

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

WRIT PETITION NO. 4352 OF 2016

Smt. Sanjivani Navnath Sant
Age: 39 years, Occ.: Service,
R/o Astagaon, Tq. Rahata,
Dist. Ahmednagar

... Petitioner

Versus

1. The State of Maharashtra
Through its Principal Secretary
Secondary and Higher Secondary Education
Department, Mantralaya, Mumbai
 2. The Deputy Director of Education,
Pune.
 3. The Education Officer (Higher Secondary),
Zilla Parishad, Ahmednagar.
 4. Shivaji Shikshan Prasarak Mandal
Shivajinagar, Tq. Rahuri,
Dist. Ahmednagar
Through its Administrator
District Deputy Registrar,
Ahmednagar.
 5. The Principal,
Arts, Science and Commerce College,
Rahuri, Tq. Rahuri, Dist. Ahmednagar.
- ... Respondents

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Advocate for Petitioner : Mr. V. R. Dhorde
AGP for Respondent – State : Mr. S. N. Kendre
Advocate for Respondent Nos. 4 & 5 : Mr. A. V. Hon

...

WITH
WRIT PETITION NO. 4353 OF 2016

Sandip s/o Raosaheb Tanpure
 Age: 38 years, Occ :Service,
 R/o Tanpurewadi, Rahuri,
 Tq. Rahuri, Dist. Ahmednagar

... Petitioner

Versus

1. The State of Maharashtra
 Through its Principal Secretary
 Secondary and Higher Secondary Education
 Department, Mantralaya, Mumbai
2. The Deputy Director of Education,
 Pune.
3. The Education Officer (Higher Secondary),
 Zilla Parishad, Ahmednagar.
4. Shivaji Shikshan Prasarak Mandal
 Shivajinagar, Tq. Rahuri,
 Dist. Ahmednagar
 Through its Administrator
 District Deputy Registrar,
 Ahmednagar.
5. The Principal,
 Arts, Science and Commerce College,
 Rahuri, Tq. Rahuri, Dist. Ahmednagar.

... Respondents

...

Advocate for Petitioner : Mr. V. R. Dhorde
 AGP for Respondent – State : Mr. S. N. Kendre
 Advocate for Respondent Nos. 4 & 5 : Mr. A. V. Hon

...

WITH

WRIT PETITION NO. 2297 OF 2016

1. The Administrator,
 Shivaji Shikshan Prasarak Mandal
 Shivajinagar, Tal. Rahuri,
 Dist. Ahmednagar.

2. The Principal,
Arts, Commerce And Science College
Rahuri, Tal- Rahuri, Dist. Ahmednagar. ... Petitioners

Versus

1. Smt. Sant Sanjivani Navnath
Age: 38 years, Ocu: Nil,
R/o Astagaon, Tal – Rahata,
Dist. Ahmednagar
2. The Deputy Director of Education,
Pune Region, Pune. ... Respondents

...

Advocate for Petitioner : Mr. A. V. Hon
AGP for Respondent – State : Mr. S. N. Kendre
Advocate for Respondent No.1 : Mr. V. R. Dhorde

...

WITH
WRIT PETITION NO. 2295 OF 2016

1. The Administrator,
Shivaji Shikshan Prasarak Mandal
Shivajinagar, Tal. Rahuri,
Dist. Ahmednagar.
2. The Principal,
Arts, Commerce And Science College
Rahuri, Tal- Rahuri, Dist. Ahmednagar. ... Petitioners

Versus

1. Shri Tanpure Sandip Raosaheb
Age: 38 years, Ocu - Nil,
R/o Tanpurewadi, Tal - Rahuri,
Rahuri, Dist. Ahmednagar
2. The Deputy Director of Education,
Pune Region, Pune. ... Respondents

...

Advocate for Petitioner : Mr. A. V. Hon
AGP for Respondent – State : Mr. S. N. Kendre
Advocate for Respondent No.1 : Mr. V. R. Dhorde

...

CORAM : NITIN B. SURYAWANSHI, J.

RESERVED ON : 07th APRIL, 2022
PRONOUNCED ON : 06th JUNE, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally by the consent of the parties.
2. Since the common question of law and fact is involved in these writ petitions, they were heard together and are being decided by this common judgment. For the sake of convenience and brevity the litigating parties are referred as 'Management' and 'Teacher'.
3. Writ Petition No.4352/2016 is filed by Teacher Smt. Sanjivani Sant (for short 'Teacher Sant') challenging the judgment of the School Tribunal in Appeal No.10/2015 to the extent it directs her reinstatement in service as a Part Time Assistant Teacher. Teacher Sant has passed her B.Com in first class and M.Com in second class, so also, she has completed her B.Ed in the year 2001. Pursuant to the advertisement dated 26-05-2007 she was appointed as a Part Time Assistant Teacher in respondent No.5 College by appointment order

dated 04-07-2007. Her appointment as Part time Assistant Teacher was continued for academic years 2007-08, 2008-09 and 2009-10. Approval to her appointment was granted by respondent Nos. 2 and 3 – Deputy Director of Education and Education Officer (Higher Secondary), Zilla Parishad, Ahmednagar, respectively. Mr. K. B. Salunke who was working as Assistant Teacher in the school where petitioner was working, retired on superannuation on 31-05-2010. As per Government Resolution dated 31-01-2001, Part Time Teachers are required to be accommodated on the post of full time teachers, therefore, she was required to be accommodated on the post which had fallen vacant due to retirement of Mr. K. B. Salunke. The Management, thereafter issued advertisement on 08-08-2010. Pursuant to the said advertisement, the petitioner was appointed as Shikshan Sevak for period between 17-08-2010 to 16-08-2013. Teacher Sant successfully completed the said period, however, her service was orally terminated on 29-01-2015. Therefore, she challenged her termination by filing Appeal No.10/2015 before School Tribunal, Pune Region, Solapur.

4. The School Tribunal after hearing both the parties allowed the appeal and set aside the oral termination of Teacher Sant by directing that she should be reinstated as a Part Time Assistant Teacher with full back-wages and continuity of service. The petitioner/Teacher

Sant is aggrieved by her reinstatement on the post of Part Time Assistant Teacher. The Management has challenged the decision of School Tribunal in Appeal No.10/2015 by filing Writ Petition No.2297/2016.

5. Writ Petition No.4353/2016 is filed by Teacher Mr. Sandip Tanpure (for short 'Teacher Tanpure') challenging the order passed by the School Tribunal in Appeal No.06/2015 to the extent it directs his reinstatement in service as a Part Time Assistant Teacher. By filing the said appeal Teacher Tanpure challenged his oral termination dated 19-01-2015. He passed M.Com in second class and completed B.Ed. in the year 2010. Pursuant to the advertisement dated 08-08-2010, by appointment order dated 17-08-2010, he was appointed as a Part Time Assistant Teacher in respondent No.5 College. His appointment as Part time Assistant Teacher was continued for academic years 2011-2012, 2012-2013, 2013-2014 and 2014-2015. Approval to his appointment was granted by respondent Nos. 2 and 3 – Deputy Director of Education and Education Officer (Higher Secondary), Zilla Parishad, Ahmednagar, respectively. The Management, thereafter issued advertisement on 29-11-2014 for recruitment of Shikshan Sevaks for various subjects including commerce subjects. Though the petitioner appeared, he was not selected and from 19-01-2015 he was prevented from signing the muster roll. Therefore, by filing Appeal No.06/2015 before School

Tribunal, Pune Region, Solapur, he challenged his otherwise termination.

6. The Management resisted the appeal by contending that the petitioner Teacher was appointed as a temporary, part time assistant teacher and he is not selected in the interview, therefore, he cannot claim his reinstatement. The Tribunal allowed the appeal and directed the Management to reinstate the petitioner/Teacher Tanpure as a Part Time Assistant Teacher with full back-wages payable to the post of Part Time Assistant Teacher. Teacher Tanpure has challenged the order of the Tribunal to the extent it grants him reinstatement as a Part Time Assistant Teacher. The Management and College have challenged the order of School Tribunal in Appeal No.06/2015, by filing Writ Petition No. 2295/2016.

7. Heard Mr. V. R. Dhorde, learned advocate for petitioners/Teachers in Writ Petition Nos. 4352/2016 and 4353/2016, who are respondents in Writ Petition Nos. 2295/2016 and 2297/2016, Mr. A. V. Hon, learned advocate for the petitioner/Management in Writ Petition Nos. 2295/2016 and 2297/2016, who are respondent Nos. 4 and 5 in writ Petition Nos. 4352/2016 and 4353/2016 and the learned Assistant Government Pleader for State.

8. Learned advocate for Teachers assailed the judgment of the Tribunal contending that the Tribunal has arrived at a wrong conclusion that Teachers were working as a Part Time Assistant Teachers, which according to him is contrary to the record. According to him, record indicates that both the Teachers were appointed on permanent post of Full Time Assistant Teachers and they were assigned work-load of Full Time Teachers. He further submits that though the Tribunal directed the Management to produce roster and other documents of the period when the Teachers were initially appointed, however, the Management deliberately did not place the said documents on record and therefore, the Tribunal ought to have drawn adverse inference against the Management and should have held that the Teachers were working on full time posts, therefore, they should have been reinstated on full time posts with consequential benefits. In support of his submissions that the Teachers were given full time work-load, he placed reliance on the Statement 'B' and work-load chart which shows that both the Teachers were assigned work-load of 18 clock hours which is a work-load of full time teachers as per Rule 21(2) of the Maharashtra Employees of Private Schools' (Conditions of Service) Rules. According to him, Teacher Sant was entitled to be accommodated on the post which became vacant due to retirement of Assistant Teacher Mr. K. B. Salunke, in view of

Government Resolution dated 31-01-2001. In support of his submissions he placed reliance on *Shramik Shikshan Mandal and Another Vs. The State of Maharashtra & Others, 2018(1) ALL MR 68*.

9. Per contra, the learned advocate for Management challenged the decision of the Tribunal in both the matters contending that the Teachers were illegally appointed by the earlier Management on political considerations to gain political mileage. He submits that the present Management by obtaining permission of respondent No.2 issued advertisement and conducted interviews. The Teachers attended the interviews, but could not get adequate marks. Therefore, though the Teachers were considered, however, on merit they were not selected. The appeals were filed by the Teachers only after they were not selected in the interviews. He submits that the appointment orders relied by the Teachers are manipulated and their appointments are not in accordance with Rule 9(5) and Schedule 'B' of the M.E.P.S. Rules. Their appointments are not approved by Deputy Director to Education – respondent No.2, so also, are not signed by the Secretary and Headmaster. He submits that, after obtaining permission from respondent No.2 Deputy Director, interviews were held and six teachers were selected on merits and they were appointed. He further submits that all these aspects are ignored by the Tribunal while granting

reinstatement to the teachers on part time post along with consequential benefits. He urged that the teachers have no right to the full time post and their appeals ought to have been dismissed by the Tribunal. He further submits that the ruling relied on by the Teachers is rendered in different facts as it is in respect of non-teaching staff and therefore, is not applicable to the facts of the present case. He, therefore, submits that the impugned judgments passed by the School Tribunal in both the appeals are liable to be quashed and set aside.

10. The learned Assistant Government Pleader submits that appropriate orders as per the record be passed.

11. In reply, the learned advocate for Teachers submits that since the present Management who has taken over the charge from the earlier Management wanted to accommodate persons of their choice the Teachers' services were terminated. The Management has prepared roster of 2014 to suit their case. He further relied on *Jagdamba Education Society Vs. Rajendra s/o Baburao Golhar & Others, 2009(2) ALL MR 613*.

12. Indisputably, Teacher Sant is holding the requisite qualification for appointment on the post of assistant teacher. Pursuant to the advertisement dated 26-05-2007, she was appointed as part time

assistant teacher of commerce subject in the Junior College run by the Management by appointment order dated 04-07-2007. She continued as part time assistant teacher for academic years 2007-08, 2008-09 and 2009-10. Her appointment was approved by Respondent No.2 Deputy Director of Education. Admittedly, assistant teacher Mr. K. B. Salunke, colleague of the petitioner retired on 31-05-2010. As per Government Resolution dated 31-05-2001, part time teachers are required to be accommodated on the post falling vacant by the retirements of full time teachers.

The Management issued advertisement on 08-08-2010, pursuant to which Teacher Sant was selected and by appointment order dated 17-08-2010 she was appointed as Shikshan Sevak for a period of three years i.e. from 17-08-2010 to 16-08-2013. Accordingly, she joined on 18-08-2010. Her joining report is signed by the Principal of the college. She appears to have successfully completed probation period and therefore, can be held to be deemed permanent teacher. Her service was orally terminated on 29-01-2015. Her service record since initial appointment as part time assistant teacher, till her oral termination appears to be unblemished. The work-load chart of the College for the year 2013-2014 shows that Teacher Sant was given work-load of 18 clock hours, which is the work-load of full time teacher as per Rule

21(2). In Statement 'B' which provides particulars regarding new appointments, name of Teacher Sant appears at Sr. No.2 and she is shown as Full Time Assistant Teacher. It is, therefore, clear from the record that Teacher Sant was working as Full Time Assistant Teacher.

The Tribunal though accepted the contention of Teacher Sant that she was appointed after following due recruitment procedure and she has rendered unblemished continuous service of more than three years as Shikshan Sevak, without there being any basis and ignoring the record the Tribunal has erroneously held that she was working as Part Time Assistant Teacher. The Tribunal has erred in recording a find that Teacher Sant was appointed as part time assistant teacher on permanent vacant post. The Tribunal has also recorded a finding that vacancy on which teacher is appointed as part time assistant teacher is permanent vacancy and not temporary one. The record shows that Teacher Sant has worked as Shikshan Sevak for three successive academic years, therefore, her appointment cannot be said to be temporary in nature. It appears that while recording a finding that Teacher Sant was working as part time assistant teacher, the Tribunal has misread and misconstrued the documentary evidence placed on record, in the form of work-load chart and statement 'B'.

13. Admittedly, in spite of the direction given by the Tribunal the Management has failed to produce roster and seniority list of the year 2010, which could have clarified the position prevailing at the time of appointment of Teacher Sant as Shikshan Sevak for probation of three years. For non-production of said documents by the Management, the Tribunal should have drawn adverse inference against the Management and ought to have held that Teacher Sant was a Full Time Assistant Teacher and the vacant post on which she was appointed was not a reserved post. The Tribunal has committed an error in placing reliance on the roster of the year 2014 presented by the Management.

14. The Tribunal, on the basis of documents filed by the Management, held that for the academic year 2014-2015 six permanent posts fell vacant in the respondent College due to retirement. Therefore, advertisement was issued for filling up these vacant posts and candidates from open market were selected. Though the Tribunal accepted that as per Government Resolution, whenever permanent vacancy is created, the Management ought to have appointed part time teacher already working on the full time vacancy, however, by relying on the roster of 2014 presented by the Management the Tribunal has erroneously held that reserve category candidates were appointed on merit on 2 permanent vacant posts of commerce branch, therefore,

Teacher Sant has no right to claim on the post of permanent vacant post on the basis of said G.R.

The above finding recorded by the Tribunal is unsustainable in view of the fact that the Management did not produce the roster and seniority list of the year 2010. It is obvious that since the Teacher Sant was appointed by the previous Management this Management did not want to continue her service, hence, it appears that she was deliberately given less marks in the interview. These relevant aspects are ignored by the Tribunal while arriving at a conclusion that Teacher Sant was working on the part time post and the management has filled in posts of Commerce faculty from reserve category. The judgment of the Tribunal is vitiated to the extent it reinstates Teacher Sant on the post of Part Time Assistant Teacher.

15. On the basis of the record, this Court is of the considered view that the findings of the Tribunal that Teacher Sant was working as part time assistant teacher is contrary to the record and therefore, cannot be sustained. The Tribunal has further erred in relying on the roster of 2014 placed on record by the Management to come to a conclusion that there was backlog of reserved category, and therefore, Teacher Sant could not be appointed as permanent teacher after retirement of Mr. Salunke. While placing reliance on the roster of 2014

placed on record by the Management, the Tribunal has failed to consider that the said roster is of no consequence as the Management has failed to produce the roster of 2010 when Teacher Sant was appointed on the post of Shikshan Sevak for a period of three years. The Tribunal has failed to draw adverse inference against the Management for not producing the said roster. Since the findings recorded and conclusion drawn by the Tribunal are contrary to the record, the same are unsustainable in law and facts of the case. The Tribunal ought to have granted reinstatement to Teacher Sant as full time assistant teacher with all consequential benefits.

16. Respondent Nos. 2 and 3 failed to appear before the Tribunal. Even in the present petition, Respondent No.2 Deputy Director of Education has failed to file say. It is, therefore, not clear as to why the approval to the services of Teacher Sant was rejected. In ***St. Ulai High School Vs. Shri Devendraprasad Jagannath, 2007(2) ALL MR 1(F.B.)***, the Full Bench of this Court has concluded that *“lack of approval or refusal of approval to the appointment of an employee cannot be a ground for terminating his services and cannot be an impediment for his continuation in services”*.

17. In ***Shramik Shikshan Mandal and Another (supra)*** the learned Single Judge of this Court (Ravindra V. Ghuge, J.) has held :

“24. Notwithstanding the above, if at all there was any backlog, the petitioner could have done away with the said backlog by ensuring that future appointments are made from the reserved categories. Considering these aspects, I find that the conclusion of the Tribunal in paragraph Nos.9 and 10 of the impugned judgment that the management had tried to mis-direct the Tribunal, does not appear to be perverse or vitiated.”

18. In the case in hand, admittedly the Management has shown roster of 2014. The Management has deliberately not placed on record roster and seniority list of the year 2010. Therefore, adverse inference needs to be drawn against the Management and it needs to be held that in the year 2010 when the Teacher Sant was appointed as Shikshan Sevak for a period of three years, there was no backlog.

19. There is no merit in the argument of the learned advocate for Management that since the appointment order issued to the Teacher Sant is not according to Rule 9(5) and as per the format given in Schedule 'B' and since it is not signed by the Secretary and Headmaster, her appointment is not valid. The Management cannot take advantage of their own wrong and contend that the appointment order issued to Teacher Sant is not in prescribed format and therefore, it should not be treated as valid.

20. It is thus clear from the record that post on which Teacher

Sant was appointed was a permanent vacant post, she has successfully completed her probation as Shikshan Sevak and thus, she is deemed to be permanent. At the time of her oral termination, she was discharging duty as full time assistant teacher. In this view of the matter, the Tribunal has erred in granting her reinstatement as part time assistant teacher.

21. Coming to the case of Teacher Tanpure, it is not in dispute that pursuant to the advertisement dated 08-08-2010 he was appointed as a Part Time Shikshan Sevak for teaching commerce subjects for one year from 18-08-2010 to 30-04-2011. His appointment was approved by respondent No.2. Thereafter, he was continued as Shikshan Sevak between 15-06-2011 to 30-04-2012 and from 15-06-2012 to 30-04-2013. His services were approved for the said period. According to him, thereafter he was appointed as a Full Time Assistant Teacher for academic years 2013-2014 and 2014-2015. He contends that the said appointment orders are with the Management. He continuously worked till his oral termination dated 19-01-2015.

22. The work-load chart of the academic year 2013-14 shows that work-load of 18 clock hours is assigned to teacher Tanpure. In Statement 'B' name of teacher Tanpure appears at Sr. No.4 and 18 clock

hours work-load is allotted to him. These documents clearly show that Teacher Tanpure was discharging duty as a Full Time Assistant Teacher. The Tribunal has misread and misconstrued the documents while recording a finding that Mr. Tanpure was working on the post of part time assistant teacher.

23. Though the Tribunal has held that the Management and Principal have not produced documents in spite of directions given to them and no satisfactory explanation for not filing the documents is given, instead of drawing adverse inference against the Management, the Tribunal has erroneously proceeded to place reliance on the roster of 2014-15 prepared and produced by the Management, to come to a conclusion that the Management has filled permanent vacancy from the reserved category. Since the roster at the time of initial appointment of teacher Tanpure and when he was appointed as Shikshan Sevak from the academic year 2011-12 was not produced by the Management in spite of directions given by the Tribunal, the Tribunal ought to have held that the appointment of teacher Tanpure was on permanent vacant post and ought to have reinstated him on the post of permanent assistant teacher.

24. The reasons recorded in Teacher Sant's case are applicable

to Teacher Tanpure's case and for the same reasons the petition of Teacher Tanpure deserve to be allowed.

25. In the result, following order is passed:

- (I) Writ petition No.4352/2016 is allowed.
- (II) The impugned judgment of the Tribunal in Appeal No.10/2015 is modified to the effect that teacher Sanjivani Sant shall be reinstated in service as Full Time Assistant Teacher with continuity of service and full back wages.
- (III) Respondent No.3 in W.P. No.4352/2016 is directed to give approval to the appointment of teacher Sanjivani Sant as Full Time Assistant Teacher, within a period of eight weeks from the date of receipt of this order.
- (IV) Writ Petition No.2297/2016 is dismissed.
- (V) Writ Petition No.4353/2016 is allowed.
- (VI) The impugned judgment of the Tribunal in Appeal No.06/2015 is modified to the effect that teacher Sandip Tanpure shall be reinstated in service as Full

Time Assistant Teacher with continuity of service and full back wages.

(VII) Respondent No.3 in W.P. No.4353/2016 is directed to give approval to the appointment of teacher Sandip Tanpure as Full Time Assistant Teacher within a period of eight weeks from the date of receipt of this order.

(VIII) Writ Petition No.2295/2016 is dismissed.

(IX) In view of disposal of Writ Petition No. 4352 of 2016, Civil Application No. 4493 of 2016 stands disposed of.

26. Rule is made absolute in the above terms with no order as to costs.

27. At this stage, the learned advocate for the Management requested for stay of the judgment for a period of four weeks. The judgment is stayed for a period of four weeks from today.

(NITIN B. SURYAWANSHI, J.)