

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

WRIT PETITION NO.5999 OF 2022

Talash Annaji Andelkar .Vs. Secretary, Bharat Shikshan Prasarak Mandal, Ganeshpur,
Tah. Armori, Dist. Gadchiroli and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N.S. Warulkar, Advocate for the petitioner.

Ms Kirti Satpute, Advocate for the respondent No.1/caveator.

Ms H.N. Jaipurkar, A.G.P. for the respondent No.3/State.

CORAM : ANIL S. KILOR, J.

DATED : 07/02/2023

1. Heard.
2. In this writ petition, the judgment and order passed by the School Tribunal, Chandrapur, is under challenge, whereby the termination of the petitioner was quashed and set aside and the respondent Management was directed to pay six months honorarium at the rate of four thousand per month to the petitioner.
3. The brief facts of the case are as follows :-
 - a) The respondent Management published an advertisement in the newspaper on 08.06.2008, inviting application for the post of 'Assistant Teacher'.
 - b) The petitioner applied for the post of Assistant Teacher (In-charge Head Master).
 - c) The interview was held on 12.06.2008 and on selection of the petitioner, he was appointed vide

appointment order dated 05.04.2009 as In-charge Head Master.

d) The petitioner joined the duty on 09.04.2009 and thereafter, approval was granted to his appointment as 'Assistant Teacher' for the period of two years.

e) Thereafter, the management issued another advertisement dated 20.04.2011 and apprehending his termination the petitioner made an application to the Education Officer for inquiry into the matter.

f) On the opening of the sessions on 28.06.2011, the petitioner was not allowed to sign the attendance register.

g) Accordingly, considering the same as otherwise termination, the appeal came to be filed before the School Tribunal, Chandrapur vide STC Appeal No.10 of 2015.

h) The learned Tribunal after holding that the appointment of the petitioner as temporary and terminating as the notice was not given or one month's salary in lieu of the notice was not paid, the termination was held to be bad.

i) However, the learned Tribunal held that the appointment of the petitioner was not according to the provisions of law and it was temporary appointment and therefore, the reinstatement was denied.

4. The learned counsel for the petitioner submits that from the staffing pattern, it is clear that there was a permanent vacancy for the post of Assistant Teacher and therefore, the appointment of the petitioner cannot be

considered as appointment made on temporary basis. He submits that the petitioner was continued even after two years and thereafter, fresh advertisement was issued which supports the case of the petitioner that there was a permanent vacancy.

5. He, therefore, submits that it is a bounded duty of the management to appoint an employees on permanent basis if there is permanent vacancy and therefore, the appointment of the petitioner cannot be considered as appointment made on temporary basis.

6. In support of his submissions, he has placed reliance on a judgment of Coordinate Bench of this Court in the case of *New Education Institute, Nashik and others Vs. Mahejabin Ashfak Ahmed Shaikh and others*¹ and in the case of *Jagdamba Education Society, Nagpur Vs. Rajendra S/o Baburao Golhar and others*²

7. On the other hand, Ms Satpute, learned counsel for the respondent No.1 points out that, in the appointment order itself there was a mention that his appointment is of temporary nature and it was on honorarium of Rs. Four Thousand. There is also mentioned that the appointment will come to an end automatically on completion of period of the appointment order.

8. It is submitted that the petitioner has not intentionally produced the copy of application made by him in pursuance of advertisement for the appointment to find

1 2008(1) Mh.L.J.

2 2009 (2) Mh.L.J.

out whether the petitioner had applied for the appointment on temporary basis or permanent basis. She, therefore, submits that the findings recorded by the Tribunal are just and proper and there is no legal infirmity committed by the Tribunal in denying reinstatement to the petitioner.

9. On the other hand, Ms H.N. Jaipurkar, learned A.G.P. supports the impugned judgment and order of the Tribunal.

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

11. From the appointment order of the petitioner dated 05.04.2009, it is evident that he was appointed as In-charge Head Master in open category with effect from 09.04.2009 on honorarium of Rs. Four Thousand. There is also mentioned in the appointment order that it is for two years on probation.

12. It is further evident that the Management passed a resolution on 04.04.2011 as regards termination of the petitioner and in pursuance with the same, the termination order was issued. However, nothing was produced by the Management to show that the said termination order was served upon the petitioner and therefore, the Tribunal has rightly refused to take into consideration the said termination order and considered the

termination of the petitioner with effect from 27.06.2011 i.e. as otherwise termination.

13. The learned Tribunal after considering the advertisement and the order of appointment has rightly reached to the conclusion that the appointment of the petitioner was on temporary basis and it was not made as per Section 5 of the Maharashtra Employees in Private Schools (Conditions of Service) Regulation Act, 1977 (for short “MEPS Act”).

14. This Court in the case of *New Education Institute (Supra)*, has held that it is incumbent on the Management to appoint the employees on probation for two years against the permanent clear vacancy. In the said case the termination was based on the ground that the approval was not granted.

15. Thus, the present case is distinguishable on facts. There is no dispute that it is the bounded duty of the Management to fill in the permanent vacancy by appointing the person on probation.

16. However, in the present case, the petitioner never raised any demur as regards his appointment on temporary basis for a specific period and that to on honorarium basis.

17. Similarly, the judgment in the case of *Jagdamba Education Society, Nagpur (Supra)* is distinguishable on facts as in the said case the Management

issued appointment order on year to year basis. Therefore, the said judgment is also of no help to the petitioner.

18. In the light of the findings recorded herein above, I do not find any merit in the present writ petition.

Accordingly, the writ petition is **dismissed**.

JUDGE