

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 8684 OF 2018

1) Brothers of St. Martin,
through its President Mr. Sujeet Kumar,
C/o St. Martin Hindi High School,
Near Dinshaws Factory, Borgaon,
Katol Road, Nagpur.

2) The St. Martin Hindi High School,
Near Dinshaws Factory, Borgaon,
Katol Road, Nagpur.

.... **PETITIONERS**

VERSUS

1) Janardhan Mahadeorao Ingole,
Aged about 47 years,
R/o Plot No.17, Manohar Cooperative
Housing Society, Mate Layout, Ekta
Nagar, Gorewada Road, Nagpur-440013.

2) The Education Officer,
(Secondary), Zilla Parishad, Nagpur.

.... **RESPONDENTS**

Mr. S. Zia Qazi, Counsel for the petitioners,
Mr. P.N. Shende, Counsel for respondent 1,
Ms. T.H. Khan, A.G.P. for respondent 2.

CORAM : ROHIT B. DEO, J.
DATED : 10th JANUARY, 2022

ORAL JUDGMENT :

Heard. **Rule.** With consent, the petition is heard finally.

2. The management of Saint Martin Hindi High School is assailing the judgment dated 03-12-2018 in Appeal 14/2017 whereby the School Tribunal allowed the appeal preferred by respondent 1-employee, set aside the termination dated 24-6-2015 and directed the management to reinstate the employee in service with continuity and back-wages.

3. The hearing was deferred in view of the statement of the learned Counsel for the petitioners Mr. S. Zia Qazi that certain grounds raised in the petition are covered by the judgment in Writ Petition 8683/2018, which judgment the management has challenged in Special Leave Petition 14477/2021. This Court directed the listing of the petition after the decision in the Special Leave Petition.

4. It is common ground that the Special Leave Petition is subsequently dismissed.

5. Brief facts are that the employee holds qualification B.A., M.A. and B.PEd. He claims to have been appointed as P.T.I./Trained Graduate Teacher, vide appointment order dated 01-7-1997, pursuant to a selection process conducted in accordance with law. The appointment was in permanent vacancy and on probation, is the contention of the employee.

6. The employee contends that since the school was not initially receiving grant-in-aid, the proposal seeking approval was not sent to the Education Officer. The employee completed the period of probation and since he continued to be in service, attained the status of permanent employee. According to the employee, in 2012 the school started receiving grant-in-aid. The management forwarded the proposal of others, however, the employee's proposal was not forwarded and he preferred Writ Petition 1146/2015 and during the pendency of the petition, he was on summer leave. The employee contends that when he returned to school on 24-6-2015 after the summer vacations, he was not permitted to sign the muster roll though he was permitted to work. The management took a stand in the High Court that the employee had abandoned services and then restrained the employee from entering the school premises. The management generally denied the allegations levelled in the memo of appeal. The management contended that the employee was appointed by the then President without following due process and that the post was not approved. The learned Counsel for the management Mr. S. Zia Qazi fairly states, that in the connected petition preferred by the management challenging the relief granted to Ratnaprabha Bharatrao Deshmukh this aspect is decided against the management and the Special Leave Petition is dismissed.

7. Be that as it may, the Tribunal noted that the employee put in uninterrupted service for more than sixteen years and that the appointment order dated 01-7-1997 shows that the employee was appointed on probation for two years from 01-7-1997. The Tribunal held that since the employee has been continued for more than sixteen years, it was not open for the management to claim that the initial appointment was not legal. I see no error in the view taken by the Tribunal.

8. Mr. S. Zia Qazi submits that two issues may be decided in the present petition. According to Mr. S. Zia Qazi, there was no sanctioned post of P.T.I. when the employee was appointed on 01-7-1997. The Tribunal has held that the management did not produce on record any documentary material to suggest that the strength of the students was not more than 500 at the relevant time. In any event, the aspect would be relevant only for the purpose of grant since the State Government will not release salary grant if the employee is not appointed in a post which is sanctioned. The management is not *per se* prohibited from appointing a Teacher even if the strength of students is less. In such an eventuality, the burden to pay the salary will be that of the management and the State Government may not reimburse the salary. In any event, considering that in appeal there was absolutely no

documentary material placed on record by the management, the adverse inference drawn by the Tribunal suffers from no infirmity. The other submission of Mr. S. Zia Qazi is that the employee was not qualified for appointment as Assistant Teacher. It is not in dispute that the employee is qualified to be appointed as P.T.I. After availing the services of the employee as P.T.I. for sixteen years, the management cannot be permitted to argue that the post was not sanctioned, that apart, I have already observed that at the most the said aspect may have relevance to entitlement of the management to receive salary grant. No other submission was canvassed.

9. The petition is dismissed with no order as to costs.

JUDGE

adgokar