

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

WRIT PETITION NO.5503 OF 2022

(NEW ADARSHA SHIKSHAN SANSTHA, PULGAON & ANR..VS.. SUNITA KESHORAO AKARE & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri N.S.Warulkar, Advocate, Advocate for Petitioners.
Shri S.A.Radke, Adv. h/f. Shri S.U.Ghude, Advocate for Respondent No.1.
Shri K.L.Dharmadhikari, A.G.P. for Respondent No.2.

CORAM : ANIL S. KILOR, J.

DATED : FEBRUARY 02, 2023.

1. Heard.
2. The judgment and order dated 22/08/2022 passed by the School Tribunal, Chandrapur, allowing the appeal and setting aside termination order dated 01/03/2017 and thereby directing the Management to reinstate the respondent No.1 with continuity of service within 30 days from the date of the order and further direction to pay full back wages, is under challenge in this writ petition.

Brief facts of the present case are that :

3. The petitioner No.1 is a registered Society, runs petitioner No.2 School and Junior College.
4. The respondent No.1 was appointed by following due process vide order of appointment dated 17/08/2018 as an Assistant Teacher on probation for a period of two years.

5. The respondent No.2-Education Officer granted approval to the appointment of the respondent No.1.

6. The respondent No.1 was orally terminated vide order dated 01/03/2017 and accordingly she filed an appeal before the School Tribunal at Chandrapur under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as “the MEPS Act”).

7. It is the case of the respondent No.1/ appellant that she completed probation period and her services were found to be satisfactory. It is further case of the respondent No.1 that, her appointment was on clear, vacant and permanent post. However, the management did not pay the salary and after putting three years of service the petitioner stopped the respondent No.1 from signing the Muster Roll from 01/03/2017.

8. She, therefore, claimed that as she has attained permanency because of continuation in service after completion of the probation period, her services cannot be terminated orally without following due process of law.

9. On the other hand, the Management opposed the appeal by filing written statement and claimed that after the appointment of the respondent No.1 w.e.f.

19/08/2013, she left the services on her own on 01/04/2015 and again joined on 01/07/2015 and therefore, the period from 01/07/2015 till the date of termination is less than two years and as such during the probation period the Management can terminate the services at any time.

10. The learned School Tribunal, after scrutinizing the evidence produced by both the parties, allowed the appeal and directed the Management and Education Officer to reinstate the respondent No.1 with full back wages, vide judgment and order dated 12/08/2022, which is under challenge in this writ petition.

11. The learned counsel for the petitioners submits that in pursuance of an advertisement issued by the Management, the respondent No.1 applied on 17/08/2013 for the post of Assistant Teacher and accordingly on selection she was appointed w.e.f. 19/08/2013.

12. It is pointed out that the appointment was on probation for a period of two years. However, she left the services on her own on 31/03/2015 i.e. before completion of the probation period. It is submitted that she served in another school during the said period and again joined the services of the petitioner No.2 school w.e.f. 01/07/2015 and she worked thereafter till 28/02/2017. It is therefore,

submitted that even after fresh appointment from 01/04/2015 she did not work for two years and before completion of the probation period she left the services of the petitioners and as such she cannot be treated as permanent teacher and therefore, her otherwise termination is just and proper. It is submitted that the learned Tribunal failed to consider the above referred dates and events and granted reinstatement with full back wages.

13. It is further submitted that though the respondent No.1 did not dispute that she was serving in some other school during the period from 01/04/2015 till 30/06/2015 the learned Tribunal granted full back wages. Accordingly, he submits that the impugned judgment and order passed by the Tribunal needs to be quashed and set aside.

14. The learned counsel for the petitioners submits that after termination of the respondent No.1 the said post was filled in and therefore, the reinstatement granted by the learned Tribunal is illegal.

15. On the other hand, the learned counsel for the respondent submits that the respondent No.1 was continuously in service from 19/08/2013 till 01/03/2017 i.e. for about 3½ years and as such she became permanent teacher on completion of the probation period and

accordingly the Tribunal has rightly held that without following due procedure she was terminated. He, therefore, submits that no error or legal infirmity has been committed by the Tribunal, to interfere with by this Court. Accordingly, he prays for dismissal of the present writ petition.

16. The learned A.G.P. is supporting the impugned judgment and order.

17. In the light of the rival submissions of the respective parties, I have perused the writ petition, documents filed along with the writ petition and the impugned judgment and order.

18. The record shows that the School Committee of the petitioner school issued appointment order on 17/08/2013 in favour of the respondent No.1 for the post of Assistant Teacher w.e.f. 19/08/2013 on probation for a period of two years.

19. The appointment of the respondent No.1 was approved by the Education Officer w.e.f. 19/08/2013 for the probation period of two years.

20. Thus, it is clear that the appointment of the respondent No.1 was made on 17/08/2013 and her probation period came to an end on 16/08/2015. It has

also come on record that by oral termination she was prohibited to sign the muster roll w.e.f. 01/03/2017.

21. If the period from 17/08/2013 till the date of oral termination is considered, it is more than two years and as such, it can be said that in this case the respondent No.1 was continued even after completion of the probation period.

22. As far as case of the petitioners that, the respondent No.1 left the services of the petitioner No.2 school on 01/04/2015 and she was again appointed on 01/07/2015 and as such if the period from 01/07/2015 i.e. from the fresh appointment till the date of termination is considered, she did not complete the probation period. The petitioners have not come up with any document namely appointment order showing that fresh appointment was made on 01/07/2015 and having signature of the respondent No.1 on accepting the appointment.

23. The appointment order, on which the petitioners are relying upon, does not bear the signature of the respondent No.1 which is obligatory as per the provisions of Rule 9(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

24. Thus, such appointment order which was never

served upon the respondent No.1, is contrary to the provisions of law and therefore, cannot be considered as fresh appointment of the respondent No.1.

25. Further the contention of the petitioners that, the respondent No.1 has accepted that her appointment as a fresh appointment w.e.f. 01/07/2015, by signing on the muster roll. However, after going through the muster roll it can be seen that certain words were subsequently added and as per the law, the requirement is not to obtain signature on the muster roll but to obtain signature on the appointment letter as a receipt in token of having received the appointment order. Therefore, in this case, it is not safe to rely upon such muster roll to find out whether the appointment was fresh, as argued by the learned counsel for the petitioners.

26. Thus, considering the material produced by the petitioners and the respondent No.1, before the learned School Tribunal and after going through the reasons recorded by the School Tribunal, I do not find any error committed by the learned Tribunal in allowing the appeal.

27. As far as question of back wages is concerned, since the respondent No.1 was serving in some other school and she was receiving Rs.8,000/- per month as honourarium and she worked there from 01/04/2015 till 30/06/2015 to that extent the amount @ Rs.8,000/- per

month for three months be deducted from the full back wages.

28. The last contention, which the learned counsel for the petitioners made, was in respect of the appointment made by the petitioner in place of the respondent No.1 after she was terminated, is concerned there is no dispute that on the date of appointment the appeal was pending and therefore, for all practical purposes the said appointment was subject to the result of the appeal.

29. Accordingly, it cannot be said that any right is created in favour of the person who has been appointed in place of the respondent No.1 and in any case such subsequent appointment during the pendency of the appeal made will not come in the way of the respondent No.1.

30. Accordingly, as there is no error committed by the Tribunal in allowing the appeal, I do not find any merit in the writ petition, the Writ Petition is **dismissed**.
No order as to costs.

JUDGE