IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

19 WRIT PETITION NO.9458 OF 2021
WITH WP/9459/2021 WITH WP/2360/2022 WITH WP/2361/2022

THE SECRETARY / PRESIDENT SAHYADRI BAHUJAN VIDYA PRASARAK MANDAL SANGAMNER AND ANOTHER
VERSUS
KSHIRSAGAR NITIN BHARAT AND OTHERS

Mr. S. T. Shelke, Advocate for the petitioners
Mr. P. V. Barde, Advocate for the respondent No.1
Mr. N. T. Bhagat, AGP for the respondent/State

CORAM : RAVINDRA V. GHUGE, J.
DATE : 14-03-2022

P. C.

1. I have considered the strenuous submissions of the learned Advocate for the respective sides. With their assistance I have gone through the petition paper book.

2. Decision in the first two petitions would decide the fate of the second set of two petitions. I am, therefore, dealing with writ petition No. 9458/2021 and 9459/2021.

3. In these two matters, the original-appellants had approached the school tribunal alleging illegal termination on 01-05-2014. It was

stated that they were appointed as Assistant Teachers in the Academic year 2009-2010 on permanent posts by following a selection process. After completing two years in service, they were entitled for a deemed status of being a permanent Assistant Teacher in view of Section 5(2) of the MEPS Act, 1977.

4. There is no dispute as regards the qualification of these appellants and the fact that they have completed five academic years. I have perused their appointment orders. One appointment order issued in June, 2009 mentioned that the Assistant Teacher would be paid as per the scale available to the Teacher on Clock-Hour-Basis (CHB). The appointment was purely on temporary basis until April, 2010. Next appointment order issued in June, 2010 indicates the designation as an Assistant Teacher @ Rs. 9,300/- per month in the scale of 9,300-34,800/-. This appointment was to end in April, 2011. It was also intimated to the appellant that the Junior College is operated on permanent no grant basis to the extent of the Science and the Arts Faculty. Third appointment order of June, 2011 indicates a consolidated pay pacakage of Rs. 5,000/-. Further appointment order issued in June, 2012 indicates the consolidated package of Rs. 9,000/-. Similar is the case with the appointment

order issued in June, 2013 and it was after April, 2014 that these two petitioners have been disengaged.

5. The petitioner-Management has taken a bold stand that there was no advertisement published by it, there was no selection process and as such the appointments of these appellants would amount to a back door entry.

6. I have come across hundred of cases under the MEPS Act wherein the employers/ school or college Management, after appointing employees in the teaching or non-teaching staff and after continuing them for few years, take a bold stand that such persons were illegally appointed by they themselves. It is plainly conceded that there was no advertisement, no prior permission of the Education Officer was obtained and there was no selection process.

7. Two situations crop up from such matters. Firstly, that such teachers who have been illegally appointed and have gained back door entries, cannot be regularized, save and excepting the cases wherein their tenure of work is, for example 15 years, 20 years, or 25 years and thereafter the Management takes a stand that none of them were legally

eligible to be appointed or had been illegally appointed. In such cases, the Management cannot be permitted to take such a stand. However, in the case in hand, both these appellants-employees were aware that they were appointed on temporary basis on a consolidated pay package and that too without advertisement and without any selection process. They never competed with others in an open competition for recruitment. Such backdoor entries cannot be regularized.

Secondly, as to how should this court deal with such Managements who appoint Teachers on temporary basis without seeking prior approval of the Education Officer and without following the due process of law.

8. Section 11 (2) (e and f) of the MEPS Act provides for two modes of penalizing such employers. In the case of those who have worked in such a fashion for ten or more, are compensated with payment of salary for a period of one year. Those who have worked for less than ten years are compensated with six months salary. This is permissible when the tribunal or this court would conclude that though the termination of service is bad in law, reinstatement in service would not be possible.

9. For the sake of clarity Section 11(2)(e) and (f) read as under:

> **11. Powers of Tribunal give appropriate reliefs and directions.** -
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> (2) Where the Tribunal after, giving reasonable opportunity to both parties of being heard, decides in any appeal that the order of dismissal, removal, otherwise termination of service or reduction in rank was in contravention of any law (including any rules made under this Act), contract or conditions of service for the time being in force or was otherwise illegal or improper, the Tribunal may set aside the order of the Management, partially or wholly, and direct the Management,-
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> (e) where it is decided not to reinstate the employee or in any other appropriate case, [to give to the employee twelve months' salary (pay and allowances, if any) if he has been in the service of the school for ten years or more and six months salary (pay and allowances, if any) if he has been in service of the school for less than ten years], by way of compensation, regard being had to loss of employment and possibility of getting or not getting suitable employment thereafter, as it may specify; or
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> (f) to give such other relief to the employee and to observe such other condition as it may specify, having regard to the circumstances of the case.

Sub-clause (f) permits the court to give other reliefs to the employee having regard to the circumstances of the case.

10. It is apparent from these two cases that these two appellants were accommodated by the petitioner-Management through the back door. Regularizing the services of such employees would actually amount to dis-service to the society at

large since this would embolden managements as well as the employees and a racket of granting back door appointments to the teachers and getting them regularized through the courts, would become rampant. In fact, in hundred cases, this court has come across such examples.

11. In the light of above, I am of the view that the school tribunal committed an error in granting reinstatement in service with continuity and 50% backwages to these appellants. Though they have worked for five academic years, such appointments cannot be regularized. At the same time, the Management needs to be penalized by invoking the powers of the court under Sub-Clause (e) and (f) as reproduced above.

12. In view of the above, these two petitions bearing Nos. 9458 of 2021 and 9459 of 2021 are partly allowed. The impugned judgment of the school tribunal is quashed and set aside and appeal Nos. 29 of 2015 and 30 of 2015 stand rejected.

13. In so far as penalizing the petitioner-Management and granting relief to the appellants under Section 11(2)(e) and (f), I find that their monthly salary was a consolidated stipend of Rs. 9,000/-. Granting six months wages would render

these appellants to gain a meager amount of Rs. 54,000/-. Sub-Clause (f) of Section 11(2) would enable this court to pass an order as may be appropriate in the facts and circumstances of the case.

14. As such, I direct the petitioner-Management to pay an amount of Rs. 1,00,000/- each to these appellants under Section 11(2)(e) and (f), inclusive of six months wages, as quantified compensation to these appellants.

15. In the second set of the two Petitions bearing Nos. 2360 of 2022 and 2361 of 2022, the same petitioner -Management is before this court because the school tribunal, while dealing with the execution of it’s judgment under Section 11(3) of the MEPS Act, has ordered the Management to pay an amount of Rs. 54,80,755/- in one case and Rs. 43,60,423/- in the second case. Since the impugned judgments of the school tribunal have been quashed and set aside, these two orders would be rendered inoperable. Hence, both these orders of the school tribunal dated 20-01-2022 in application No.09 of 2021 and 10 of 2021, would not survive and stand set aside. These two petitions are therefore, disposed off.

16. The amount of Rs. 1,00,000/- as directed by this court shall be paid by the Management to each of the respondents/original appellants, as expeditiously as possible and in any case on or before 21-04-2022, failing which, shall carry an interest @ 6% from the date of the judgments of the Tribunal delivered in the original appeals.

[RAVINDRA V. GHUGE, J.]

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