

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

WRIT PETITION NO. 6415 OF 2019

Sadguru Bahu Uddeshiya Shikshan Sanstha and ors __ Vs. __ Pravin Janraoji Madghe
and ors

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

Court's or Judge's orders

Mr. A.A.Naik, Advocate for petitioner
Mr. A.S.Dhore, advocate for respondent no.1
Ms. T.H.Khan, AGP for respondent no.2

CORAM : AVINASH G. GHAROTE, J.
DATE : 31/03/2023

1] Heard Mr. Naik, learned counsel for the petitioners, Mr Dhore, learned counsel for respondent no.1 and Ms. Khan , AGP for respondent no.2.

2] The petition challenges the judgment dated 5.8.2019 (pg.78) of the School Tribunal, Amravati, by which the so called otherwise termination dated 26.6.2015 of the respondent no.1 has been quashed and set aside and he is directed to be reinstated with full salary as backwages and continuity.

3] Mr. Naik, learned counsel for the petitioners while assailing the judgment submits, that there is no compliance with the requirement of

Section 5 of the MEPS Act, as a result of which the findings rendered by the learned School Tribunal in respect of issue no.2, stands vitiated. He further submits that the respondent no.1 though claims to have been employed in the school run by the society, there is no material on record to indicate any employment or the process having been followed. The management of the petitioner no.2 school was transferred to the petitioner no.1 and therefore, at that time it was presumed that the Deputy Director of Education had verified the entire position to be in consonance with the requirements of the Acts and Rules framed thereunder and therefore, the question of legality of the appointment of respondent no.1 did not fall for consideration of the petitioner no.1 and it is only consequent to the filing of the appeal under Section 9 of the MEPS Act, that upon verification it was found that the respondent no.1 was never appointed. It is therefore submitted that since the finding rendered as to point no.2 by the learned School Tribunal in the impugned judgment is based upon an incorrect factual premise, the same cannot be sustained and the consequent order directing reinstatement is required to be set aside.

4] Mr. Dhore, learned counsel for respondent no.1 while opposing the contention submits that respondent no.1 was appointed in the year 2008 with the petitioner No.2 which was run by Manjudada Bahu-Uddeshiya Shikshan Sanstha. He submits that the continuation of the respondent no.1 till 2015, would indicate that he was legally and validly employed by following all the norms and therefore the finding rendered by the learned School Tribunal, according to him, requires to be sustained.

5] Ms. Khan, learned AGP supports the impugned judgment.

6] The respondent no.1 claims to have been appointed with the petitioner no.2 which was being run by Manjudada Bahu-Uddeshiya Shikshan Sanstha, in the school situated at Amravati on 1.7.2008 as an Assistant Teacher. In view of the transfer of the school from Amravati to Morshi in pursuance to the permission dated 24.10.2008 (pg.32) granted by the State of Maharashtra, the school was transferred. By a subsequent order dated 11.7.2011, the management of the school was transferred from Manjudada Bahu-Uddeshiya Shikshan Sanstha to the petitioner no.1 on the

condition that all the persons who were at that time working with the petitioner no.2 would be continued. The name of the respondent no.1 figured in that order dated 11.7.2011 (pg.35). Thereafter, it is claimed that by otherwise termination on 26.5.2015, the services of respondent no.1 were discontinued.

7. What is material to note is that the respondent no.1 in his appeal under Section 9 of the MEPS Act comes with a case not of his employment with the petitioner no.2 at Amravati, but with his employment at Morshi, when the school was transferred, whereas there is no material to indicate that any person was taken on roll of the petitioner No.2 after the transfer of the school from Amravati to Morshi. The respondent no.1 further in clear terms admits that he was never issued any appointment order, but was merely assured that his name was listed in the teaching employees of the school and should work till approval is accorded. It is also material to note that there is no material placed on record to indicate that any approval was accorded to the respondent no.1 at any point of time. That apart, the respondent no.1 in para 5 of the memo of appeal itself makes a statement that he

has never received any wages or remuneration right from 2008 till 2015, which again clearly shuts the door upon his claim of having been employed with the petitioner no.2 at any point of time.

8] The learned School Tribunal while answering issue no.2 has merely relied upon the order dated 11.7.2011 by the Deputy Director of Education regarding the transfer of the school and the inclusion of the name of the respondent no.1 in his order, without looking to the fact that the respondent no.1 himself in its memo of appeal admits – (a) that there was no appointment order (b) there is no approval granted by the Education Officer and (c) he has not received any wages or remuneration from the petitioner no.2 at any point of time. This being the position, even on the admitted position by the respondent no.1, as falls from the averments in the memo of appeal, the Tribunal could not have answered issue no.2 in the positive. The findings of the School Tribunal on issue no.2 therefore cannot be sustained and is liable to be set aside. That being the position, the consequent plea of the respondent no.1 of reinstatement also falls through as a logical corollary thereto.

8] Mr. Dhore, learned counsel for respondent no.1 does not dispute the averments made in para 3 and 5 of the memo of appeal. He however, relies upon **Shailesh Anand Kulkarni vrs. Khandesh College Education Society, 2020 (2) Mh. L.J. 606**, to contend that since the respondent no.1 was continued for years together, it has to be presumed that he was legally appointed.

9] In my considered opinion the judgment does not assist the learned counsel for the respondent no.1, for the reason that in **Shailesh Anand Kulkarni** (supra), the Court has found that the employment of the petitioner therein was not disputed, rather on the contrary, the management had raised contrary claims that the petitioner was unqualified, was a contractual employee and also admitted that the petitioner therein was an internal/ external examiner for the management, having put in 7 years experience. In the instant case, the stand of the management has been consistent that the respondent no.1 was never employed by the Manjudada Bahu-uddeshiya Education Society. Even the stand of the respondent no.1 regarding his employment is contradictory, inasmuch as, even the respondent no.1 does not claim that he was ever

engaged by the society when the society was functioning at Amravati, rather on the contrary his claim is that he was the first teacher employed at Morshi without there being supporting documents or material in that regard. Though the judgment dated 10.11.2022 in SCS No.126/2015 has been relied upon by the respondent no.1 in support of his contention regarding his employment, it is however material to note that the judgment merely considered the claim for non-payment of wages for the duration 1.4.2012 to 31.5.2015 (para 10), which is a subsequent period. It is also necessary to note that though in para 13, the judgment renders the finding based upon the evidence of the petitioners that there is an admission of the respondent no.1 being employed for the duration 1.7.2008 to 26.6.2015, Mr. Naik, learned counsel for the petitioner has tendered across the bar the evidence of the petitioner as recorded in the suit, which would indicate that there is no such admission rendered by the Secretary of the petitioner no1, which is apparent from the answer given to the question regarding non-payment of salary for the duration 1.7.2008 to 31.5.2015, to which the answer is that he was never employed by the

petitioner society and therefore the question of payment of any salary to him does not arise at all.

10] In view of the aforesaid position, the judgment of the learned School Tribunal cannot be sustained even on the basis of the averments made in the memo of appeal, considering which the same is hereby quashed and set aside and the petition is accordingly allowed in above terms. No costs.

JUDGE

Ryjalit