



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9804 OF 2022**

1. The President,
Bahiram Dev Education Society,
Ghodade, Taluka Sakri, District Dhule.
 2. The Head Master,
Mahatma Jyotiba Phule Madhyamik
Va Uchh-Madhyamik Vidyalaya,
Ghodade, Tal. Sakri, Dist. Dhule
- ..Petitioners

Versus

1. Smt. Rajshri Dadaji Shirwadkar,
Age 37 years, Occu. Nil,
R/o 182-34, Raje Park 2,
At Post Pimpalner, Tal. Sakri,
District Dhule.
 2. The Education Officer (Secondary),
Zilla Parishad, Dhule.
- ..Respondents

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Mr. S. S. Deshmukh, Advocate for Petitioners.
Mr. A. S. Sawant, Advocate for Respondent No.1.
Mr. V. S. Badkh, AGP for Respondent No.2.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 20th JULY 2024.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. By the consent of the parties, matter is taken up for final hearing at the stage of admission.
2. The petitioners impugn the order dated 05.08.2022 passed by the School Tribunal, Nashik in Appeal No.14/2020 under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short 'MEPS Act') directing Management to reinstate respondent no.1 on the same post alongwith full back-wages and continuity in service.

3. On 14.06.2007 respondent no.1 was appointed as Shikshan Sevak at petitioner no.2-School by following due process of law. Her appointment was approved on 21.12.2009 by the Education Officer. After completing the period of Shikshan Sevak, her services were confirmed and approved by the Education Officer as Assistant Teacher. During service period, respondent no.1 acquired B.Ed. qualification. The management sent proposal for grant of B.Ed. scale to the petitioner. Accordingly, on 01.07.2014 her name is inserted in the seniority list maintained as per Schedule 'F'. The respondent no.1 rendered continuous unblemished service of about 13 years.

4. The President of petitioner no.1-Management is father-in-law of respondent no.1. There was matrimonial discord between respondent no.1 and her husband. Some criminal cases were filed. Exacerbated by such litigation, the President of Institution i.e. father-in-law of respondent no.1, issued show cause notices to her incorporating false imputations and consequently, issued termination order dated 15.06.2020 on the basis of Resolution dated 01.06.2020. The respondent no.1 approached School Tribunal under Section 9 of the MEPS Act assailing termination being illegal and capricious. She pleaded that she has been appointed by following due process of law. Her services were approved by the competent authority. She was a permanent employee. She has been terminated without enquiry under stigmatic order. As such, sought to set aside the order with consequential relief of reinstatement. The petitioner no.1-Management filed written statement and denied the material averments in Appeal Memo and pleaded that respondent no.1 was served with show cause notices dated 03.08.2019, 09.09.2019 and 13.03.2020 and consequently, terminated her services by giving three months salary. The petitioners have candidly admitted that

the termination is without enquiry prescribed under Rules 36 and 37 of the MEPS Rules. The School Tribunal after considering the rival contentions, allowed the Appeal vide order dated 05.08.2022 and directed reinstatement of respondent no.1 alongwith full back-wages.

5. Mr. Deshmukh, learned Advocate appearing for the petitioners vehemently submits that respondent no.1 could not place on record her appointment order. There is nothing to demonstrate that proposal seeking approval to the appointment of petitioner was forwarded by Management. The burden to prove that she was appointed by following due process of law has not been discharged by her. Due to misconduct of respondent no.1, the students were suffering. She was a elected member of Zilla Parishad and always pressurized Headmaster. She was not serious in performing her duties as teacher. Consequently, show cause notices were issued to her and finally Resolution was passed by Management to terminate her services. Consequently, termination order is issued. To buttress his submissions he relies upon the judgment of this Court in ***Writ Petition No.1019/19991*** in case of ***Rayat Shikshan Sanstha Vs. Yeshwant Dattatarya Shinde*** dated ***25.06.2009***.

6. Mr. Savant, learned Advocate appearing for respondent no.1 justifies the impugned order. He would submit that respondent no.1 being permanent employee could not have been terminated without following prescribed procedure contemplated for inflicting major penalty. In present case, admittedly respondent no.1 has been terminated without following procedure prescribed under Rules 36 and 37 of the MEPS Rules. Therefore, no fault can be found in the order passed the Tribunal. To buttress his submissions he relies upon the judgments of this Court in case of

Trimurti Balak Mandir Shikshan Sanstha, Aurangabad Vs. Vithabai Bhikan desale and Another and Others¹ and Balasaheb Ramchandra Burke and Others Vs. President, Bahujan Samaj Prabodhan Shikshan Sanstha and Others².

7. Having considered submissions advanced on behalf of the learned Advocates appearing for respective parties and on perusal of documents tendered before this Court, apparently respondent no.1 possessed requisite qualification for appointment as Shikshan Sevak as on the date of her appointment. Her appointment was duly approved by the Education Officer on 21.12.2009 and after completing period of Shikshan Sevak, she has been confirmed as Assistant Teacher and Education Officer approved her services. In the year 2014, respondent no.1 acquired higher qualification of B.Ed., which has been entered into the record and she was given appropriate placement in the seniority as per Schedule 'F'. In this background, it is difficult to accept the contentions of the petitioners that she was not appointed by following due process of law. Only because respondent no.1 could not place on record the appointment order, no adverse inference can be drawn. Pertinently, there are three consecutive approvals to the appointment of respondent no.1 initially as Shikshan Sevak and lastly for grant of pay scale based on B.Ed. qualification. Apparently on proposals of the Management, such approvals have been granted. The respondent no.1 has rendered service of more than 13 years and there is nothing on record to demonstrate that the legality of her appointment was ever questioned by Management during this long tenure.

8. It is apparent that respondent no.1 is daughter-in-law of the President of petitioner no.1-Institution. The matrimonial discord

¹ 2017 (1) Mh.L.J. 90.

² 2016 (3) Bom.C.R. 197.

between respondent no.1 and her husband is writ large. The allegations and counter allegations are made against each other. All such disputes are subjudice before judicial Forum. It is evident that respondent no.1 was served with notice for divorce on 16.01.2020. She replied said notice on 03.02.2020 and thereafter, management came in action to issue notices against respondent no.1 with certain allegations. There is direct nexus between matrimonial litigation and action resorted against respondent no.1. This Court has no hesitation to observe that family dispute is given colour of service litigation.

9. The School Tribunal has thoroughly examined the legality of respondent no.1's appointment and recorded finding of facts that her appointment was legal, proper and against clear vacant post. She was permanent employee. In case of stigmatic termination under Section 33, it could have been preceded by enquiry as contemplated in MEPS Rules. Section 4(6) of the MEPS Act prescribes that no employee of a private school shall be suspended, dismissed or removed, except in accordance with the provisions of the Act and Rules. Therefore, if respondent no.1 was a permanent employee, the major penalty could not have been inflicted without following prescribed procedure in terms of Rules. In this circumstance, no fault can be found in the view taken by School Tribunal. Consequently, Writ Petition stands dismissed.

10. Rule is discharged.

(S. G. CHAPALGAONKAR)
JUDGE