

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10536 OF 2017

1. Lal Bahadur Shastri Shikshan
Prasarak Mandal, Gitta,
Tal. Ambajogai, Dist. Beed.
Through its Secretary
Dashrath S/o Bhausahab Shinde,
Age- 49 years, Occ- Service,
R/o. Gitta, Tal. Ambajogai,
District-Beed.
2. Shri Ram Madhyamik Vidyalaya,
Bharaj, Tal. Ambajogai,
District-Beed,
Through its Headmistress. ...PETITIONERS

VERSUS

1. Aruna Bhairuba Nakure,
Age- 40 years, Occ- Nil,
R/o. Jawalgaon, Tal. Ambejogai,
District-Beed.
2. The Education Officer (Secondary),
Zilla Parishad, Beed. ...RESPONDENTS

ALONG WITH
WRIT PETITION NO.100 OF 2019

Aruna Bhairuba Nakure
Age- 40 years, Occ- Assistant Teacher
R/o. At Post- Jawalgaon,
Tq. Ambejogai, Dist. Beed.

VERSUS

1. Lal Bahadur Shastri Shikshan Prasarak Mandal,
Through its Secretary,
Gitta, Ambejogai, Dist. Beed.

2. Head Master,
Shri. Ram Madhyamik Vidyalaya,
Bharaj, Ambejogai, Dist. Beed.
3. The Education Officer (Secondary)
Zilla Parishad, Beed.
4. The State of Maharashtra
Through its Secretary,
School Education Department,
Mantralaya, Mumbai.

...RESPONDENTS

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Mr. S.S. Thombre, Advocate for Petitioners in Writ Petition No. 10536/2017 and Respondents No. 1 and 2 in Writ Petition No. 100/2019.

Mr. R.J. Godbole, Advocate for Respondent No. 1 in Writ Petition No. 10536/2017 and Petitioner in Writ Petition No. 100/2019.

Mr. S.W. Munde, AGP for Respondent-State.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 15th JUNE, 2022

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard with the consent of learned advocate for the parties.
2. Since both these petitions raise similar question of law and facts they were heard together and are being decided by this common judgment.
3. For the sake of convenience, parties are hereinafter referred to as 'management', 'school' and 'teacher'.

4. The management has filed Writ Petition No. 10536/2017 challenging the judgment of the Tribunal passed in favour of the teacher.

5. By filing Writ Petition No. 100/2019 the teacher has challenged the judgment of the school Tribunal to the extent it grants her only 50% back wages.

6. The teacher filed appeal No. 52/2011 before the School Tribunal, Aurangabad, contending that she is M.A., B.Ed., hence, she has qualification of a trained graduate teacher. By following prescribed procedure, she came to be appointed as assistant teacher in the secondary school run by the management on 12.06.2006. However, no appointment order was served on her. She was the first appointee in the school, appointed on clear permanent vacant post. At the time of her appointment, school was not receiving grant in aid. Being senior most she was made in-charge headmistress from the date of her appointment and she discharged her duty as in-charge headmistress from 12.06.2006 till 13.12.2010.

After seven years of recognition, school started receiving grants. In order to deprive her legitimate claim on the

post of headmaster, the charge of said post was withdrawn from her and was given to Shri. Tidke, who was junior to her. She therefore started working as assistant teacher w.e.f. 14.12.2010.

From beginning of academic year 2011-12 she was prevented from signing muster roll on the pretext that muster roll was sent for inspection, however, she was allowed to perform her regular duty. The headmaster used to countersign her lesson notes. At the time of school inspection done on 3rd, 4th and 5th October, 2011, she realized that her name is deleted from the school record and Government officers are misguided by the management, by fabricating the school record. Immediately, on the next day she filed complaint to the Inspector and Education Officer making grievance in that regard. Thus, she has claimed in the appeal that her name was deleted from the muster roll by headmaster of the school and she was prohibited from taking classes. Lastly, on 08.10.2011 she was orally told that her services are terminated w.e.f. 10.10.2011. She therefore challenged her otherwise termination and claimed reinstatement, back wages and continuity in service.

7. The management and school opposed the appeal by filing their say. Though they admitted that the teacher was appointed by appointment order dated 12.06.2006, they contended that her appointment was not done by following due procedure. Her appointment was on purely temporary and year to year basis. She has worked in the academic year 2010-11 up to 30.04.2011. They admitted that the teacher was asked to work as in-charge headmistress, however, they contended that she failed to properly discharge duties as in-charge headmistress and therefore charge of that post was withdrawn from her on 14.12.2006 and the same was given to assistant teacher Shri. Tidke.

The management and the school filed additional say stating that teacher was appointed in the academic year 2010-11 by appointment order dated 12.06.2010. Her appointment was against reserved post, purely on temporary basis. In spite of appointment order, teacher did not work in the school after 30.04.2011. By relying on advertisement published by them calling upon candidates from reserved category to fill up the vacant post and B.C cell register, the management contended that candidate from reserved category namely Shri. Tanaji Gaikwad is appointed in the teacher's place by appointment

order dated 15.06.2011. By relying on the lesson notes of other teachers, the management contended that headmaster never used round stamp of school, while signing the lesson notes, the stamp of headmaster's post was being used, while counter signing the lesson notes. On this ground they denied the lesson notes relied upon by the teacher. It is further contended that the letters of S.S.C. board in respect of payment of charges toward checking papers of the board examination by the teacher, do not specify that the teacher has worked in the school. It is claimed that in inspection/patpadtalani held on 03.10.2011, name of the teacher is not reflected. They therefore claimed that the appeal filed by the teacher be dismissed.

8. The Tribunal after hearing the parties and considering the record partly allowed the appeal and directed reinstatement of teacher with continuity of service with 50% back wages. The management and the teacher both have challenged this judgment.

9. Heard the learned advocate for the petitioners, learned advocate for the respondents and learned Assistant Government Pleader for Respondent/State.

10. The learned advocate for the management strenuously submitted that admittedly, there is no appointment order issued in favour of teacher since beginning. The teacher has worked purely on temporary basis for one academic year. By placing reliance on roster submitted before school Tribunal, he would urge that the post on which the teacher was working, was a reserved category post and by issuing advertisement and by following prescribed procedure, teacher namely Tanaji Gaikwad belonging to the scheduled caste category is appointed. Since all the posts are filled in, there is no vacancy on which the teacher can be accommodated. The Tribunal has failed to consider this aspect. By placing reliance on *Priyadarshini Education Trust and Ors., Vs. Ratis (Rafia) Bano* (2007 (6) Mh.L.J., 667), he further submits that the teacher was not appointed by following prescribed procedure and therefore she cannot claim any right to the post. According to him, the Tribunal has erred in coming to a conclusion that teacher has acquired deemed permanency. He therefore, submits that the impugned judgment is liable to be quashed and set aside.

11. Per contra, learned advocate for the teacher submits that the management has never contended before the Tribunal in

their written say that the post on which the teacher was working was a reserved category post. By relying on the record he submits that the teacher was the first appointee in school run by the management. She was the senior most and therefore, she was given charge of post of headmistress, on which she has successfully discharged her duties, however, only after school started receiving grants, her legitimate claim to the post was denied by the management and she was orally terminated. By placing reliance on documents presented before the Tribunal, he submits that there is voluminous record to show that the teacher was working in the school from 2006 till 2011, and therefore, the Tribunal was justified in allowing the appeal. He therefore, supported the judgment of school Tribunal.

12. He would further urge that the Tribunal once having come to a conclusion that the teacher has worked with the management and the school for a period between 2006 to 2011, for no justifiable reason the Tribunal has erroneously granted only 50% back wages to the teacher. He claims that the Tribunal ought to have granted 100% back wages to the teacher as for no fault on her part, her services were terminated by the management.

13. In support of his submissions he placed reliance on Nita Ramesh Danane Vs. Dombivali Mitra Mandal and Others (2009 (1) Mh.L.J, 796), Aadarsh Education Society & another Vs. State of Maharashtra & others (2000 (2) Bom.C.R. 799), John Wilson Education Society's Wilson College & Anr. Vs. Shri. Prakash John Rawade (1993 (2) BSC 519), President Mahila Mandal, Sinnar Vs. Sunita Bansidhar Patole (2007 (2) Mh.L.J, 105) and National Education Society's High School and Junior College Vs. Mrs. Lulomool Monachary (1987 (2) Bom.C.R. 521).

14. Heard the learned advocate for the petitioners, learned advocate for respondent and learned Assistant Government Pleader at length. Perused the record.

15. It is clear from the record that the teacher is the first appointee in the school and being the senior most from the first day of appointment, she was made in-charge headmistress. The management has admitted that the teacher was appointed by appointment order dated 12.06.2006. It is clear from the muster rolls of the year 2006 onwards and other documents i.e. copies of lessons notes, letters from S.S.C. and H.S.C. board and the cheque dated 15.06.2011 which are on record, that the teacher has worked in the school from 12.06.2006 till 2011.

16. It is pertinent to note here that four teachers including teacher were appointed in the year 2006, on the same day. The name of the teacher appears at serial no. 1 in the muster roll of year 2006. Thus, it is clear that the teacher is the first appointee in the school and therefore it can be safely concluded that her appointment was against permanent, vacant, sanctioned post.

Since the teacher was the senior most amongst four appointees she was made in-charge headmistress, from day one. The name of teacher Shri. Tidke appears at serial no. 3 in the said muster roll. The management and school have not denied the fact that as the teacher was the senior most, she was made in-charge headmistress since beginning and she has worked on that post continuously for five years.

17. Admittedly, the charge of the post of headmistress was withdrawn from the teacher in the year 2010 and the same was given to Shri. Tidke, who as per the record is junior to the teacher. There is nothing on record to substantiate the stand of the management and school that the teacher failed to properly discharge her duties as in-charge headmistress. The management has failed to place on record any material in

support of this stand.

18. The teacher by filing application Exhibit-41, called upon the management to file documents in respect of prescribed procedure followed by them, while appointing assistant teachers along with her, in the year 2006 and subsequent thereto. The management for the reasons best known have chosen not to file said documents of appointments made in the year 2006 and 2007. It is therefore clear that the position prevailing in the year 2006, at the time of appointment of teacher and Shri. Tidke is deliberately suppressed by the management. Adverse inference therefore needs to be drawn against the management.

The management has produced advertisement issued in the year 2011 pursuant to which they claimed to have appointed assistant teacher Shri. Tanaji Gaikwad, allegedly on reserved post. The management has also relied on the roster of year 2013 to contend that, out of four teachers appointed pursuant to the advertisement, two were appointed in open category and two are in reserved category. In the said roster, Shri. Tidke is shown to be appointed as assistant teacher in the year 2006. Assistant Teacher Shri. Balaji Malwad is shown to be appointed in the year 2007 and thereafter two more assistant

teachers were appointed. This roster since is prepared by the management by deleting the name of teacher, same cannot be relied upon as it shows position of the year 2013 and position of 2006 is not brought on record by the management.

19. As per the record, teacher and Shri. Tidke were appointed on the same day and the management claims that Shri. Tidke was appointed by following prescribed procedure. Since the teacher and Shri. Tidke are appointed in a single process, it is required to be held that the teacher and Shri. Tidke are appointed by following due procedure. At the cost of repetition it is to be noted here that the name of teacher stands at serial no. 1 in the muster roll of the year 2006 onward and teacher as well as the management have relied on said muster rolls.

20. It is evident from the muster rolls placed on record that after withdrawal of charge of headmaster from the teacher, it was given to Shri. Tidke, who is next senior most teacher and his name thereafter is written at serial no. 1 in the muster roll.

21. As per muster rolls and record, assistant teachers

Shri. Balaji Malwad, Shivaji Ganlewar and Tanaji Gaikwad were not in school in the year 2006, still their names are shown as legally and validly appointed teachers. As the management is claiming that these four teachers are legally and validly appointed, and since as per the record they are junior to the teacher, then it needs to be held that the teacher is also legally and validly appointed in the year 2006.

22. Since the teacher has worked in the school continuously for a period of more than five years, she has acquired deemed permanency, in view of Section 2 of Maharashtra Employees of Private Schools (Conditions of Service) Act, 1977.

23. Record indicates that teacher's name was deleted from the school record. She has complained in that behalf to the Inspector and Education Officer by representation dated 04.10.2011. There appears substance in the contention of teacher that after the school started receiving grant in aid and as the management wanted to appoint candidates of their choice, the teacher was illegally terminated. In the peculiar facts of the present case, otherwise termination of the teacher is apparently

illegal and same is rightly set aside by the Tribunal.

24. The Tribunal has properly appreciated the facts and has drawn conclusions, which are supported by the record. There is no illegality or perversity in the impugned order passed by the Tribunal. Therefore, the impugned judgment of the Tribunal to the extent it sets aside order of termination of teacher is not liable to be interfered with, in extra ordinary writ jurisdiction.

25. In *Priyadarshini Education Trust* (supra) the Division Bench of this Court has held that '*in order to claim benefit of deemed permanency, a teacher must be duly selected and appointed in clear permanent vacancy. His appointment must not be for a fixed/limited period and the appointment order must indicate that the appointment is on probation.*'

In this judgment it is further held that '*the appointment order in the custody of the petitioner is the primary evidence and unless she could have made out a case of having acquired right to lead secondary evidence, neither management could have been invited to produce the document, nor any adverse inference could be drawn against it. Appointment order is a document, original of which ought to be in the custody of the candidate appointed. We are, therefore, unable to concur with*

the learned Single Judge that non-production of the documents by the management can provide a key for success to the teacher-petitioner.'

26. By relying on this ratio, learned advocate for management strenuously urged that admittedly, there is no appointment order issued in favour of teacher and therefore, in the light of this ratio, since the teacher is appointed without following due procedure and as she failed to produce appointment order, she cannot be said to have acquired deemed permanency and hence her appeal ought to have been dismissed.

27. In the case in hand, since the management has admitted that teacher was appointed on 12.06.2006 and Shri. Tidke and other teachers who were appointed along with teacher were appointed by following due procedure, it has to be held that the teacher was also appointed by following due procedure. Therefore, ratio in *Priyadarshini Education Trust* (supra) is of no help to the management.

The ratio in *John Wilson Education Society's* (supra), *President, Mahila Mandal, Sinnar* (supra) and *Aadarsh Education Society* (supra), supports the case of teacher.

28. The Tribunal while awarding 50% back wages to the teacher has taken into consideration the affidavit filed by the teacher stating that she was not gainfully employed anywhere and has observed that the management and the school have not filed counter affidavit or any other affidavit to show that the teacher was gainfully employed anywhere. Then by relying on para 33 of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (2013 AIR SCW 5330), the tribunal has observed that:

"27. Considering the fact that the appellant has worked in the school for five years and more, considering the fact that the appellant was abruptly removed without following the due procedure, considering the fact that this removal of the appellant indicates that the malign intention of the Shikshan Mandal and the school, to take other candidate as the school came on grants, the way that the appellant was terminated, I hold that the appellant is entitled for the back wages to the extent of 50% of the total salary, from the date of termination till the date of reinstatement."

29. It is clear from the above observations of the Tribunal that teacher's termination was *malafide*, illegal and unsustainable. The Tribunal therefore, in the light of observations in *Deepali Surwase* (supra) ought to have granted full back

wages to the teacher. The Tribunal without assigning any reason erroneously held that the teacher is entitled for 50% back wages of the total salary. Said finding is contrary to the ratio in *Deepali Surwase* (supra). The impugned order of the Tribunal to the extent it denies 50% back wages to the teacher is therefore unsustainable. In the result, following order:

ORDER

- i) Writ Petition No. 10536/2017 is dismissed.
- ii) Writ Petition No. 100/2019 is hereby allowed.
- iii) The teacher is held entitled to full back-wages from the date of her termination till the date of reinstatement. The judgment of the School Tribunal, Aurangabad in Appeal No. 52/2011 dated 06.04.2017 is modified to that extent.

Rule is made absolute to the above extent with no order as to costs.

[NITIN B. SURYAWANSHI, J.]