



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4644 OF 2007

Arun s/o. Krushnaji Bhagat,
Age 40 years, Occu. Service, Now terminated,
R/o. C/o. Kamlabai Patil,
Near Buddha Murti, Mahur,
Taluka Mahur, District Nanded

.. Petitioner
(Original Appellant)

Versus

1. The State of Maharashtra
School Education Department,
through its Secretary,
Mantralaya, Mumbai
2. Milind Shikshan Prasarak Mandal,
Ambadi, Tq. Kinwat, Dist. Nanded
through its Secretary
3. Mahatma Jyotiba Phule Secondary
& Higher Secondary School,
Gokunda, Tq. Kinwat, Dist. Nanded
through its Head Master
4. Deputy Director of Education,
Latur Region, Latur
5. Education Officer (Secondary),
Zilla Parishad, Nanded

.. Respondents

Mr. R. J. Godbole, Advocate for Petitioner;
Ms. R. R. Tandale, A.G.P. for Respondents No.1, 4 and 5;
Mr. V. D. Gunale, Advocate for Respondents No.2 and 3

CORAM : S. G. MEHARE, J.

Reserved on : 22.01.2024

Pronounced on : 08.04.2024

JUDGMENT :-

1. The petitioner has impugned the judgment and order of the learned Presiding Officer, School Tribunal, Latur, passed in Appeal No.126 of 2000 [Appeal No.15 of 2006 (new), District Nanded], dated 05.02.2007.

2. The case of the petitioner in brief was that in 1997, respondents No.1 and 2 had published an advertisement inviting applications for the post of Lecturer in English. It was a clear, vacant and permanent post. Respondents appointed him on 16.06.1997 on probation. On 26.08.1997, respondent No.4 i.e. the Education Officer (Secondary), Zilla Parishad, Latur, accorded approval to his post as part-time Lecturer, instead of full-time Lecturer. His appointment was against the permanent vacancy. Therefore, the Deputy Director had specially approved the post of the petitioner and accorded him approval as a full-time Lecturer. He had satisfactorily completed his probation. Hence, he was deemed permanent, as per Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act", for short).

3. The petitioner used to sign the muster roll regularly. However, on 12.06.2000, the muster roll was not made available to him to put his signature for his attendance. Thereafter, on 08.07.2000, he was not allowed to teach and enter the school. He

requested to respondent No.4 to allow him to sign the muster roll, but in vain. On 17.08.2008 and 18.08.2008, he again went to respondent/ Management to sign the muster roll, but they did not allow him to enter the school premises. In the meantime, the Management had advertised his post in the newspaper. When he made an inquiry, he was told that his services had come to an end. He was told that he had indulged in the moral turpitude. His services were terminated by order dated 18.08.2008 and 19.08.2008. Therefore, the petitioner filed the appeal.

4. The contesting respondent resisted the appeal. They denied the pleadings of the petitioner. They had submitted that he did not approach the Court with clean hands. He belonged to a scheduled caste. The quota of the scheduled caste category was already completed. He was appointed temporarily against the post reserved for the Other Backward Class. Hence, his appointment was not against the clear and permanent post. His approval was conditional, that on filling up the candidates from reserved categories, his services would be terminated. The performance of the petitioner also was not satisfactory. The notices were issued to him, but there were no improvements. He had accepted his poor teaching performance. The petitioner had strained relations with co-workers and had illicit relationships with female students. They prayed to dismiss the appeal.

5. The learned School Tribunal held that the appointment of the petitioner was not against the clear vacant and permanent post as per Section 5 of the MEPS Act, and the Rules framed thereunder. He also held that the termination of the services of the petitioner was not illegal, and he is not entitled to reinstatement and consequential benefits.

6. Learned counsel for the petitioner has vehemently argued that the petitioner was never appointed against the reserved post. He was appointed on probation and rendered his services sincerely and honestly. He had completed two years of probation. The Deputy Director had granted the approval. The learned School Tribunal has incorrectly held that the appointment of the petitioner was against the post reserved for the O.B.C. He pointed out the order of the Deputy Director, dated 29.08.1997 and argued that the directions were issued not to appoint a candidate from an open category on the post reserved for the backward classes. If the open candidate was appointed against the reserved category, the appointment should be only for one academic year. He has also directed that, except for the appointments of Principal and Lecturer in History, the approval was given to the petitioner on certain conditions, which have been mentioned above. The petitioner was not a candidate from the open category. Therefore, the Rule appointing him against the backward post does not apply. However, the learned Tribunal did not consider this material

aspect. He has vehemently argued that the Deputy Director of Education granted regular approval to the petitioner. His approval reveals that he was a full-time Lecturer. Mr.Sonkamble and Mr.S.K.Kamble were appointed to the post reserved for scheduled Caste after his appointment. Therefore, the respondent has no voice to say that the quota for the scheduled caste category was already over.

7. Another limb of the arguments of Mr. Godbole, learned counsel for the petitioner, was that Rule 9(5) of the MEPS Rules, 1981 is mandatory. The Management shall serve a copy of the appointment order to the appointed Lecturer. It is a settled law. Management did not produce such a copy of the order on record. The learned Tribunal has disbelieved the service book as proof of his appointment and discharge of duties. He also argued that there should be a full-fledged inquiry against the allegations of moral turpitude. The learned Tribunal illegally held him temporary employee. The said term has been construed in ***John Wilson Education Society's Wilson Collage and Another Versus Shri. Prakash John Rawade, (1993(2) BSC 519)***. The findings of the learned Tribunal are perverse and illegal. Hence, it may be quashed and set aside. He relied on a bunch of case laws to bolster his arguments. Those will be discussed in the later part of the judgment.

8. Per contra, Mr. Gunale, learned counsel for respondents No.2 and 3, has vehemently argued that the petitioner was never appointed as a permanent employee against the clear and vacant post. There were excess appointments in the scheduled caste category. The Deputy Director had ordered the Management to fill up posts of O.B.C. The wrong case was placed before the learned Tribunal that the appointment order was not served upon him. His appointment was only for a year against the post reserved for the O.B.C, subject to approval. Since the Deputy Director directed the Management to fill up vacancies for the O.B.C., his services were terminated. It was made clear to the petitioner that his appointment is temporary against the reserved post. His approval was granted only for one academic year, and the petitioner never disputed the approvals. His services were without stigma. His services were terminated by following the relevant Rules. Even if the appointment was on probation, his or her services can be terminated under Section 5(6) of the MEPS Act. The service book is not proof of the nature of his appointment. The petitioner sought a written apology for his poor performance and assured the Management that he would try to improve himself and the result of his subject. The burden was on him to prove that he was appointed against a clear and vacant post. There was no stay to his termination and the post of the Lecturer in English subject was abolished by the Deputy Director by his order dated 19.05.2016.

Therefore, Management was impeded in filling the O.B.C. candidates' posts. The approval of Mr. Kamble and Mr. Sonkamble was on unaided basis. Rule (9) of MEPS Rules provides temporary appointments year to year. A confidential assessment report of the petitioner was recorded. He was serving elsewhere and getting a salary. His contention of preparing the false termination order was verified by comparing the signature and the learned Tribunal, which correctly disbelieved his defense. He also relied on the case laws and prayed to dismiss the petition.

9. In reply, Mr. Godbole, learned counsel for the petitioner, has argued that Rule 9(a) of the MEPS Rules only provides that a reserved post may be filled in by a candidate from another backward category. If no person is available from S.C. & DT/NT category, such appointment shall be made on a yearly basis. The post can be filled by candidates from other categories, and Rule (9) provides for service of the appointment order.

10. Learned A.G.P. for respondent No.4 has vehemently argued that approval of the appointment was on a year-to-year basis. The resolution should be followed to give representation to the candidates of all categories. The roster of the reservation was prepared for the school of the respondent/Management on 18.10.1997. The Education Officer (Secondary) directed the Headmaster of the respondent/School on 21.03.1998 that the

quota of scheduled caste candidates has been completed. Therefore, until the open category posts are filled up, his approval on the scheduled caste post will not be granted. All the posts reserved for each category have been filled in. Therefore, the petitioner cannot take advantage of Rule 9(9)(a) of the Rules, 1981. He submits that the impugned judgment and order is correct and proper and does not warrant interference.

11. Hearing the respective counsels, the following points arise for determination:-

- i) Is service of the appointment order mandatory under Rule 9(5) of the Rules, 1981?
- ii) Were the entries in the service book sufficient to hold that the petitioner's appointment was permanent/full-time?
- iii) Was the petitioner appointed against the vacancy reserved for another backward class?
- iv) Can his appointment against the reserved category be protected under Sub-rule 9(a) of Rule 9 of the Rules, 1981?
- v) Were the petitioner's services deemed confirmed under Section 5 of the M.E.P.S.Act?

12. Neither party produced an appointment order on record. Sub-rule (5) of Rule 9 of the Rules, 1981 provides that a letter of appointment order in the Form in Schedule "D" shall be issued to a candidate appointed to the post. A receipt in token of having

received the appointment order shall be obtained from the candidate appointed. The section is clear that the Management has to issue a letter of appointment to the candidate for the post on which he has been appointed and receive an acknowledgement from the appointed candidate. If an appointment order is issued, a person appointed must have the appointment order, and he is the best person to have custody of the order.

13. Mr. Godbole, learned counsel for the petitioner, relied on the judgment and order of this Court in the case of Smt. Kalavati d/o. Dnyaneshwar Durugkar vs. The President, Mahatma Phule Shikshan Prasarak Sanstha, Siddeshwar Wes. Latur (Writ Petition No.2783 of 2022, dated 17.07.2000), and vehemently argued that this Court held non-issuance of the order gives a chance to the Management to substitute the orders suitable to the Management and, therefore, the service of the order on the candidate carried great importance. As in the present matter, there is nothing to show that the order in question was served on the petitioner. *Prima facie* material held in favour of the petitioner that her appointment was on a permanent basis on a substantive post; therefore, this Court is inclined to grant *interim* relief in favour of the petitioner. It was *prima facie* observations of the Court. Mr. Godbole, learned counsel for the petitioner, did not produce a copy of the final judgment of Writ Petition No.2783 of 2022. Therefore, it is not the precedent.

14. The petitioner has a case he was appointed on 16.06.1997 and was continued in service till 18.08.2000. In the absence of the appointment order, he relied on his service book. The said service book discloses that his appointment was on probation. He further relied on the experience certificate of the Headmaster of the same School, dated 29.04.2000, indicating he was a junior lecturer since 16.06.1997. To support his contention that his appointment was full-time Lecturer, he referred to the order of respondent No.4, dated 23.05.1998 and 24.07.1998.

15. The Headmaster or the Chief Executive Officer maintain the service book. It is maintained in the Form of Service Book Schedule' E' of Rule 11 of the Rules, 1981. It should bear the signature of either the Headmaster or the Chief Executive Officer. As against this, the Management/appointing authority shall issue the appointment order. The source of the service book entry is the appointment order.

16. Petitioner's contention was that the Management/respondent did not serve him with an appointment order despite the repeated demands. From these facts, the sole inference is he served with respondents from 12.06.2000 to 29.08.1997 (21.07.1988 to 12.10.1989) without an appointment order. However, the copy of the service book placed on record mentions that the petitioner was appointed by an appointment order of the petitioner by the

President/Headmaster bearing No. MSPMA/MJFVG/O.APP/97-98. However, the date of order of the appointment is missing. Further, it mentions that the petitioner was appointed on 16.06.1997 on probation. As usual, the entry does not bear the date on which the Headmaster signed the said service book. A copy of the appointment order is part of the service book. That record is also not produced on record. He also relied on an experience certificate dated 29.04.2000 issued by the Headmaster. It may, at the most, prove that he was serving with the respondent. There were various files in which the appointment orders should be kept. Surprisingly, neither the petitioner nor the respondents have a copy of the appointment order, and the respondent did not explain it properly. The respondents/management argued that the Headmaster prepared the service book to get approval for his appointment. Submitting and replying to this peculiar fact of non-issuing or serving appointment order creates serious doubt of collusion between the petitioner and respondent/management. In the facts and circumstances, it is difficult to believe that the petitioner was appointed, and the service book is sufficient evidence to believe the petitioner.

17. Sub-rule 9(a) of Rule 9 of the Rules, 1981, speaks of the situation, how the teaching post is filled against the post reserved for a specific category it was as follows;

"In case it is not possible to fill in the teaching post for

which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward Classes."

18. Sub Rule (7) of Rule 9 of the Rules, 1981 speaks of the percentage of the reservation of the post to different classes of reserved category. The then Sub-rule 9(a) of Rule 9 of the Rules, 1981 was clear that where it is not possible to fill in the teaching post reserved for a person for whom it was reserved, first preference should be given to a person from the other reserved/remaining categories. In the second part of that Rule, it was provided that in the absence of a candidate from other reserved categories for which a vacancy is reserved, the candidate from the open category should be appointed temporarily on a year-to-year basis.

19. Rule 9(5) provides that every appointment shall be in the Form in Schedule 'D'. The Form in Schedule 'D' specifically provides that there shall be mention of appointment, whether purely temporary for a period of months/years from in the leave/deputation vacancy. It also specifically mentions that after the expiry of the above period, the services of the person/

employee shall stand terminated without any notice. This format does not indicate the appointment category. Before the amendment of 2017, the law was silent on mentioning the reservations of the posts in an advertisement. The roster prepared by the Commissioner of B.C. Cell was the only evidence to establish whether the petitioner appointed to the post was open or for the reserved category. The roster was available, Which indicates that the petitioner was appointed against the post reserved for Other Backward Classes.

20. The learned Tribunal held that a service book showing probation does not mean the appointment of the petitioner was permanent. Considering the surrounding circumstances, he found that his appointment was on the post reserved for other backward Class the Management has prepared a roster in which the post on which the petitioner was appointed was reserved for O.B.C. only. Therefore, approval was granted year-to-year for his temporary appointment.

21. The primary burden was on the petitioner to prove that his appointment was not against the reserved or temporary post. The said experience certificate does not disclose that he was appointed either on probation or temporary. Rule 9(5) and Form 'D' of the Rules, 1981 provide that there shall be an appointment order, may it be permanent or temporary.

22. The written statement of the respondent/management denied the allegations of not serving the appointment order. Their further submission is that the initial appointment of the petitioner was as a part-time. There was no workload for a full-time junior Lecturer during the said year. The written statement of the respondent directly jumped on the case that his appointment was against the post reserved for the other backward category.

23. The pleadings of the petitioner before the School Tribunal were that he had faced the interview and competed with the other eligible candidates in response to the advertisement published for his post. His pleading also reveals that he had placed a copy of the advertisement below Exhibit H. The advertisement may be another source to ascertain the vacancy for which the aspirants have been invited to apply for the post published in the advertisement. However, the record does not reveal a copy of the said advertisement.

24. In view of the facts of the case and the sole evidence of the service book available on record, the Court is of the view that he was appointed on probation against the clear vacancy could not be proved. There is material of the approvals granted from time to time by the Deputy Director of Education to fortify the counsel's submissions that there was no evidence to believe that the appointment of the petitioner was not against the vacancy

reserved for the backward classes.

25. Another source to ascertain the nature of the appointment against the vacancy is absent. Both rely on the orders of the approvals of the appointment of the petitioner by the Deputy Directory of Education.

26. Order of the Deputy Director of Education dated 29.08.1997 shows that the Deputy Director of Education, considering the workload, approved the posts. He approved the appointment to the post of Principal and Lecturer for History subject. He granted conditional approval to the remaining post. He clarified that the requisite appointments for each category had not been made. Hence, the open-category teaching staff appointments were approved only for an academic year. He had specifically mentioned in the order that they should be removed from the service at the end of an academic year. One of the approvals of the Deputy Director of Education was for the permanent post of confirming the probation.

27. It was an argument of the learned counsel for the petitioners that the appointment against the post reserved for other backward Classes is not illegal. It is not disputed that an advertisement was published for the lecturer position in the English subject. However, again, neither party placed its copy on record. However, the petitioner had a case that he had applied as per the

advertisement, and he was appointed in 1997.

28. Sub-rule 8 of Rule in of Rules of 1981 in 1997 was that for the purpose of filling up the vacancies of reserved Class, the Management shall advertise the vacancies in at least one newspaper having wide circulation in the region and also notify the office of District Employment and Social Welfare Officer. It is explicit that publishing advertisements in one widely circulated newspaper was obligatory to fill the vacancies from the reserved category.

29. The learned counsel for the petitioner relied on the case of ***Nita Ramesh Danane vs. Dombivali Mitra Mandal and other, 2009(1) Mh.L.J. 796*** on the point that there is no requirement of advertisement. However, it does not assist him. In the said case, an appointment order was available with the Court. The Court considered Rule 9(8) of the Rules, 1981 and observed that it provides that a reserved post must be advertised. However, there is no such requirement for advertising a post in the open category.

30. The respondents pleaded that the initial appointment of the petitioner was part-time. During that year, there was no workload for a full-time junior Lecturer. The petitioner also pleaded in his appeal memo that respondent No. 3 accorded approval to his appointment as a part-time Lecturer instead of a full-time Lecturer. However, on his representation, the Deputy Director approved his

appointment as full-time Lecturer vide approval dated 23.3.1998. Respondents further replied that his appointment for 1997-98 was against the post reserved for the Other Backward Class. The petitioner is Scheduled Caste, and its quota has already been filled out. Therefore, there was no question of appointing him to the post reserved in S.C. category. The petitioner claimed that his appointment was permanent on a clear and vacant post. However, he did not come up with a case that there were posts vacant for his Caste. On the contrary, it has been established that the post on which the petitioner was appointed was reserved for the Other Backward Class. He belongs to Schedule Caste for which the vacancies were filled up. The reservation for a particular class could not be disturbed by appointing from another class. The permanent vacancy means the vacancy/post is sanctioned in the permanent category with requisite reservation. Since the vacancy was reserved for the Other Backward Class, the said post was permanent for that category. The case of Kankavali Shiskhan Sanstha and others V M.R. Gavali (2006) 1 Mh. L. J. 713 relied upon for the petitioner had a peculiar facts the person appointed after the petitioner was retired. Hence, he was appointed on certain conditions. In this case the learned counsel for respondents argued that the candidate from O.B.C. category had been appointed. However, the petitioner was never appointed on probation. Hence, he cannot claim his appointment for a permanent vacancy.

31. Learned counsel for the petitioner, relying on the case of **St. Ulai High School and another versus Devendraprasad Jagannath Singh and another, Maharashtra Education Cases (2007) 300**, is correct in arguing that neither Act of 1977 nor the Rules 1981 provide for grant the grant of approval by the Education Officer is a condition precedent and appeal is maintainable at the behest of an employee whose appointment has not been approved.

32. Facts of the case in **Jagdamba Education Society, Nagpur vs. Rajendra s/o. Baburao Golhar and others, 2009(2) Mh.L.J. 522**, were that the respondent was appointed as a Teacher, and appointment orders were issued on a year-to-year basis from 1986 to 1991. Thereafter, the Management advertised the same post. Under this premise, it has been held that where the Management issued orders of appointment on the post of Assistant Teacher on a year-to-year basis from 1986-1991, mentioning there that the appointment was temporary but thereafter advertised the same post in the year 1992, it was held that such vacancy was a permanent one when the first appointment was made. None of the parties have such a case before the Court. On the contrary, the material indicates that the post on which the petitioner was appointed was reserved for the O.B.C. candidate.

33. Another limb of the defence of respondent/management was

that the performance of the petitioner was not satisfactory. Therefore, his assessment was done, and he was found unsuitable for the said post. The petitioner had also the case that the termination order dated 13.03.2000 was not served upon him. He was regularly attending his classes. However, on 12.06.2000, the muster roll was not kept on the premises of the school. Respondent No.2 circulated a notice, and the petitioner signed the notice on that day. He requested respondent No.2, Headmaster to make the muster roll/register available. Lastly, on 08.07.2000, he was prohibited from engaging in the classes. Again, on 17.08.2000, he went to the College to sign the muster roll. He had been to the school with an advertisement issued by the Management. On 19.08.2000, again, he was not allowed to enter the premises of the school. That day, the Management gave an understanding that his services were terminated on 12.06.2000. He was threatened that if he files a false case, they may involve him in the case of moral turpitude. His specific case was that the Management had misused the blank signed paper while preparing the termination order. To prove the allegations, he relied on the handwriting expert's report. He had obtained it privately. Much has been argued on this fact and issue. However, there was no material on record that the petitioner complained against the Management at any time that the Management had obtained his signatures on blank papers.

34. The Learned Tribunal compared his signature with the appeal memo and the termination order and satisfied that both signatures were almost identical. The learned Tribunal has also correctly held that the opinion of the handwriting expert could not be accepted because neither did he step into the witness box nor explain how he had gathered such opinion in respect of the questioned signature, and hence, he discarded the opinion of the handwriting expert.

35. The Learned Tribunal observed that the Management did not conduct the inquiry against the petitioner for having a relationship with a female student. However, the Management passed the resolution dated 13.04.2000, discussing the moral turpitude of the petitioner and decided to terminate his services with effect from 30.04.2000. The Management had annual confidential reports for the years 1998-1999 and 1999-2000. The learned School Tribunal referred to the report about the dissatisfaction of the Management with the performance of the petitioner. One apology letter from the petitioner was also there, saying that he would improve the result of his English subject as it was much less. The learned Tribunal has, in the absence of any cogent and reliable evidence from the girl student who allegedly had an illicit relationship, erroneously held that the said charge was certainly serious and against the pious aim of the Educational Institution and the

School/Management had certainly received a blow of damage to its reputation by the conduct of the petitioner. The petitioner has an explanation that he married that girl. Therefore, there was no question of moral turpitude. There was nothing on record when they developed the relationship, what type of complaints were made by her parents against the petitioner, and the case was not revolving around that. It was the outcome of the defence of the respondent/Management, which was twofold; first, his performance was not satisfactory, and second, his conduct received a blow of damage to the reputation of the School/Management.

36. Learned counsel for the petitioner relied on the decision in the case of **V. P. Ahuja Versus State of Punjab, 2000 A.I.R. (SC) 1080**. It has been held that termination cannot be directed without regular enquiry and without opportunity of hearing. Probationary and temporary servants, as they are entitled to protection, their services cannot be terminated arbitrarily. A probationer, like a temporary servant, is equally protected against arbitrary termination without complying with the principle of natural justice. Relying on the ratio of this case, he has argued that even services of temporary servants cannot be terminated arbitrarily without initiating an enquiry where the punishment on the basis of so-called charges is stigmatic.

37. The termination order dated 30.03.2000, which the petitioner relied on, was barely on the grounds that his services were terminated since his appointment was against the reserved post and approval was granted only for a year from 1999-2000. Before his appointment, the appointment from Scheduled Caste was over. Hence, his temporary services were terminated. The Tribunal has observed that no inquiry against moral turpitude was held against the petitioner. As observed above, the termination was also not on the grounds of moral turpitude. The observations of the learned School Tribunal that the Management did not conduct any inquiry against the petitioner for moral turpitude, but there were serious charges against the applicant about the illicit relationship with a female student. Such observations of the learned School Tribunal are stigmatic and without foundation. Therefore, all these findings against the petitioner have been expunged, and the learned Tribunal is directed to remove paragraph No.23 of the impugned judgment and order for the reason that it was defamatory against a female student and her family.

38. Again, there is no question to discuss about the poor performance of the petitioner when his services were not terminated for poor performance. This might have been observed pursuant to the argument of respondent/management that the petitioner's appointment being temporary could terminate his

services without any reason or inquiry, though his temporary services were for more than two years.

39. This Court, in the case of ***Priyadarshini Education Trust through the Secretary Shri. Subhash Sardar, The President, Priyadarshini Education Trust and The Head Master, National Urdu High School vs. Ratis (Rafia) Bano d/o. Abdul Rasheed, 2007(6) All MR 238***, relied upon by the respondent/ Management, held that as per Rule 28, services of a temporary employee other than on probation will be terminated by the Management at any time without assigning any reason after giving one calendar month's notice or by paying one month's salary in lieu thereof.

40. The protection of the termination of the probationary/ permanent services without holding the enquiry has not been granted to employees appointed temporarily. The only condition is a calendar month's notice or one month's advance salary is to be fulfilled.

41. This Court disbelieved the case of the petitioner that he proved that his appointment was against the clear vacancy and on probation. On a similar point, the learned counsel for respondent/ management has relied on different case laws, and they need no discussion as the law on that point has been crystallized in those cases based on its facts. Law is also well settled that the

appointment of employee without following due process of law is illegal and no employee on such appointment can claim the right of permanency in employment. The law is also well settled that the services of a probationary can be terminated at any time before probation is completed without assigning any reason.

42. This Court has also gone through further case laws relied upon by the petitioner and found that those are based upon different facts. Hence, those are not reproduced in order to maintain brevity.

43. For the reasons mentioned above, the Court concludes that;

- (i) The appointment of the petitioner was against the vacancy reserved for the Other Backward Class;
- (ii) Since the petitioner was appointed against the post of reserved category, he cannot be protected under Rule 9(9) (a) of the Rules, 1981
- (iii) The service of the appointment order is mandatory as provided under Rule 9(5) of the Rules, 1981.
- (iv) For want of a source of information to prepare the service book, the service book was not sufficient to hold that the appointment of the petitioner was on probation.
- (v) In view of the facts and circumstances of the case, the services of the petitioner were not deemed/confirmed under Section 5 of the Act.

44. The final result of the petition is as follows:

(i) The petition stands dismissed.

(ii) No costs.

45. Rule stands discharged.

(S. G. MEHARE)
JUDGE

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