

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11951 OF 2015

1. Milansar Shikshan Prasarak Mandal,
Juna Mondha, Super Market,
Parbhani, Tq & Dist.Parbhani,
Through its Secretary
Mohammad Gaus Abdul Gaffur
Age 42 yrs, Occ.Business.
2. Soniya Gandhi Urdu High School,
Sevak Nagar, Parbhani,
Tq. & Dist. Parbhani
Through its Headmaster .. Petitioners

Versus

1. Rizwana Parveen Sayed Ahmed
Age 39 years, Occ.At present Nil,
R/o Rashid Photo Studio,
Gujri Bazar, Parbhani,
Tq & Dist. Parbhani.
2. The Education Officer (Secondary)
Zilla Parishad, Parbhani. .. Respondents

...

Mr.R.N. Dhorde, Sr. Advocate i/b Shri V.R. Dhorde, Advocate for
the petitioners.

Mr.M.V. Ghatge for respondent no.1.

Mr.D.R. Dorde, AGP for respondent no.2.

CORAM : SMT. BHARATI H. DANGRE, J
Reserved on :- 4th February, 2022
Pronounced on :- 25th February, 2022

JUDGMENT :

1 The present petition is filed by the petitioner no.1, a Society registered under the Maharashtra Trust Act and a minority institution, running the petitioner no.2 High School in Parbhani, On being aggrieved by the judgment and order dated 31/10/2015 delivered by the School Tribunal, Latur in an Appeal filed by the respondent and the direction issued to reinstate the respondent with continuity and full back wages from the date of registration of the Appeal and other consequential benefits.

 In support of the writ petition, I have heard learned senior counsel Shri R.N. Dhorade for the petitioners. I have also heard Shri M.V. Ghatge for respondent no.1 and the learned AGP representing the Education Officer (Secondary) Zilla Parishad, Parbhani.

 On 15/12/2015, while the respondents were noticed on admission of the petition, the impugned judgment of the Tribunal dated 31/10/2015 came to be stayed, subject to the condition that the petitioner shall deposit the full back wages due to the respondent no.1 from 7/2/2013 till 31/10/2015.

 Record and Proceedings was also called from the School Tribunal, Latur, which is received.

 The consensus is expressed by the learned counsel for the parties to argue the petition finally. The pleadings are complete and even the Education Officer had filed his affidavit in furtherance of the directions issued on 10/1/2022.

Hence, Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2 The petitioner no.1, Milansar Shikshan Prasarak Mandal, is a registered Trust under the Maharashtra Public Trust Act, 1950 on 16/11/2002 and was conferred with a minority status, its aim and object being to impart education by establishing schools. The petitioner Society was granted permission by the State of Maharashtra to run Urdu Primary School from I to VII standard at Sevak Nagar, Parbhani on 'permanent no grant basis' by its order dated 25/7/2003. However, in view of the policy of the State Government, the word 'permanent' came to be deleted and subsequently, the School started receiving grants. On passage of time, the Petitioner No.1 felt the necessity to start Secondary School covering standards VIIIth to Xth, and permission was sought from the State Government to conduct such classes and the permission was received on 28/7/2009 to run Secondary school from VII standard on 'no grant basis'. Gradually, on account of the natural growth, IXth and Xth Standards were added in the petitioner no.2 School, which impart education in Urdu medium.

3 Since the petitioner no.2 school started the Secondary school from September 2009, for the Academic Session 2009-2010, the Education Officer sanctioned two posts of Assistant

Teacher and the staffing pattern for the years 2009-2010 comprised of these two posts.

The case of the petitioners, as set out in the petition, is that, for making appointment of the said posts, applications were invited, and, in all, six applications were received and on following the due procedure for appointment, two persons namely, Shri Inamdar Gupta and Shri Shaikh Nazim Hussain were selected and appointed to occupy, the posts of Assistant Teachers, by order issued in their favour on 5/10/2009 and 3/10/2009, respectively. The said teachers continued to work with the Management, is the specific stand of the petitioners.

4 The respondent no.1 to the petition claim that when the applications were invited for eligible and qualified candidates for the post of 'Assistant Teachers' by the petitioner no.1 for being recruited in the petitioner no.2 School, she applied and came to be appointed on the post of In-charge Head Mistress for a period of two years on probation from 21/6/2009 to 20/6/2011, and she claim that her appointment was on a clear, vacant and permanent post in the petitioner no.2 School and accordingly, she joined the School with effect from 21/6/2019.

Claiming that she was the one who was appointed on the post of Assistant Teacher/In-charge Head Mistress, with the appointment order being placed on record before the Tribunal and with supporting documents to show that her appointment

was effect on and permanent regular basis, but on re-opening of the School, after summer vacation of May 2012, when she was not permitted to resume her duties on 16/6/2012, and was restrained from signing the Muster Roll, with a demand coming from the Secretary of the Society to pay an amount of Rs.18 lakhs, she approached the Education Officer requesting his indulgence, by permitting her to resume the duties. She also approached the concerned police station by filing a complaint and also approached the higher authorities in the Education Department, alleging that since she was unable to fulfill the illegal demand of the respondents, her services were orally terminated on 4/9/2012.

Being aggrieved by manner in which her services were put to end by the petitioner, she approached the School Tribunal by filing an Appeal, seeking relief of her reinstatement.

I will be referring to the Appeal of the respondent no.1, a while later.

5 The case of the petitioners as against the respondent no.1 as specifically set out in the petition is to the effect that respondent no.1 appeared for interview for the post of Assistant Teacher, but she was not selected, whereas in the Academic Year 2009-2010, two persons came to be appointed on the two posts of Assistant Teachers.

The petitioner's case is, that in the year 2010, she approached the Management once again along with her

application dated 21/6/2010 and requested to engage her services, limited for experience purpose. The Management conceded to her request and an agreement came to be executed on a stamp paper of Rs.100/- to set out the terms and conditions of such an appointment, and she accepted the appointment on honorarium of Rs.1500/- per month. The Management claim that the appointment was purely on a temporary basis and along with the petition, a copy of her bio-data forwarded to the Management, highlighting her experience and the agreement entered into with the respondent no.1 on 14/9/2010 is also placed on record. The agreement signed by the respondent no.1 and the Secretary of petitioner no.1 set out that the respondent no.1 is desirous of gaining experience and therefore, she is ready to accept her appointment as a teacher on honorarium of Rs.1500/- p.m in the petitioner no.2 school, which will not confer any rights upon her. In the above writing, she also conceded to the fact, that there is no vacancy available in the petitioner no.2 school and she will not claim any equity in future, pursuant to such an appointment in her favour.

6 In support of the claim that the appointment of the respondent no.1 was merely on honorarium basis on her request for gaining experience, the Management has annexed to the petition a copy of the payment register, reflecting payment of Rs.1500/- p.m being paid to her. During the course of hearing, the Management has also produced the register in original.

7 The case of the Management is very specific. By taking advantage of the arrangement with the respondent no.1, as contained in the agreement under her signature, taking undue advantage of the situation, she prepared forged certain record of the School and approached the Tribunal by staking a claim that she was appointed as In-charge Head Mistress on 21/6/2009, and on completion of period of probation, she attained the status of confirmed employee in view of Section 5(2) of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The petitioner has pleaded in the petition that on the basis of this forged record, she made a feeble attempt to demonstrate that she was working on the post of in-charge Head Mistress, but in the backdrop of an unlawful demand made by the petitioner no.1, which she could not fulfill, her services were terminated, which constrained her to approach the School Tribunal.

8 Turning to the Appeal filed by the respondent no.1 before the School Tribunal at Latur, it was registered as Appeal No.8 of 2013 and the Appeal came to be filed by invoking Section 9 of the MEPS (Conditions of Service) Regulation Act, 1977.

In the Appeal, the appellant/respondent no.1 specifically pleaded about her appointment effected by the Management, on the post of In-charge Head Mistress by order dated 21/6/2009 and her illegal oral termination. She pleaded

before the Tribunal that she continued to work for more than three years in the Petitioner No.2 School, and has attained status of a permanent employee and, as a consequence, the otherwise oral termination order, without any prior notice or opportunity of hearing be afforded, is violative of principles of natural justice, equity and good conscience. It was the contention of the appellant before the Tribunal that since the termination is a major penalty and the procedure for imposing such a penalty is set out in Rules 33, 36 and 37 of MEPS Rules 1981 and in absence of the said procedure being adhered to, her termination is illegal.

9 Before the School Tribunal, she brought on record the alleged order of appointment, which is the bone of contention between the parties as the appellant claim rights of permanency flowing from the said appointment order, whereas the Management specifically deny about issuance of any such order of appointment. She placed reliance on several documents which include the correspondence with the Education Department, where she has represented the School and signed as Head Mistress of Sonia Gandhi Urdu High School, Parbhani and relying upon the said correspondence, her submission is, she worked as Head Mistress of the petitioner no.2 School and the bulk of documents, which demonstrate her presence in the School as Head Mistress, lead to an inference, that she was appointed as Head Mistress.

The appellant also placed on record a communication addressed to her by the Education officer, Zilla Parishad Parbhani on 3/8/2012, informing her that she cannot sign the Muster Roll, since her name is not borne on the Muster Roll and she is an unauthorized person. Her various representations addressed to the different authorities as well as the information obtained by her under the Right to Information Act came to be placed before the Tribunal.

10 On consideration of the claim projected by the employee and contested by the Management, the School Tribunal framed the following issues :-

(i) Whether appellant proves that the respondent no.2 school is a recognized private school ?

(ii) Whether appellant proves that, on 21/06/2009 the respondent Management duly appointed her on probation, on clear, vacant and permanent post of incharge Headmistress, in respondent no.2 school as claimed ?

(iii) Whether appellant proves that, on 16/06/2012 the respondent Management illegally and orally otherwise terminated her said services from respondent No.2 School ?

(iv) Whether appellant is entitled to get reliefs of reinstatement, continuity of service, full back wages and all consequential benefits as claimed ?

Issue no.1 was answered in the affirmative whereas issue nos.2 to 4 was answered partly in the affirmative and on perusal of the documentary oral evidence brought on record, the Tribunal concluded thus :

92 Considering facts, circumstances, evidence on record and legal position discusses above, I come to the conclusion that, the appellant has brought on record sufficient evidence to prove that, on 21.06.2009 the respondent management has duly appointed her on probation on clear, vacant and permanent post of assistant teacher with charge of the Headmaster in respondent No.2 school. She has also brought on record sufficient evidence to prove that, on 16.06.2012 the respondent management illegally and orally otherwise terminated her said services from respondent No.2 school. As such she is entitled to get relief of reinstatement on original post of assistant teacher with charge of Incharge Headmistress with continuity of service, full back wages from date of registration of the appeal as she caused delay for it and all the other consequential benefits only from respondent management and not from respondent No.3 Education Officer (Secondary) as her appointment is on unaided/non grantable respondent No.2 school and her services has not been approved by the Education Department?.

11 With the aforesaid conclusion being drawn, the Tribunal set aside the impugned oral/otherwise termination order dated 16/6/2012 passed by the respondent Management

terminating the services of the appellant. The Management was further directed to reinstate the appellant on the original post of Assistant Teacher with charge of in-charge Head Mistress with continuity of service, full back wages from the date of registration of the Appeal i.e. 7/2/2013 and other consequential benefits from the said date. Since the School was unaided/non granted and her appointment was not approved by the Education Officer, no liability was fastened on the Education Officer.

12 It is in the backdrop of the aforesaid facts, I have heard the respective counsel who advanced their submissions, in opposing and supporting the impugned judgment of the School Tribunal, and perused the record and proceedings of the Tribunal as well as the Writ Petition and the response to it.

13 In support of the claim before the Tribunal, the respondent no.1 placed on record an order of appointment dated 20/6/2009, appointing her i.e. Smt.Rizwana Parveen Sayyed Ahmed from 21/6/2009 to 20/6/2011, on the period of probation on the post of In-charge Headmistress in the Pay Scale of Rs.9300 – 3480 + G.P 4300. The said order placed on record, at page 68 of the paper book, do not bear any outward number and in a very unusual manner, bear the signature of the President and Secretary of the Milansa Shikshan Prasarak Mandal and signatures are put above the stamp of the designation. The posts on which the

appointment is effected is mentioned as in-charge Headmistress, which is not a sanctioned post and which is not a post available, with the petitioner Management in the staffing pattern. It is also pertinent to note that column nos.2, 3 and 4 in the order of appointment placed on record, are left blank. The appointment order is accompanied with a joining report of 21/6/2009, which was a Sunday and though independently, there is no prohibition on an employee resuming her duty on a Sunday, but the aforesaid fact coupled with the form of appointment order placed on record, create suspicion.

14 The case of the petitioner Management, as specifically pleaded is, that for the Academic Session 2009-2010, only two posts of Assistant teachers were sanctioned and two appointment orders were issued to fill up the said post, 5/10/2009 and 3/10/2009 respectively. The Management specifically plead that selection process was carried out for the said post and even the respondent no.1 participated but she was not found eligible, hence not appointed as Assistant Teacher. If the appointment of the two assistant teachers is issued in the month of October 2009, which was preceded by a selection procedure, it is not comprehensible to rely upon the appointment order, alleged to be issued by the respondent no.1 in her favour, which is dated 20/6/2009. The appointment of the two teachers, as Assistant Teachers was also approved by the Education Officer (Secondary)

for two distinct periods on probation of two years, in pursuance of the proposal forwarded by the Management on 7/7/2011. However, admittedly, there is no approval to the appointment of the respondent no.1, obviously for the reason that there was no post of In-charge Headmistress available with the Management. The appointment order without outward number therefore, creates a doubt about its issuance by the Management.

The respondent placed several documents before the School Tribunal and this include the inspection report for the year 2010-11, reflecting her appointment as on 20/6/2009, but the said document is under the signature of the respondent no.1 himself. Another inspection report dated 26/7/2011 also contain a mention of her appointment as on 15/6/2011, but even this document is under her own signature. Several other documents like forwarding her name for training, proposal for Mandal Manyata, under her signature are projected to be the documents, which could establish that she was working with the Management.

15 The case of the Management is, all the aforesaid documents were forged by respondent no.1, which constrained the Management to lodge an FIR which resulted in invoking Sections 420, 468, 471 of the IPC. The complaint alleged that the appointment letter was forged by her, and the President and Secretary never issued any appointment letter in her favour and

she represented herself as Headmistress before the Education Officer during an inspection held on 20/8/2010 and 26/7/2011 and she signed the inspection reports and prepared bogus reports in collusion with the Inspection Officer and used the same before the School Tribunal.

The respondent no.1 was tried for the said offences by JMFC in RCC No.718/2012 and she stood acquitted of the said charges since the accusations were found to be vague and levelled with ulterior motive and since the prosecution failed to establish how and in what manner the accused cheated the complainant or the alleged institution. In any case, on account of the complainant not establishing the guilt of the accused, the order of acquittal was passed on 9/8/2017 by the concerned JMFC. However, the acquittal of the respondent no.1 from the criminal charges, is not a factor which would come to her aid, since in the criminal trial, the offence has to be proved beyond reasonable doubt and if the prosecution has failed to prove so, an accused stands acquitted.

16 The petitioner Management has relied upon the two appointment orders issued in favour of two Assistant Teachers which were approved by the Education Officer. At the same time, the petitioner has also placed on record an agreement executed between the Management and respondent no.1, which clearly reflect that the respondent no.1 was appointed for fixed

honorarium on the post of Assistant Teachers and the agreement clearly specify that she will not claim any equity on the basis of the said appointment.

The Management has placed before me the remuneration register and it is worth to take note of the fact that from June 2020, the name of the respondent no.1 is reflected in the said Register and bear her signature, against the entries and where she acknowledged receipt of Rs.1500/- from June 2009 to August 2011. Apart from the respondent, there are several other employees who had received the payment of Rs.1500/-, who were appointed on various capacities and since the Register is maintained in the normal course of business of the School/Management, where payment is received by the incumbent in cash and she/he has acknowledged the same, in absence of the respondent no.1, establishing or proving that the salary paid to her, was deposited into her account, the said document cannot be discarded.

17 The respondent no.1 has staked different stands at different points of time and though her case before the Education Department is to the effect that huge amount of Rs.18 lakhs was claimed from her, but since she did not succumb to the demand, her services came to be terminated, deserve to be tested in the wake of her own pleadings made in distinct proceedings.

Pertinent to note that when she approached the police station by filing a complaint, she do not make reference to any such demand, when it was imperative for her to inform the police about an act of demanding bribery, which itself is an offence, whereas in the complaint made by respondent no.1 to the Education Officer, she specifically allege that an amount of Rs.18 lakhs was demanded from her and on refusal to pay the said amount, in humiliating manner, she was driven out.

18 On a complaint being preferred to the Education Officer, he responded on 3/8/2012 by declaring that there is no appointment order in her favour and her presence in the School is unauthorized. Her grievance that she was not allowed to sign the Muster Roll, was not accepted as her name was not to be found to be entered in the Muster Roll and therefore, there was no question of she being refused to sign, is what the Education Officer communicate to her.

The Education Officer, i.e. Respondent No.2 has taken the same stand before this Court, when a direction was issued to file a specific affidavit, clarifying its stand and the contents of the said affidavit which is of great significance, read as under :-

“3 I say and submit that, as per the order passed by the Ld. School Tribunal, the affidavit in reply on behalf of the Education Officer (Secondary) Zilla Parishad, Parbhani has been filed. I say and submit that the Petitioner has not

forwarded any proposal for grant of continuation of service or personal approval in favour of present respondent no.1 to the office of the deponent till today. I say and submit that, as per the staffing pattern for the year 2009-10 two posts are available in the school run by present respondent Petitioner namely Soniya Gandhi, Secondary School, Parbhani, therefore Shaikh Najeem and Inamdar came to be appointed as Assistant Teachers and whose appointment has been approved by the office of the present deponent. I say and submit that, the present Petitioner has not forwarded any proposal of personal approval of the present respondent no.1, as such the Education Officer has not granted any approval. I say and submit that, if the Petitioner no.1 has appointed any teacher as per the staffing pattern with the prior approval of the Education Officer, in that cases the Education Officer is granting approval.

It pertinent to note here that, the post as Incharge Head Masters is never came in staffing pattern. I say and submit that, if the staffing pattern for the year 2009-2010 is perused there was only two posts sanctioned. I say and submit that, in the sanctioned posts or staffing pattern there is no mention about the post as Incharge Head Master.

After verifying the record which is available in the office, deponent has not found any document to show that the proposal for approval as In charge is received by the office of the deponent i.e. Education Officer, Parbhani and I further say and submit that the appointment which is annexed with the writ petition at Exh. B (Page no. 68) is issued by the Management and the proposal to approval is not received by the office of the Deponent. However, I say and submit that, additional charge of any post will be given

to any suitable person for looking day to day affairs of the school till the regular Head Master is appointed.

4 I say and submit that, as stated in the order of this Hon'ble Hon'ble High Court the deponent has perused all the record and after perusal it is found that, no any single document is given to the present respondent no. 1 -Rizwana Parveen Sayed Ahmed in pursuance to the application made under RTI Act. I say and submit that, the appointment order dated 20-06-2009 had not been issued from the office of this deponent”.

The affidavit of the Education Officer (Secondary) Zilla Parishad filed on 9/2/2022, says it all.

The documents which the respondent no.1 had obtained under Right to Information Act and file the same before the School Tribunal is also denied to have been issued to her and not even the appointment order dated 20/6/2009.

19 The learned counsel for the respondent has relied upon the inspection reports of the School for the year 2009-2010, 2011-2011, where the report mention that the VIII standard has started in the Academic Year 2009-2010 and IX Standard was started as a result of natural growth. The inspection reports, on which reliance is placed do not reflect the name of Shaikh Nazim Kasim despite his appointment is what is sought to be argued on her behalf. The counsel for the respondent no.1 has also submitted that since he is son-in-law of the Secretary and

therefore, he has been wrongfully inducted by back door entry. This argument do not hold any ground, since, if there was no appointment order issued in favour of Shaikh Nazeem Hussain, the Education Officer could not have granted the approval as the order of the Education Officer is placed on record and even the record of the Education Officer reflect his appointment on the post of Assistant Teacher in the year 2009-2010 itself.

Another important aspect which warrant attention, is about the appointment of the respondent no.1 as “In-charge Headmistress”. Pertinent to note that there is no post as incharge Headmistress/Head Master and there is no reason why she should be appointed on probation as in-charge Headmistress. In the absence of the regular Head Master, a person on who the charge is conferred, is termed as ‘in-charge Head Master/Headmistress’, and therefore, the claim of the respondent no.1 that she was directly appointed as ‘in-charge Headmistress’ and that too, on probation, cannot be believed and the said claim do not inspire confidence. All the documents on which the respondent no.1 has placed reliance are signed by her, and as the Management do not deny her presence in the School as a temporary employee receiving payment of Rs.1500/- per month, but as per the Management, taking advantage of this and since she had access to the documents including the inspection reports, it is quite possible that at times, she would have projected as in-charge Headmistress by the Management itself for some administrative

purposes. However, she cannot claim the right to the said post, in absence of a validly issued appointment order by the Management and further approval of her appointment by the Education Officer.

20 The School Tribunal has completely ignored the said aspect of the matter.

The numerous judgments relied upon by the learned counsel for the respondent no.1 to demonstrate that since she was a permanent employee of the Management, her services could not have been terminated without following due process of law, I need not refer to the said proposition of law, since here is a case where the respondent no.1 has failed to demonstrate her appointment in the petitioner school and the appointment order itself is under cloud. In absence of the burden being discharged by her to establish that she was appointed on a permanent clear vacancy, after following due procedure of law by the Management, which would have entitled her to claim the benefits of Rule 33 and 36, 37 of the MEPS Rules, the School Tribunal has erroneously recorded her to be a confirmed employee and set aside her termination and directed her reinstatement and action was taken without following process of law.

The Tribunal has failed to appreciate that though the School is minority institution, it is not exempted from following produced in appointing its teachers, except the limited number,

who are exempted from rigors of Section 5(2) of the MEPS Act. It is the Management, who deny the factum of her appointment and the corroboration is to be found, is the stand of the Education Department, that only two posts of Assistant Teacher were approved in staffing pattern of petitioner no.2 School, and accordingly, two individuals were appointed and their appointment was approved by the Education Department. The respondent no.1, completely fall out of the frame. But only claim, she was there in the School. This assertion is not authentically supported by her, by showing receipt of salary, as per pay scale or her appointment being approved by the Education Department.

The judgment of the School Tribunal, therefore, suffers from factual and legal flaw and hence, cannot be sustained. It is therefore, quashed and set aside, holding that the respondent no.1 was never appointed on clear and permanent vacancy of Assistant Teacher, giving rise to only benefits, being conferred upon her.

Necessarily, the Writ Petition is allowed in terms of prayer clause (a).

Rule is made absolute.

SMT. BHARATI DANGRE, J