



THE HIGH Court OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 10691 OF 2017

1. Rajdharma Shikshan Prasarak Mandal,
Ambad, Taluka Ambad, Dist. Jalna,
Through its Secretary,
Smt. Taramati Sahebrao Kharat
Age: 60 years, Occu. Secretary of the Trust,
R/o Ambad, Tq. Ambad, Dist. Jalna.
2. Savitribai Phule Secondary School,
Parner, Taluka Ambad,
District: Jalna
Through its Head Master
Abhimanyu s/o Baburao Gadhave,
Age: 42 years, Occu. Service,
R/o Ambad, Tq. Ambad, Dist. Jalna.

... Petitioners
(Orig. Respondents)

VERSUS

1. Uddhav s/o Bhimrao Jadhav
Age: 45 years, Occu. Assistant
Teacher (Presently terminated),
Savitribai Phule Secondary School,
Parner, Taluka Ambad,
District: Jalna.
2. Education Officer (secondary),
Zilha Parishad, Jalna.

... Respondents
(Ori. Petitioners)

...

Mr. S. B. Deshpande, Senior Advocate, i/b Mr. Swapnil A. Deshmukh,
a/w Mr. Shyeyas Deshpande, Advocates for Petitioners.

Mr. Dhananjay Mane, h/f Mr. Milind Patil, Advocates for Respondent No.1.

Mr. K. B. Jadhavar, AGP for Respondent No.2.

...

AND

CIVIL APPLICATION NO. 995 OF 2023
IN WP/10691/2017

Uddhav Bhimrao Jadhav.

... Applicant

VERSUS

Rajdharma Shikshan Prasarak
Mandal and others.

... Respondents

AND

CIVIL APPLICATION NO. 8835 OF 2024
IN WP/10691/2017

Uddhav S/o. Bhimrao Jadhav.

... Applicant

VERSUS

Rajdharma Shikshan Prasarak
Mandal and others.

... Respondents

CORAM : KISHORE C. SANT, J.

RESERVED ON : 8th October, 2024.

PRONOUNCED ON : 11th December, 2024.

PER COURT :

. The Management of the school has approached this Court

challenging a judgment and order dated 17th April, 2017 passed by the learned Presiding Officer, School Tribunal, Aurangabad Division, Aurangabad in Appeal No.5 of 2016. The Tribunal has partly allowed the appeal of respondent No.1 (hereinafter referred to as “appellant”) and directed to reinstate him to his original position with continuity of service with all consequential benefits. The petitioners / Management and the Education Officer are further directed to pay the arrears of salary and back-wages to respondent No.1 / appellant from the date of termination till the date of reinstatement to the extent of 50%. Further, petitioner Nos.1 and 2 are directed to pay amount of Rs.5,000/- the respondent No.1 towards costs of the appeal.

2 The case of the appellant in short is that the petitioner No.1 is Trust running educational institutions. Petitioner No.2 is the Secondary School run by petitioner No.1. Respondent No.1 / appellant was appointed as an Assistant Teacher in the year 2001, pursuant to an advertisement published in daily newspaper. Pursuant to the selection process, the appellant came to be selected and was given an appointment with effect from 1st August, 2001. Till 2006-2007, the school was being run on non-aided basis. In the year 2007, the school started receiving grant-in-aid. It is only thereafter, the proposal for approval of the individual person was sent to respondent

No.2 / Education Officer. Alongwith proposal, copies of degree certificates of the appellant were not sent and it is for this reason the proposal of the appellant was not processed by the Education Officer. It is the allegation of the appellant that the Management intentionally did not send proposal in proper form, so as to appoint son of the President of petitioner No.1 in the school. A proposal was again submitted on 6th July, 2009 for approval. The Deputy Director of Education, Aurangabad vide Communication dated 10th December, 2010 confirmed that the appellant possesses requisite educational qualification i.e. B.Com., B.A., B.Ed.. The Deputy Director of Education directed the Education Officer to consider the proposal of the appellant. Still the Education Officer did not process the proposal for approval. As per the allegations, this was only to protect illegal appointment of the son of the President of petitioner No.1. It is the case that out of ten employees working in the school, four were from the family of the President of petitioner No.1. In the academic year 2015-2016, the appellant insisted for payment of salary. It is the case that because of this insistence, the Management did not allow the appellant to sign muster roll. It is thus, the case of the appellant that this amount to otherwise termination. He thus, approached the learned School Tribunal with prayer to set aside the otherwise termination and for reinstatement with consequential benefits.

3 It is the case of the Management and the school that in fact the appellant's case was that he was terminated in the year 2008 and at the same time he claimed to have been terminated in the year 2015. It is specific stand that in fact there was no termination of the appellant. However, his services were not approved by the Education Officer and therefore, he himself abandoned the services and remained absent from the school. The Management thus, challenged the maintainability of the appeal. It is also a case of the Management that the appellant was not appointed by following due procedure of law as contemplated under Section 5 of the MEPS Act. It is further case that there was a backlog of vacancies of the Scheduled Caste candidates in the school and it is for this reason, no approval was granted by the Education Officer. The Management thus, prayed for dismissal of the appeal.

4 The learned School Tribunal, after hearing and after going through the evidence / documents on record, held that the appellant was appointed against clear, vacant and permanent post by following due procedure of law. He was a permanent employee, in view of Section 5(2) of the MEPS Act. By holding these two points in favour of the appellant, the learned School Tribunal allowed the appeal.

5 Being aggrieved by the said judgment, the petitioners are
before this Court.

6 Mr. S. B. Deshpande, learned Senior Advocate for the
petitioners vehemently argued that in the present case there is no
approval by the Education Officer and thus, there is no question of the
appellant being permanent employee of the school. Though the
Deputy Director of Education sent communication dated 10th
December, 2010 clarifying that the qualification of the appellant is
sufficient for appointment as a teacher, however, there was further
communication dated 18th February, 2011 by the Education Officer to
the Headmaster that in the case of appellant there are certain
deficiencies in the proposal. It was directed to send a proposal duly
completed in all respects. There is one more communication dated
21st April, 2011, by which the Education Officer communicated that
there is no compliance in respect of the proposal of the appellant. It
was directed to make compliance. It is further stated that if no
compliance is done, the recognition of the school will be withdrawn.
He, thus, submits that the services of the appellant were never
approved by the Education Officer.

7 The learned Senior Advocate further submits that in the appeal, the appellant had made prayer only to set aside the impugned termination. However, there was no prayer for reinstatement and back-wages. Still the Tribunal has granted both these reliefs. The observations of the School Tribunal about the back-wages are not proper. He further submits that while communicating about the qualification, the Deputy Director of Education has communicated that a degree of B.Com., B.A., B.Ed. is requisite qualification. However, in the case of appellant, it was a degree course of only one year and the same is not recognized as qualification. The appellant had abandoned services in 2009 and till 2015, he did not sign the muster. Just to bring the appeal within limitation, a vague statement is made by the appellant that he was terminated in 2015. He submits that it is a case of the appellant himself that he signed the muster roll till 30th December, 2009 and was not allowed to sign the muster since January 2010, though he was discharging duties. He submits that this cannot be accepted. He submits that when the post was reserved for the candidate belonging to Scheduled Caste as per the roster, the same was not provided. In view of Section 5 of the MEPS Act and the Rule 9 of the MEPS Rules, it was necessary for the appellant to show that due procedure was followed while appointing him. He, thus,

submits that the judgment and order of the Tribunal is illegal and against the record. He prays for allowing the writ petition by quashing and setting aside the impugned judgment and order.

8 In support of his submissions, the learned Senior Advocate for the petitioners relied upon the judgment in the case of ***Vilas Laxman Gavai Vs. Dnyandeo Uttamrao Dhandar and others***, reported in, ***2017(6) Mh.L.J. 812***. Another judgment he relied upon is the judgment delivered by this High Court, Bench at Aurangabad in ***Writ Petition No.10710 of 2022 (Swati d/o Shahajirao Chate Vs. The State of Maharashtra and others)***.

9 Mr. Dhananjay Mane, the learned counsel for respondent No.1 / appellant submits that the appellant has obtained degree from the Open University by undergoing one-year course. It is for this reason a clarification was sought. The Deputy Director clarified that the degree of B.Com., B.A., B.Ed. is requisite qualification for the post of Teacher. In the advertisement, no reservation was shown. The Management had sent the proposal for approval. Approval was also granted, subject to Management making the compliance of the deficiencies. However, it is the failure of the Management that no proper proposal was sent. Though as per the roster, a seat was

reserved initially for the candidate belonging to Scheduled Caste, however, it lapsed as no candidate was available. In the advertisement itself, no reservation was shown by the Management. He submits that for the fault of the Management, the appellant cannot be punished. He submits that by way of amendment, prayer of reinstatement and back-wages were introduced. He further submits that in the reply of the Management, there was no averment made about the qualification. The theory of the Management that the appellant had abandoned the job, is not supported by any document. It is not on record as to what steps the Management has taken when the appellant abandoned the duties. No specific date is mentioned as to on which date the appellant abandoned the job. He submits that the learned Tribunal has rightly considered all these aspects and has rightly passed the order. He prays for dismissal of the writ petition.

10 In rebuttal, the learned Senior Advocate for the petitioners submits that theory of the appellant that he was working till 2015, is not properly considered by the Tribunal. There is no discussion about the stand taken by the Management that it is the appellant, who, on his own, abandoned the school and as such there is no question of termination.

11 Mr. K. B. Jadhavar, learned AGP, appearing on behalf of the Education Officer. It is the stand of the Education Officer that though the appellant was appointed with effect from 1st August, 2001, however till date there is no complete proposal sent by the Management for approval. It is for this reason, there is no approval granted to the appointment of the appellant. In view of the same, it is the responsibility of the Management to pay the salary to the appellant. The Education Officer has also received a proposal to challenge the order passed by the learned School Tribunal to that extent. Thus, the submission is that if at all the salary is to be paid, it is the duty of the Management to pay the salary to the appellant / respondent No.1.

12 In the present case the question is as to whether the judgment and order passed by the learned School Tribunal is legal and proper. It also needs to be considered as to whether the appointment of the appellant / respondent No.1 can be said to be an appointment made by following due process of law and whether he can be treated to be a regularly appointed teacher.

13 From the above stated facts, it is clear that the service of

the appellant was never approved by the Education Officer, as there were certain deficiencies in the proposal sent by the petitioners / Management. It is also further clear that no deficiencies were cured. Another question is as to whether the degree of the appellant was recognized or it is requisite qualification for the post of Assistant Teacher. Admittedly, the degree course of the appellant is from Open University and the course was of duration of one year only. There is nothing on record to show that the degree obtained by the appellant by completing one year course is recognized. The Education Officer did not grant the approval on this point as well.

14 The further question as to whether the appellant's story can be believed that since 2009, though he worked with the Management, he was not allowed to sign till 2015. It needs to be kept in mind that the story of the appellant appears to be doubtful. There is nothing on record to show that the appellant, at any point of time, made any grievance to any authority or even to the Management that he was not allowed to sign the muster roll. It is not the case of the appellant that he has raised any grievance that he was not allowed to sign the muster roll. This Court finds sufficient force in the argument of the Management that the appellant himself abandoned the duty. Thus, there was no cause of action to file appeal in the year 2015. It

is only to bring the appeal within limitation, the imaginary date is given.

15 It is clear from record that the appellant has obtained a degree from an open university having course duration of one year only. It was not a specific query that as to whether one year degree course is a requisite qualification. It was necessary for the appellant to show that the said degree course is equivalent to the regular degree course. Merely because the Deputy Director has answered that the degree is recognized, cannot bind the statute when the statute requires a degree of three years course. This was precisely the reason as to why the Education Officer did not grant approval. The School Tribunal has failed to consider this material aspect and has allowed the appeal. It is also further clear that the post was reserved for Scheduled Caste candidate and no general category candidate could have been appointed in his place. This submission also finds some force.

16 So far as the submissions of the appellant are concerned, this Court does not find any force. The very submission that the Management did not forward the proposal in proper manner, itself shows that the proposal was not approved. Consequentially, the

appointment of the appellant was also not approved. Once it has come on record that there was no approval granted to the appointment, still the Tribunal has failed to appreciate this fact. There is also no question of deemed confirmation when there is no approval by the Education Officer. For all these reasons, this Court finds that the petitioners have made out a case to allow the petition. The writ petition therefore, deserves to be allowed. Hence, the following order is passed:-

ORDER

- I. The writ petition is allowed.
- II. The impugned judgment and order dated 17th April, 2017 passed by the learned Presiding Officer, School Tribunal, Aurangabad Division, Aurangabad in Appeal No.5 of 2016, is hereby quashed and set aside.
- III. In view of disposal of the writ petition, pending civil applications also stand disposed of.

[KISHORE C. SANT, J]