment of respondent No.2 and there was no proposal forwarded to Education Officer for the same, his appointment cannot be said to be valid. There appears substance in the contention of respondent No.2 that after the petitioner School started receiving grant-in-aid, the petitioners terminated services of respondent No.2. Admittedly, the petitioner No.2 started receiving grant-in-aid in the year 2006 and thereafter only the proposal for approval of services of employees was forwarded by petitioner No.2 to the Education Department. There was no occasion to forward proposal for approval earlier to that. Since second respondent's services were terminated by the petitioners prior to that, naturally his name was not forwarded for approval.

15. The documents produced by respondent No.2 i.e. letter dated 24-06-2005 addressed to Divisional Secretary, Certificate dated 22-08-2005 and the resolution dated 15-08-2005 bears signature of respondent No.2. Resolution dated 14-11-2005 bears signature of respondent No.2 and the Headmaster. The receipt of deposit in account dated 31-03-2006 bears signature of respondent No.2. Thus, these documents establish that respondent No.2 was serving with petitioner School on the post of clerk. In the letter produced on record by respondent No.2 dated 11-12-2007 addressed to the Education Officer,

respondent No.2 has expressed apprehension that the president might seek approval of new person. These documents clearly establish that respondent No.2 worked with petitioner No.1 School till 2007. The petitioners have failed to produce anything contrary to the record to show that services of respondent No.2 were validly terminated. The record further reveals that respondent No.3 was appointed by the petitioners before the services of respondent No.2 were terminated.

16. The tribunal after appreciation of the record has recorded proper reasons in support of the findings arrived at in favour of respondent No.2. Possible view is taken by the Tribunal on the basis of material produced before it. This Court is not sitting as a Court of appeal on the decisions of the Tribunal. In that view of the matter, this Court is of the opinion that the Tribunal was right in allowing the appeal.

17. In *Bhartiya Seva Samaj Trust through President and Another* (supra) the Hon'ble Supreme Court has considered the case of appointment of a teacher who did not possess prescribed qualification. The Trust conceded that there was violation of statutory provisions in its order terminating him as no notice was issued to him and no approval for terminating his services was sought from the competent authority. Considering the fact that though the teacher was terminated for not

possessing prescribed qualification, but other teachers who were appointed in accordance with same advertisement and possessing same qualification, were still working with the same management. It was held that the action of the management was not only *mala fide* but a clear case of discrimination and victimisation of the teacher for raising his voice against the exploitation. It was further held :

“28. A person alleging his own infamy cannot be heard at any forum, what to talk of a writ Court, as explained by the legal maxim *allegans suam turpitudinem non est audiendus*. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong. (vide *G. S. Lamba v. Union of India*, *Narender Chadha v. Union of India*, *Molly Joseph v. George Sebastian*, *Jose v. Alice and T. Srinivasan v. T. Varalakshmi*). This concept is also explained by the legal maxims *commodum ex injuria sua non habere debet* and *nullus commodum capere potest de injuria sua propria*.”

18. In the present case though the respondent No.2 was terminated, respondent No.3 is continued in service. This shows the discriminatory approach on the part of the petitioner towards respondent No.2.

19. In ***Shikshan Prasarak Mandal*** (supra) the Coordinate Bench of this Court held :

“7. The provisions of Section 5 of the MEPS Act require management to fill in every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy and Sub-section (2) thereof

states that every person appointed to fill a permanent vacancy shall be on probation for a period of two years. The provisions of Rule 10 which stipulate categories of employees states that the employees shall be permanent or non-permanent. Non-permanent employees may be either temporary or on probation. A temporary employee is one who is appointed to a temporary vacancy for a fixed period. Thus, in view of mandate of Section 5(1) of the MEPS Act, it is apparent that if the management wanted to show that respondent No. 2 was a temporary employee, it was incumbent upon the petitioner management to produce material before it to show that respondent No. 2 was appointed against a vacancy which was of temporary nature. The perusal of judgment of the School Tribunal reveals that no such material has been produced. In the absence of any such material and the fact that respondent No. 2 was continued for two sessions, the School Tribunal has drawn an inference that respondent No. 2 was continued on probation. The qualifications of respondent No. 2 are not in dispute and also there is nothing on record to gather that his performance or behaviour during this period was not satisfactory. It is in this background that the School Tribunal has found that the order of termination is in violation of Section 5(3) of the MEPS Act and Rule 28(1) of the MEPS Rules.”

20. In the case in hand, it was incumbent on the part of the petitioners to produce material before the Tribunal to show that respondent No.2 was appointed against a vacancy which was of temporary nature. Since no such material is produced the Tribunal has rightly allowed the appeal filed by respondent No.2.

21. In *Shailesh Anand Kulkarni* (supra), the Coordinate Bench of this Court held that:

“15. Considering the observations of the learned Full Bench in paragraph 16 in the Ramkrishna case (supra), that a management cannot engage a teacher on contractual basis for years together, it is obvious that as the present respondent/management was conducting the said course on 'No Grant' basis, it did not require the sanction of a post from the Government so as to take a stand that though the Government permitted the college to conduct the said course, not a single post for a Full Time Teacher was sanctioned. The continuance of the petitioner for eleven years and documents indicating that he was paid salary even for the month of May, after each academic year was over, would indicate that there was no break in service and the petitioner continued in employment. As stated by the Joint Director vide his reply before the School Tribunal as well as through the affidavit-in-reply in this Court, the engagement of such a Teacher was within the domain of the College and the payment of his salary was also the responsibility of the management.”

This ratio also supports the case of respondent No.2.

22. For the aforesaid reasons, the petitioners have failed to make out a case to interfere in the extraordinary writ jurisdiction. The writ petition being devoid of merits is dismissed.

23. Rule is discharged accordingly. No costs.

24. At this stage the learned advocate for petitioners seeks continuation of stay granted by this Court on 05-01-2022. The stay shall continue for a period of four weeks from today.

(NITIN B. SURYAWANSHI, J.)