

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4321 OF 2017

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Subhash Vidya Mandal,
Pimpalwandi, Tal: Junnar
District: Pune & Anr.

..Petitioners

Versus

Smt. Ratna Kashinath Bhor & Ors

..Respondents

Mr. P. B. Shah i/by Kayval P. Shah, for the Petitioners.
Smt. V. S. Nimbalkar, AGP for Respondent Nos.2 & 3.

CORAM : NITIN W. SAMBRE, J.

DATE : 2nd AUGUST, 2022

P.C.

1. This petition is under Article 227 of the Constitution of India by the petitioner No.1, a Trust registered under the provisions of Bombay Public Trusts Act, 1950 questioning order dated 4th February, 2017 passed by School Tribunal, Pune, whereby appeal preferred by respondent No.1, an Assistant Teacher under Section 9(1) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as "the MEPS Act" for the sake of brevity) against an order of termination dated 11th November, 2011 came to be allowed.

2. Facts necessary for deciding the present petition

are as under :-

Petitioner No.1 - Trust runs and manages the affairs of petitioner No.2 school which is unaided. The respondent No.1 to the petition claimed that she holds qualification of M.A. in Marathi, B.Ed. in Physical Science and Marathi. As she was qualified to be appointed as Assistant Teacher, it is her contention that she was orally appointed on 21st June, 2001 i.e. on the opening of the academic sessions 2001-02. It is claimed by her that during her tenure as an Assistant Teacher, she was permitted to sign muster, was provided invigilation work and also attended various training programmes. Since her services were satisfactory, the Head Master i.e. petitioner No.2 issued an order dated 17th November, 2003 appointing her as an Assistant Teacher which was in the form of confirmation after completing probation.

3. According to said respondent No.1, her services were terminated orally on 11th November, 2011 which has prompted her to prefer appeal being Appeal No.42 of 2013 under Section 9(1) of the MEPS Act. The said appeal was resisted by the petitioners by filing common written statement, wherein the entire claim of the respondent No.1 was denied. The defence of the petitioners was, respondent No.1 was never in the employment of the petitioners and alleged oral appointment dated 21st June,

2001 and the written appointment order dated 17th November, 2003 are sham and bogus. It is claimed that the respondent No.1 was never in the employment of the petitioners.

4. The respondent No.1 in support of her claim has appeared to have produced substantial evidence before the Tribunal which has led to passing of the impugned order dated 4th February, 2017, whereby the order impugned of otherwise termination of the respondent No.1 dated 11th November, 2011 was quashed and set aside with further directions of reinstatement with 50% backwages.

5. Mr. P. B. Shah, learned counsel for the petitioners management while questioning the aforesaid order would urge that the petitioner No.2 school was operated on permanent no grant basis. According to him, the alleged oral appointment of respondent No.1 on 21st June, 2001, so also on 20th June, 2003 is not in accordance with the law viz. was not preceded with an advertisement and no such post existed on the application of the respondent No.1. According to him, one Kalpana Rajguru, then Head Mistress under whose signature order of appointment dated 20th June, 2003 claimed to have been issued, has done so without authority. He would claim that the alleged appointment order does not bear outward number. In

addition the contentions of Mr. P. B. Shah are, the judgment of the School Tribunal is contrary to law laid down by the Apex Court in the matter of **Priyadarshini Education Trust & Ors. Vs. Ratis (Rafia) Bano d/o Abdul Rasheed & Ors.** reported in **2007(6) Mh.L.J. 667**. He has drawn support from the aforesaid judgment so as to claim that there was no advertisement and the selection/appointment of the respondent No.1 was not in accordance with the relevant rules. According to him, the very claim for appointment is contrary to the rules. In addition, Mr. P. B. Shah has drawn support from the judgment of Apex Court in the matter of **Secretary, State of Karnataka Vs. Umadevi** reported in **AIR 2006(4) SCC 1**, so as to substantiate his argument that alleged appointment is in violation of provisions of law and rules, hence same is illegal. His claim is, even if such employee has put in long service, same cannot be regularized. In addition Mr. P. B. Shah has drawn support from the judgment of Apex Court reported in **(2013) 4 SCC 324** between **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya**, so as to claim that the backwages ought not to have been ordered.

6. Learned AGP appearing for respondent Nos.2 and 3 would support the order impugned.

7. None appears for the respondent/ employee.

8. I have appreciated the aforesaid submissions of Mr. P. B. Shah.

9. From the reply placed on record before the School Tribunal, it can be noticed that the petitioners have come out with a case in paragraph 'J' that the respondent No.1 has not been serving since October, 2010. The said claim was substantiated by relying on the entries in the muster roll since October, 2010. Apart from above, it is claimed that muster roll which was produced by the respondent No.1 was fabricated. It is also claimed in paragraph 17 that the respondent No.1 had worked on temporary basis for getting experience of teaching and she was paid honorarium/remuneration. As such, it is admitted that respondent No.1 has worked on the honorary basis and she was not given appointment order. Apart from above, further admission is given in paragraph 17 that the respondent No.1 belongs to open category (Maratha) and was having qualification of B.A. B.Ed (Physical Education). It is claimed that as per roster, no vacancy in the petitioner No.2 school for the open category was available.

10. If the claim in the written statement is appreciated, the petitioners are trying to blow hot and cold at the same time. The petitioner/management on one hand is claiming that the respondent No.1 has never worked with them and on the other hand are admitting her

employment may be on temporary basis.

11. The petitioners have come out with a case of fabrication of appointment order dated 20th June, 2003, fabrication of muster roll etc.. Once the respondent No.1 has produced the documents, such as muster roll, appointment order, it was for the petitioners to discharge their burden by placing on record original muster roll, details of the employees working with them, copies of service book, appointment order and approved staffing pattern. But for denial of the claim of the respondent No.1, the petitioner has not discharged its burden by placing on record any documents.

12. The fact that the petitioner No.2 school is on no grant basis and in such schools the appointments are given at the mercy of management cannot be ignored. Employees are required to work at the mercy of management and that too on the meager honorarium. The fact remains that the record produced by the respondent No.1 in clear terms establishes her employment with the petitioners in view of various documentary evidence discussed by the Tribunal such as appointment order, muster roll and such other documents so as to infer her employment with the petitioners.

13. At this stage, Mr. P. B. Shah informs that already

petitioner No.2 school is transferred to a third party. Be that as it may, the said fact will not have any bearing over the matter and such third party is not impleaded herein by petitioners.

14. As far as claim of Mr. P. B. Shah based on the judgment of this Court in the matter of *Priyadarshini Education Trust (cited supra)* is concerned, once the petitioners have failed to demonstrate that there was no vacancy in their approved staffing pattern and have also failed to demonstrate the details of the employees working with them viz. the appointment orders, the approval orders, approval of staffing patterns from the office of the Education Officer, the Tribunal, in my opinion, was justified in carving out exception to the aforesaid judgments as the petitioners have failed to discharge their burden.

15. The reliance placed by the petitioners on the affidavit of alleged signatory to the appointment order dated 20th June, 2003, said affidavit was produced for the first time before this Court as was sworn on 21st March, 2017. No such documents were produced before the Tribunal, as such, the said attempt on the part of the petitioners is by way of afterthought so as to cover-up the *lacunas*.

16. The Tribunal while passing the order impugned

has noticed that the proposal dated 20th June, 2009 speaks of staff who were appointed and granted approval on permanent no grant basis were junior to the respondent No.1.

17. The document dated 20th June, 2009 speaks of the petitioner deputing respondent No.1 employee for training which has reference to the communication issued by Block Education Officer, Panchayat Samiti Ambegaon for training. Respondent No.1 was relieved vide communication dated 17th July, 2010 for attending the said training. Apart from above, in the record maintained by the petitioner No.2, the name of the respondent No.1 appears to have been mentioned as an employee.

18. Exh.22 an application for directions to produce documents of the respondent No.1 was allowed on 19th December, 2014. It appears that in spite of the order of School Tribunal, the petitioners have failed to produce on record the staff roster maintained by the institution for a period of 2001-11, list of teaching staff since 2001-11 for all the subject of Marathi, Social Science, Physical Education etc. The appointment orders of teaching and non-teaching staff and the approval order by the Education Officer for the aforesaid period. As the petitioners have failed to produce aforesaid documents, rightly so adverse inference was drawn against the petitioners which has led

to the only finding that the respondent No.1 was in employment of the petitioners.

19. Apart from above, memo was served to the respondent No.1 in 2007, as she remained absent from the duty. In the aforesaid background, the view expressed by the Tribunal on the issue of the employer - employee relationship between petitioners and respondent No.1, the appointment of the respondent No.1 as an Assistant Teacher till the date of her oral termination and in view of above background her reinstatement appears to be quite justified and in tune with provisions of the MEPS Act.

20. The claim put forth by Mr. P. B. Shah in the matter of backwages is concerned, the Tribunal has awarded 50% of the backwages. The law on the point of backwages is well settled. If the reinstatement is granted, the rule is, backwages must follow, unless it is demonstrated by the employer like the petitioner that the employee during such period was gainfully employed. In case if there is denial of backwages, the same can be termed as a punitive action against the employee. In the case in hand, though Mr. P. B. Shah by relying on the judgment of Apex Court in the matter of *Deepali Gundu Surwase (cited supra)* has questioned the order of Tribunal of granting 50% backwages, however, the fact remains that it was for the petitioners to establish before the

Tribunal, so also before this Court that during such period the respondent No.1 was gainfully employed. The petitioners rather have not pleaded any such case before the Tribunal, as the question of establishing the same by the petitioners was not an issue before the Tribunal at all.

21. In the wake of above, the judgment in the matter of *Deepali Gundu Surwase (cited supra)* will rather help the respondent and not the petitioners. In this view of the matter, no case for interference is made out. The petition fails, dismissed.

[NITIN W. SAMBRE, J.]