

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1586 OF 2018

1. Dr. Babasaheb Ambedkar Shikshan
Prasarak Sanstha, Meharkuda,
Tahsil-Arjuni Morgaon, District-Gondia,
through its Secretary, Resident of
Chandramani Bhawan,
at Post Bondgaon (Devi), Tahsil Arjuni
Morgaon, District-Gondia.

2. Gindabai Vidyalaya, Wadegaon (Station),
Tahsil-Arjuni Morgaon,
District-Gondia, through its
Head Mistress.

.. Petitioners

.. Versus ..

1. Pramod Eknath Sinhagade,
Aged about 44 years,
Occupation-Service,
Resident of and C/o. Anil Kamble,
At Post Barabhati, Tahsil Arjuni
Morgaon, District-Gondia.

2. Education Officer (Secondary),
Zilla Parishad, Gondia.

.. Respondents

.....
 Shri H.A. Deshpande, Advocate with Shri N.A. Gaikwad, Advocate
 for the petitioners,
 Shri I.K. Daudasariya, Advocate for respondent no.1,
 Mrs. S.S. Jachak, A.G.P. for respondent no.2-State.

CORAM : MRS. VRUSHALI V. JOSHI, J.
RESERVED ON : 22.02.2023.
PRONOUNCED ON : 06.04.2023.

JUDGMENT

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The petitioners challenge the order passed by the School Tribunal reinstating the respondent no.1 with back-wages. The petitioners terminated the services of respondent no.1 as the appointment of the respondent no.1 was illegal, as at the time of his appointment he was age barred. The respondent no.1 remained absent without intimation for a long period and, therefore, the petitioners have terminated his services.

3. The facts giving rise to the petition are as under :

The petitioner no.1 is a society registered under the Societies Registration Act and also a Public Trust. The society manages two schools i.e. Gindabai Vidyalaya, Wadegaon, Arjuni Morgaon and Samrat Ashok Vidyalaya, Sawartola, Arjuni Morgaon, District-Gondia. The

petitioner no.2 is a recognised school imparting Primary and Secondary Education. The appointment of the respondent no.1 was as under graduate teacher for standard 5 to 7 with qualification of HSSC, D.Ed.

4. The respondent remain absent without intimation from 14.07.2014, therefore, the petitioners had issued the letters on 4.8.2014, 11.8.2014, 13.9.2014 and 8.10.2014 by registered post directing the respondent no.1 to report on duty, but he failed to respond the petitioners. After waiting for considerable period of three months, his name was removed from attendance register from the month of February-2015. Thereafter, the respondent no.1 approached the School Tribunal by filing appeal under Section 9 of the MEPS Act challenging his alleged termination from 20.8.2014. He has stated before the School Tribunal that he was not allowed to join his duties though he has attached the medical leave along with certificate and though he resumed his duties on 30.7.2014, he was not allowed to sign attendance register.

5. The petitioners have stated before School Tribunal that the respondent no.1 was working as LIC Agent and was earning, therefore, there is no question of gratuity back-wages. He has registered himself as an Insurance Agent of Life Insurance Corporation and his Agent Code is 1229-99H.

6. The learned counsel for the petitioners has urged that the respondent no.1, at the time of his appointment, was above 33 years of age, therefore, was not eligible to be appointed as primary school teacher. Rule 9 provides age limit for appointment to any post in primary school. Upper age limit for backward class candidate is 33 years of age. The appointment of respondent no.1 was without prior permission of the Deputy Director. Since the appointment of respondent no.1 was contrary to the provisions of law, the same cannot be termed as an appointment on probation in view of Section 5 read with Rule 9.

7. The respondent no.1 was holding the post of undergraduate teacher on standard 5 to 7. For the academic session 2015-2016, not a single post undergraduate teacher was sanctioned. The School Tribunal erred in granting relief of reinstatement in absence of sanctioned teaching post. Section 11 empowers the School Tribunal to mould relief. For want of post, the School Tribunal could not have granted reinstatement and at the most could have granted six months salary by way of compensation.

8. He has further argued that the order of back-wages is obtained by fraud, misrepresentation and suppression. Though he has stated that he was not gainfully employed after termination and is facing starvation,

the respondent no.1 was working as LIC Agent and has source of income. During the pendency of appeal, the respondent no.1 had alternate source of income. The compromise talks were initiated between the parties, the respondent no.1 was willing to give up his claim towards the reinstatement provided the society pays certain amount towards full and final settlement. Since the parties were exploring the possibility of settlement and negotiations were midway, the respondent no.1 was reinstated in service on 19.01.2017 and his name was taken on attendance register on 19.01.2017. From 20.01.2017 the respondent no.1 remained absent and continuous to work as LIC Agent. Thereafter, on various occasions, they tried to settle the matter. As the financial condition of the society was poor, the petitioners not assailed the order of the School Tribunal. The Contempt Petition was also filed by the respondent no.1 and they tried to settle the matter. Thereafter, the petitioners have filed this petition before this court praying to set aside the order passed by the Tribunal.

9. The respondent no.1 has submitted that due to ill-health he has taken the leave and thereafter the petitioners restrained the respondent no.1 from signing the muster and, thereafter, termination order was passed. The appointment of the respondent no.1 is legal. The respondent no.1 was not in gainful employment and, therefore, is entitled for back-

wages. The respondent no.1 is a permanent employee. The termination dated 20.8.2014 cannot be said to be in consonance to law and rules as laid down in MEPS Act as no enquiry came to be conducted by the petitioners for effecting termination on 20.8.2014. In Secondary School, there is no age criteria , therefore, the aspect canvassed by the petitioners cannot be taken into consideration and, therefore, prayed to dismiss the petition.

10. Heard both the counsel.

11. It appears from the record that the petitioners tried to settle the matter and not complied the order, only after filing of Contempt Petition, the respondent was reinstated and thereafter, the petitioners have filed this petition after a period of two years. By way of settlement and to avoid contempt prosecution though petitioners allowed to join the duty, they did not allow him to sign muster.

12. The school where the respondent no.1 was appointed was initially unaided school and provisional recognition was granted for five years which can be termed as recognized school. The appointment of respondent was made after following due process of law. The respondent appointed the petitioner on probation for two years as Assistant Teacher

which is as per provisions of Section 5 and Rule 9 of M.E.P.S. Act.

13. The petitioners are coming before this court for the first time stating that the appointment of the respondent no.1 was illegal as he was age barred. The petitioners have not raised this issue before School Tribunal, therefore, this ground is not available to the petitioners at this stage. The petitioner has relied on judgment in support of his argument that his appointment itself was illegal, as he was age barred. **2009 (2) Mh.L.J. 195 (Nehru Shikshan Sanstha, Pune and another .vs. Smt. Shobha Karve and others)**

14. The respondent no.1 has stated in his written notes that he was working as LIC Agent and his Code was 1229-99H and it was terminated from the year 1.4.1990, therefore, the petitioners have taken a stand that during the period of employment, he was working as LIC Agent, after going through the record, it appears that except said licence, nothing is brought on record to prove that he was working as LIC Agent.

15. The petitioners have terminated the services of the respondent no.1 as he was absent for a long period without intimation.. The record shows that the respondent no.1 was absent and various letters were issued by the petitioner no.2 requesting him to join the duties and as he failed to

join the duty, he was terminated. No show cause notice was issued to the respondent no.1 for remaining absent and without any notice he was terminated which creates doubt about the allegation made by the petitioners and stand taken by the respondent no.1 about not allowing him to sign the muster is probable. Moreover, the petitioners are coming before the Court at belated stage with a challenge to his initial appointment which was not raised by the petitioners before School Tribunal.

16. In view of abovesaid facts, the petition deserves to be dismissed and accordingly is dismissed with costs.

[MRS. VRUSHALI V. JOSHI, J.]

Gulande