

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

WRIT PETITION NO.1238/2021

- PETITIONERS:** 1. Yug Pravartak Seva Mandal
Neri, Tahsil, Chimur, District :
Chandrapur, through its General
Secretary namely Rushidev Gopalrao Pise,
Aged : 45 years.
2. Lok Vidyalaya, Neri,
Tahsil : Chimur, District : Chandrapur
through its Head Master : Ishwar Kashinath
Randaye : Aged 52 years.

...VERSUS...

- RESPONDENTS:** 1. Shri Sambha s/o Vithobaji Pise
aged about : 54 years, Occupation :
Service, Resident of Netaji Ward,
Neri, Tahsil : Chimur District Chandrapur.
2. The Presiding Officer,
Additional School Tribunal,
Chandrapur.
3. The Education Officer
(Secondary) Zilla Parishad
Tahsil and District : Chandrapur.

Mr. S.P. Bhandarkar, Advocate for petitioners
Mr. A.Z. Jibhkate, Advocate with Shri A.B. Tikle, Advocate for respondent no.1
Mrs. M.A. Barabde, AGP for respondent nos.2 and 3

CORAM : AVINASH G. GHAROTE, J.

Judgment reserved on : 11/04/2023
Judgment pronounced on : 02/05/2023

1. Heard Mr. S.P. Bhandarkar, learned counsel for the petitioners, Mr. A.Z. Jibhkate, learned counsel for the respondent no.1 and Mrs. M.A. Barabde, learned Assistant Government Pleader for the respondent nos.2 and 3. Rule. Rule made returnable forthwith. Heard finally with the consent learned counsels for the rival parties.

2. The petition challenges the judgment dated 06/02/2020 passed by the learned School Tribunal Chandrapur in STC Appeal No.14/2017 filed by the respondent no.1 whereby the appeal filed under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, “the MEPS Act”, hereinafter) challenging the termination of the respondent no.1 by the order dated 02/05/2017 has been quashed and set aside and the respondent no.1 has been directed to be reinstated on the post of part-time librarian with continuity of service and full back wages with all pecuniary benefits from the date of termination till reinstatement and so also Rs.5,000/- as costs.

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

(a) The petitioner/Trust runs a school in the name and style “Lok Vidyalaya, Neri” in which classes from standard 5th to 12th are being conducted. The school is recognised by the competent authority.

(b) There was a vacant and clear post of librarian in the school in the year 1992 and the appellant having passed H.S.C. certificate course in library science and typewriting examination and was belonging to the caste Telgi, which is recognised as an OBC, being duly qualified for the post of librarian applied to the petitioner, in pursuance to which on an interview held by the school committee, the appellant was selected for the post of librarian and an order was issued on 06/07/1992, appointing the respondent no.1 as a part-time librarian, on probation for a period of two years with effect from 07/07/1992, on which date itself the respondent no.1 joined duties.

(c) The proposal for approval sent to the Education Officer was granted by an order dated 27/09/2000.

(d) On completion of the probation period, the respondent no.1, was continued in service and has rendered 25 years service.

(e) The employees of the school run by the petitioner had formed a society under the Maharashtra Cooperative Societies Act named as

Lok Vidyalaya, Bahuuddeshiya Karamchari Sahakari Pat Sastha, Neri in which the respondent no.1, was appointed as a clerk to write a record of the society on an honorarium of Rs.1100/- per month. The accounts of the society were audited and there was no audit objection. The society had issued a letter on 24/09/2014, claiming that during the internal audit of the society for the period from 01/04/2002 to 31/03/2011 there were deficiencies pointed out in the audit report on the basis of which it was alleged that the respondent no.1 had caused a loss to the society to the tune of Rs.3,97,693/-.

(f) The subsequent action on part of the aforesaid society in claiming amounts from the respondent no.1, is challenged before the Cooperative Court in Dispute No.575/2014, in which, by an order dated 27/01/2015, *status quo* is directed to be maintained.

(g) It is also stated that the said Sanstha, has thereafter lodged an FIR against the respondent no.1, as a result of which, the respondent no.1 was arrested on 17/04/2017 and was released on bail on 21/04/2017, as a result of which, the petitioner applied for permission from the Education Officer to suspend the respondent no.1 on 18/04/2017, which was granted on 04/05/2017, however, the respondent no.1 was not suspended.

(h) The services of the respondent no.1 came to be terminated by the petitioner by an order dated 02/05/2017, which as indicated above, came to be quashed and set aside, resulting in filing of the present petition.

4. Mr. S.P. Bhandarkar, learned counsel for the petitioners submits that the findings rendered by the learned School Tribunal are factually incorrect, as there was no permanent post of librarian and therefore the finding rendered by the learned School Tribunal that the appointment of the respondent no.1, was made in accordance with Section 5 of the MEPS Act and the Rules framed thereunder was legally and factually infirm.

5. It is also contended, that it was impermissible for anyone to be appointed as a part-time librarian and the fact that the respondent no.1 claims to have been so appointed clearly militates against the aforesaid finding. It is also contended that there was no permanent substantive post available, and therefore the appointment of the respondent no.1 which was without any advertisement was clearly untenable being in contravention to the provisions of Section 5 of the MEPS Act and the Rules framed thereunder. It is therefore contended that the impugned judgment is

liable to be quashed and set aside. Reliance is placed upon the following judgments.:

(i) *Priyadarshani Education Trust and others Vs. Ratis (Rafia) Bano d/o Abdul Rasheed and others 2007 (6) Mh.L.J. 667 (paras 8, 9, 12 and 16) ;*

(ii) *Sanjay Gandhi Shikshan Prasarak Mandal through its President Vs. Deputy Director of Education and another 2022 SCC OnLine 1111 (paras 26) ;*

(iii) *Chandramani Devraj Tiwari Vs. Secretary Smt. R.B. Tiwari Sanskrutik Kendra and others 2008 (3) Mh.L.J. 274 (para 12);*

(iv) *Narendra Kesharao Meshram Vs. Presiding Officer, School Tribunal, Nagpur and other 2014 (3) Mh.L.J. 881 (para 6 and 8);*

(v) *Abdul Rafique Abdul Hamid Vs. Yavatmal Islamia Anglo Urdu Education Society and others 2014 (3) Mh.L.J. 99 (para 22) ;*

(vi) *Jamdar High School Education Society, Nagpur Vs. Sunil Wasudeorao Bhoyar and another 2009 (6) Mh.L.J. 678 (para5) and*

(vii) *Mathuradas Mohta College of Science, Nagpur Vs. R.T. Borkar 1997 (2) Mh.L.J. 168 (paras 6 and 8).*

(viii) *Navin Osmanabad Zilla Balvikas Samity, Osmanabad through its Secretary and another Vs. Pramod Trimbakrao Pawar and*

another (Aurangabad Bench) (Writ Petition No.4394/2016 Decided on 06/10/2016)

(ix) *Sudhakar Balaji Motghare Vs. Adarsha Mahila Mandal, Bhandara through its President and others (Nagpur Bench) (Letters Patent Appeal No.241/2013 in W.P. No.3619/2012 (D) Decided on 04/10/2013).*

6. Mr. A.Z. Jibhkate, learned counsel for the respondent no.1, supports the impugned judgment contending that the staffing pattern indicated the existence of a permanent and vacant post to which the respondent no.1, was duly appointed after following due procedure of law. Further placing reliance upon the Secondary School Code, namely 'Schedule A', it is contended that clause (m) thereof permits appointment of a part-time librarian and therefore the contention raised in this regard is clearly untenable. Further, relying upon the definition of employee as contained in Section 2 (7) of the MEPS Act, it is also submitted that the definition would include a part-time employee as it is an inclusive definition and not an exclusive one. It is also contended that the filing of the criminal proceedings against the respondent no.1, has no bearing whatsoever upon the question of illegal termination which has rightly been decided by the learned School Tribunal as the appointment of the

respondent no.1, was after the following due procedure of law. It is also contended that the appointment of the respondent no.1, was initially on probation and after successfully completing the probation, the respondent no.1, acquired the status of a confirmed/permanent employee and therefore the termination of his services after a period of 25 years cannot be countenanced. In support of his contention, Mr. Jibhkate, learned counsel for the respondent no.1 relies upon ***Nagpur Shikshan Mandal and another Vs. Varsha Vinod Sayam and another, 2014 (5) Mh.L.J. 550.***

7. Insofar as the plea regarding the appointment of the respondent no.1 not being in consonance with the provisions of Section 5 of the MEPS Act and the Rules framed thereunder, it is necessary to note that the present petitioners in the petition itself in paras 2 have made the following averments :

*“2. The petitioners further most respectfully submit that, the respondent no.1 came to be appointed as a Part Time Librarian on 06.07.1992 after following due process contemplated under the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder (hereinafter referred to as the MEPS Act, 1977 for the sake of brevity). A copy of the Appointment Order dated 06.07.1992 is annexed herewith and marked as **ANNEXURE-A** to the petition for the ready reference and kind perusal of this Hon’ble Court.”*

8. In view of the above admission, the contention that the appointment of the respondent no.1, is without following due process of law as contemplated by the provisions of Section 5 of the MEPS Act and the Rules as framed thereunder is clearly untenable. The appointment order of the respondent no.1, dated 06/07/1992 placed on record at Annexure-A (pg.22) would indicate that the appointment of the petitioner was w.e.f. 07/07/1992 as a part-time librarian on probation for a period of two years commencing from 07/07/1992. The petitioners themselves have relied upon this appointment order and therefore are bound by it. Thus, when the appointment order dated 06/07/1992 itself speaks about the respondent no.1, having been appointed on a probation period of two years, on completion of the period of probation the services of the respondent no.1, stood confirmed, in view of Section 5 (2) of the MEPS Act. It is also necessary to note that the appointment of the respondent no.1, has also been granted approval by the Education Officer vide his order dated, 27/09/2000, w.e.f. 04/07/1993 until further orders. It is also not the case of the petitioners, that the respondent no.1, was not qualified to be appointed to the post of librarian. In view of this position, the finding that the respondent

no.1, was appointed after following due process of law; the appointment was on probation; the probation period was successfully completed, which resulted into permanency being accorded to the employment of the respondent no.1, is clearly a position which is spelt out from the material on record and is well justified.

9. The lodging of the FIR against the respondent no.1, cannot be said to be of any consequence in relation to the termination of the services of the respondent no.1, inasmuch as any termination of the services of the respondent no.1, which attained the status of permanency, could only be done after following due process of law, as contemplated under the provisions of the MEPS Act and the Rules framed thereunder and not otherwise.

10. No doubt *Priyadarshani Education Trust ; Sanjay Gandhi Shikshan Prasarak Mandal; Chandramani Devraj Tiwari ; Narendra Kesharao Meshram ; Sudhakar Balaji Motghare* and *Mathuradas Moha College of Science, Nagpur* (supra) all speak about the requirement of Section 5 of the MEPS Act being complied with in the matter of appointment of an employee, which position cannot be disputed. However, on facts in the instant case, as occurring in

para 2 of the petition, as quoted in para 7 (supra), since the petitioners themselves admit that the appointment of the respondent no.1 on 06/07/1992 was after following due process as contemplated under the MEPS Act and the Rules framed thereunder, in my considered opinion, the finding in this regard, rendered by the learned Tribunal, which is based upon this specific and categorical admission on part of the petitioners cannot be faulted with. Though ***Abdul Rafique Abdul Hamid*** (supra) speaks about the burden to establish this position, however, in view of the aforesaid admission by the petitioners themselves, the burden can surely said to be discharged. In ***Jamdar High School Education Society, Nagpur*** (supra) the question under consideration was whether the appointment of a teacher on clock hour basis by paying honorarium could be said to be an appointment entitling the teacher concerned to confirmation under Section 5 of the MEPS Act, which was answered in the negative, which again is not attracted in view of the admission of the petitioners, as quoted above. ***Navin Osmanabad Zilla Balvikas Samity, Osmanabad*** (supra), in my considered opinion, does not have any bearing upon the matter in issue altogether.

11. It is also material to note that the respondent no.1 was appointed as a part-time librarian, which was a non-teaching post,

and therefore, in view of Rule 9 (3) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, it was enough that an application was made by him for appointment, which was so made on 04/07/1992 was scrutinized by the petitioners, resulting in the issuance of the appointment order dated 06/07/1992 (pg.22) in favour of the respondent no.1. The MEPS Act merely contemplates, a post of librarian and prescribes his qualification in Table-IV Item-5 of Schedule-B under the Maharashtra Employees of Private Schools (Conditions of Service) Rules and does not prohibit the part-time librarian being appointed. Even the definition of “employee” as occurring in Section 2 (7) of the MEPS Act would indicate that it is an inclusive definition and includes any member of the non-teaching staff, without any distinction, being made upon the nature and tenure of the appointment. Even otherwise, the contention in this regard is clearly fallacious on account of the fact that the respondent no.1 has been continued for the last 25 years in his post as a librarian without any demur from the petitioners and therefore the petitioners are now estopped from contending otherwise.

12. The petitioners, have also not placed any other material on record, to indicate, that there was no requirement of librarian at all, considering the strength of the students in the school, which material was exclusively in possession of the petitioners.

13. Insofar as the plea regarding back wages is concerned, in the appeal under Section 9 of the MEPS Act itself, the respondent no.1 has made a categorical statement in para 16 (pg.85) that from the date of termination the respondent no.1 has not been gainfully employed anywhere, which statement is continued in his affidavit at Exh.25. No material has been brought on record by the petitioners, to indicate otherwise, regarding the gainful employment of the respondent no.1 anywhere during the aforesaid duration and so also no material has been placed on record by the petitioners in light of what has been contemplated by the Hon'ble Apex Court in para 38.2 of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324* so as to bring on record the factors to take a different view on the point of back wages.

14. In view of the above discussion, I do not see any reason to interfere in the impugned judgment passed by the learned School

Tribunal directing reinstatement and continuity in services. The writ petition is dismissed. Rule stands discharged. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar