



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

WRIT PETITION NO. 4147 OF 2018

Ku. Nalini Damodharrao Deshmukh
now Sou. Nalini W/o. Purushottam Kamdi,
Aged about 45 years, Occupation : presently
Nil, R/o. Shivganga Complex, Kohale Layout,
Khadgaon Road, Wadi, Nagpur.

.... **PETITIONER.**

// VERSUS //

1. Shubham Bahu-Uddeshiya Shikshan
Sanstha, Wad-Dhamna, Tahsil : Hingna,
District : Nagpur, through its then
President Shri Eknath Tiukaram Pise,
R/o. & Post Wad-Dhamna, Tahsil :
Hingna, District : Nagpur.
2. The Head-Master,
Swami Vivekanand High School,
Wad-Dhamna, Tahsil : Hingna,
District : Nagpur.
3. The Education Officer (Secondary),
Zilla Parishad, Nagpur.
4. Ku. Pushpa D/o. Bapuraoji Selukar,
Aged 45 years, Assistant Teacher,
Swami Vivekanand High School,
Wad-Dhamna, Tahsil : Hingna,
District : Nagpur.
5. Namdeo Gangadharrao Nagose,
Aged about 54 years, Occupation :
Cultivator, Secretary, Shubham
Bahu-Uddeshiya Shikshan Sanstha,
Wad-Dhamna, R/o. Wad-Dhamna,
Tahsil : Hingna, District : Nagpur.

.... **RESPONDENTS.**

Shri A.Z.Jibhkate, Advocate for Petitioner.
Shri B.H.Shambharkar, Advocate for Respondent No.1.
Ms H.N.Jaipurkar, A.G.P. for Respondent No.3.
Shri A.D.Mohgaonkar, Advocate for Respondent No.4
Shri V.N.Patre, Advocate for Respondent No.5.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 29, 2023

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.
3. In the present writ petition the challenge is raised to the judgment and order passed by school Tribunal dated 12 February 2018, dismissing the appeal preferred by the petitioner raising challenge to her termination as an assistant teacher.
4. The petitioner was appointed as assistant teacher for English subject with effect from 12th October 1993. The appointment was for one academic session. On the date of appointment the petitioner was untrained. Hence, the petitioner, applied for B. Ed. course and was selected for regular B.Ed course.

5. It is alleged that the petitioner resigned from the post by issuing a letter dated 29th October 1994 and completed her B.Ed. on 19th October 1995.

6. In the mean time, the petitioner was appointed with effect from 1st July 1995. Thereafter, the petitioner was appointed on probation from 24/06/1996 to 30 June 1998. However, the petitioner was not allowed to come to school and sign the attendance register from 08/12/1997. On enquiry, it was informed that the Education Officer refused to accord an approval to her appointment and therefore she stood terminated from 08/12/1997.

7. The petitioner, therefore, approached the school tribunal by filing an appeal and thereby raising a grievance against termination. The respondent management resisted the appeal on various grounds including that appointment of the petitioner was for temporary period and also she does not have any right to continue after the period for which the appointment was made. It is further submitted that her appointment was not made in consonance with the provisions section 5 of the MEPS Act.

8. Thereupon, the tribunal after scrutinizing the evidence, oral as well as documentary, dismissed the appeal vide impugned judgment and order dated 12th February 2018, which is the subject matter of the present petition.

9. I have heard the learned counsel for the respective parties.

10. The learned counsel for the petitioner submits that it is a settled law that any appointment made against a clear vacancy may say it as temporary, however, such appointment order by itself will not make the appointment temporary. He therefore submitted that as the petitioner was continued in service as Assistant Teacher from the year 1993 till the date of termination, her appointment can be considered as on clear vacancy and she attained deemed permanency.

11. It is thus, necessary to find out whether the appointment of the petitioner was made in consonance with section 5 of the MEPS Act.

12. It is a settled law that for the appointment to be treated as valid and legal, the appointment should be made after following due procedure of law, namely after issuance of advertisement, holding of

interview and thereupon on selection, issuance of appointment order in the prescribed form given under the MEPS Rules of 1981.

13. It is the case of the respondent management that, the advertisement filed by the petitioner in support her claim to show that, her appointment was legal and proper and it was made following the due procedure, is fake and fabricated one.

14. The respondents in support of their case have filed an affidavit of the Headmistress, to point out that, the Headmistress never issued any such advertisement in the newspaper “Naya Khoon”.

15. The management, on finding that the said advertisement is fake and fabricated one, issued legal notice to the Editor of the said newspaper, who in reply has categorically stated that no such advertisement was published in his newspaper.

16. The learned School Tribunal, while dealing with the said issue, has considered the evidence in detail by making certain serious observations, in paras 25 and 26 of the impugned judgment, how the said advertisement was fake and fabricated.

17. Hence, it can be said that there is sufficient and cogent evidence available on record in support of the case of the management that the said advertisement was fake and fabricated one.

18. The petitioner has not produced any other advertisement in support of her case that, her appointment was made after following due procedure.

19. In the circumstances, I do not find any perversity or error committed by the learned Tribunal in arriving at a conclusion that the appointment of the petitioner was not made as per the provisions of section 5 of the MEPS Act.

20. In the above referred backdrop, since the issue as regards not having made the appointment as per the provisions of section 5 of MEPS Act is held against the petitioner and since it goes to the root of the matter, the petitioner cannot claim any right over the said post.

21. It has further come on the record that the post was reserved for ST/NT category and the petitioner belongs to OBC category being of Teli Caste.

22. Though there is no dispute that non-grant of approval cannot be the ground for termination, however the fact remains that the post was reserved for ST/NT category and since the petitioner belongs to OBC category the approval was denied to the petitioner.

23. In the circumstances since the post on which the petitioner was appointed as Assistant Teacher was for NT/ST category and as the petitioner does not belong to the said category the petitioner has no right to claim deemed permanency on the said post.

24. In the circumstances, the judgments and authorities cited by the learned counsel for the petitioner do not of any help to the petitioner as the appointment of the petitioner itself was not made as per the provisions section 5 of the MAPS Act.

25. In light of above referred findings and having observed that the appointment of the petitioner is illegal, no relief of reinstatement can be granted in favour of the petitioner, accordingly, the petition is **dismissed**.

In the circumstances, there shall be no order as to costs.

(ANIL S. KILOR, J)