

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2736 OF 2009

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| 1. The Secretary, Khedi and
Gramin Vikas Samajik Sanstha
Khandala-Hisori & others | ...PETITIONERS |
| 2. The Head Master
Ravindranath Tagor
Secondary and Higher Secondary
Vidyalaya, Khandala-Hisoli
Tq. & Dist. Latur | |

VERSUS

- | | |
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| 1. Kum. Rupali D/o. Raosaheb Poul
Rupali W/o. Sudamrao Sirsath
and others | ...RESPONDENTS |
| 2. The Education Officer (Secondary),
Zilla Parishad, Latur,
Dist. Latur | |

Mr. V. D. Salunke, Advocate for the petitioners
Mr. R. J. Godbole, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

RESERVED ON : 22-06-2023

PRONOUNCED ON : 12-07-2023

JUDGMENT :

1. This petition is by the Management/Headmaster

challenging the judgment and order passed by the Presiding Officer, School Tribunal, Latur in Appeal No.34/2007 dated 31-03-2009. The appeal of the respondent-teacher came to be allowed and she is directed to be reinstated in the school with backwages by setting aside alleged oral termination dated 16-12-2006 that was passed by the Management.

2. Facts in short are that; respondent No.1 was orally appointed on temporary basis initially from 12-06-2002 to 30-04-2003 for one academic year. There after the same was continued from 23-06-2003 to 30-04-2004 for one academic year. From May, 2004, the teacher did not come. On 30-04-2004 she joined one other college namely Shivaji College Murud as a Lecturer and worked there from 16-06-2005 to 16-04-2006. Thereafter, she filed an appeal in the school tribunal challenging the oral termination order. This court while admitting the petition, granted relief in terms of prayer clause -C by order dated 07-07-2009 and thus the impugned judgment dated 21-03-2009 in the petition is not implemented.

3. The main submission of the petitioner is that there is no appointment order on record. Entire record produced by the respondent before the School Tribunal was manipulated. She on her own left the job. Subsequently, an advertisement was given by the Management and now one Chavan is already appointed as a Teacher. Respondent in spite of knowing that advertisement was issued did not challenge the said advertisement. On the contrary she appeared for the interview and she was found to be not fit. In view of the same, it is submitted that she is not entitled to get any relief. Findings recorded by the learned Presiding Officer are not proper. There was no sufficient material before the learned tribunal to come to a conclusion that respondent is terminated. Thus, the finding that the respondent was appointed as an Assistant Teacher under Section 5 (1) of the MEPS Act itself is wrongly answered in affirmative. Further finding that respondent has become deemed permanent is also wrongly recorded.

4. The learned advocate for the respondent vehemently argued that the MEPS is piece of beneficial legislation. In fact appointment letter was issued, however, same was never given to the respondent and she was only orally communicated the order. Thus, it will have to be presumed that she was appointed by giving appointment letter. He submits that Rule 9 (5) of the MEPS Rules makes it mandatory for the Management to issue written orders and in view of this there has to be an order passed by the Management which is not given to the respondent. Non compliance of the order on record will not give any benefit to the Management. There would be a presumption that appointment order is kept in custody by the Management. There is no case of the Management that there was no post vacant. When the post was vacant the appointment should not have been made on temporary basis. He submits that the Management is in habit of not giving orders in hands of the teachers. He further submits that in view of Rule 23 there is no concept of oral termination. Vacancy is said to be temporary only when it is made against reserved post or leave vacancy or

suitable candidates if not made available etc. He thus, supports the order and prays for dismissal of the writ petition.

5. From the submissions and record it is clear that there is no appointment order issued by the petitioner Management. Though the record is produced by the respondent showing that she had attended school, however, there is no record showing that she has attended the school after 2006. The respondent tried to rely upon the certificate issued by the Headmaster of the school viz experience certificate. The Management has also produced on record the letter dated 01-03-2007 issued by the Principal of Shivaji Mahavidyalaya to the petitioner No.2, that the respondent has worked in the said college from 16-06-2004 till 02-04-2005 and from 20-06-2005 till 16-09-2005 without salary. There is also material on record wherein the respondent has signed on the pay slip in the capacity of the Headmistress. There is seniority list of the school showing that respondent is senior most teacher. The petitioners specific case is that the Deputy Education Officer (Secondary), Zilla Parishad, had

communicated to the Education Officer (Secondary), Latur by communication dated 20-03-2007 that respondent herself has put a stamp as Headmistress and has signed and by putting whitener on the name of S. P. Chavan she has shown herself to be senior most teacher. This material produced by the respondent is refused by the Management and its allegation is that said record is manipulated.

6. On this fact, the court has to proceed with the submission and the judgments relied upon by the parties.

7. Learned Advocate Mr. Salunke firstly relied upon the judgment reported in 2007 (6) Bom CR. 79 in the case of Priyadarshani Education Trust and others VS Ratis (Rafia) Bano Abdul Rasheed and others to submit that when no procedure is followed i.e. advertisement, proper selection, process the teacher does not get any right. In this judgment the Division Bench of this court has held that the teacher does not get any right of permanent teacher unless said teacher is appointed by following

due process of law in view of Rule 9 which provides for manner of appointment of staff. The court has specifically emphasised the words 'in the manner prescribed' as contemplated by the Section 5(1) of the Act. This finding was based upon the judgment in the case of Narendra Kumar Chandla Vs State of Haryana and others. In that case, teacher was appointed for one academic year on temporary basis. For the next 2-3 years she was again continued for one year and she was continued till 03-09-1994. She had claimed that she was appointed on probation in 1992, however, she was not given continuation. In that case also in 2004 advertisement was issued by the Management and after following due process the teachers were appointed. In response to the said advertisement the teacher did not apply. However, an appeal was filed in July, 1994 before the School Tribunal, Aurangabad. She had approached the School Tribunal and after the appeal was allowed the Management came to this court. This court specifically held that it would be expected that teacher was appointed on probation period for two years. The court also observed that respondent could not satisfy that she

was appointed by following due process of law.

8. Next judgment relied upon by the learned advocate for the petitioner is the judgment reported in 2008 (3) Bom C. R. 206 in the case of Chandramani Devraj Tiwari Vs Secretary and others. It was against in LPA. This court again held that to claim the benefit of deemed permanency under Section 5(2) of the MEPC Act it was necessary for the appellant teacher to prove that he/she was duly selected in the manner prescribed and had rejected the appeal of the teacher.

9. As against this learned advocate Mr. Godbole relies upon the judgment reported in 2006 (2) MHLJ 530 in the case of Ramchandar Ramdhar Yadav Vs Hyderabad (Sind) National Collegiate Board and another. In the said case this court held that use of word 'temporary' in the appointment order by itself will not make the appointment temporary. If there is clear vacancy and when the appointment is not for a fixed period. In that view this court held that the petitioner therein was entitled

for benefits of permanency. In this reported case the facts were different than the present case and same is not therefore, applicable. Next judgment is the judgment reported in 2009 (1) MHLJ 796 in the case of Nita Ramesh Danane Vs Dombivali Mitra Mandal and others. In the said case there is clear finding that the appointment of the petitioner therein was valid and she was appointed on probation and it was case that she was prevented from signing muster roll and in that view of the matter the petition was allowed in favour of the petitioner.

10. Next judgment is the judgment reported in 1987 2 Bom 521 in the case of National Education Society's High School and Junior College Vs Mrs. Lulomool Monachary. The court has considered the case of otherwise termination. This court finds that the judgments relied upon by the respondents are not applicable on the facts to this case. The School Tribunal has not properly appreciated the legal position and the case of the parties and has arrived at a conclusion. It is fundamental right to claim the benefit of permanency, the teacher has to

show that there was an advertisement and thereafter appointment was made by following due selection process and only thereafter the appointment was given. In this case, it is case of the respondent herself that she was orally appointed though it is stated that there has to be an appointment order but the same is not given to her however, this submission cannot be accepted.

11. Going through the submissions and record it is clear that in the year 2006 there was an advertisement and one P. S. Chavan came to be appointed pursuant to the advertisement in the selection process. Said advertisement is never challenged by the respondent. Certificate issued by the Headmaster itself cannot be accepted as proof of valid appointment of the teacher. There is also report by the Deputy Education Officer (Secondary) that it is respondent herself had submitted a report by signing as Headmistress. This report is found to be manipulated. The learned Tribunal should not have relied upon the said manipulation when there is specific case of the Management that she has manipulated record. This court thus

finds that it was necessary for the respondent to show that she was duly appointed by following procedure as prescribed under section 5 of the MEPS Act. In this case to claim permanency, it was necessary for the teacher to show that she was appointed on probation. For all these reasons this court finds that the judgment and order passed by the learned School Tribunal deserves to be quashed and set aside. In view of the same, following order:-

ORDER

- a] The petition stands allowed.
- b] The impugned judgment and order dated 21-03-2009 passed by the Presiding Officer, School Tribunal, Latur in Appeal No. 34/2007 is quashed and set aside.
- c] No order as to costs.

[KISHORE C. SANT, J.]

Later on:

1. Learned advocate for the respondent prays for stay to the effect of this judgment and order.

2. Learned advocate for the petitioners opposes the said prayer.

3. However, since the respondent want to approach the Higher Forum, the effect of this judgment and order is stayed for four weeks.

[KISHORE C. SANT, J.]

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