



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.40 OF 2014

1. The Secretary,
Adhiwashi Mahila Mandal,
Barbada, Tq. Naigaon (Kh),
District Nanded.
 2. The Headmaster,
Shivaji Maharaj High School,
Kopra, Tq. Kinwat,
District Nanded.
- ... Petitioners.

Versus

1. Dhanu S/o Trimbakrao Swami,
Age 41 years, Occu. Nil,
R/o Kopra, Tq. Kinwat,
District Nanded.
 2. The Education Officer (Secondary),
Zilla Parishad, Nanded.
- ... Respondents.

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Advocate for Petitioners : Mr. Ganesh Asaram Gadhe.
Advocates for Respondent No.1 : Mr. P. R. Katneshwarkar with
Mr. G. R. Karne.
AGP for Respondent No.2-State : Mr. A. S. Shinde.

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CORAM : S. G. MEHARE, J.

RESERVED ON : 31.01.2024

PRONOUNCED ON : 12.04.2024

JUDGMENT :-

1. Heard the learned counsel for petitioners, learned
counsel for respondent No.1 and learned AGP for respondent
No.2/State.

2. The respondent/Management has impugned the judgment and order of the learned Presiding Officer, School Tribunal, Latur, passed in Appeal No.39 of 2010, decided on 19.12.2013.

3. The parties would be referred to their original position. The present "petitioners" would be referred to as "respondents" and "respondent No.1" would be referred to as "appellant".

4. The facts giving rise to the dispute in brief were that the appellant was B.A., B.Ed. Respondents invited aspirants for the post of "Shikshan Sevak" by publishing an advertisement in a newspaper. Respondents invited the aspirants for a walk-in interview. The appellant was selected after facing the interview. By order dated 14.07.2002, he was appointed as "Incharge Head Master" as mentioned in the appointment order. He has a case that he was primarily selected as "Shikshan Sevak". It was the first appointment of the staff of the respondent. Hence, while appointing him, he was appointed as "Incharge Head Master". A few months later, he resigned from the post of Head Master and continued his services as "Shikshan Sevak". He rendered his services till 2010. However, the respondents, without making an inquiry, terminated him from his services.

He made the representation to the Management and the Education Department and, lastly preferred the appeal. He has a further case that his termination is illegal. A departmental inquiry was never initiated against him. His service record was clean and clear. At the time of his joining, the Management obtained his signatures on blank papers. He, along with other staff, requested the Management to apply for the 6th pay commission. The respondents were annoyed by this and misused the blank signed papers and created false evidence against him that he was appointed against the reserved post. He has a claim that he was appointed in a clear post, and the Education Department had accordingly approved the appointment as "Assistant Teacher". He has completed his probation satisfactorily. Hence, he is deemed confirmed. He has a case that he never applied for his posting on a reserved post nor undertook to produce the caste validity certificate. The respondents had dug the false evidence against him. Therefore, the termination order may be declared illegal, and he may be reinstated.

5. The respondents had a case that the appellant had applied for the post of Assistant Teacher from the S.C. category. He belongs to Malajangam caste. Along with an application, he

had attached the caste certificate issued by the Tahsildar, Kandhar. Considering the recruitment rules, he was appointed from the S.C. category on a condition to submit the caste validity certificate. The Management has produced another appointment order on the same date with an undertaking on its foot. The appellant was to produce the caste validity certificate within six months. To hide the truth, he had produced the order of his appointment as an Incharge Head Master. The appellant never discharged his duty sincerely. He was adamant and provoked other school employees against the Management. He was also negligent and dishonest. He secured the job by misrepresentation on the basis of false and fabricated documents. The respondents made an inquiry with Tahsildar, Kandhar, about the issuance of his caste certificate. Shocking information was received that the said office did not issue him a caste certificate. Therefore, he tactfully changed the category of his appointment from scheduled caste to open category. Though the Education Officer initially approved his appointment as a candidate from the open category, the Education Officer corrected their mistake and clarified that he was appointed against S.C. category. Till 2009, the school was non-aided. However, the Government granted aid on 26.03.2009. After getting information from the Tahsildar, a

show cause letter dated 01.04.2010 was issued to the appellant. Further, he has falsely replied to the representation, claiming that he was never undertaken to furnish the caste validity certificate. The handwriting expert opinion corroborates their contention that documents like apology letters, the application for appointment as a teacher etc. do bear his signature. Since the appellant played fraud and obtained the appointment fraudulently, the departmental inquiry is not required. Therefore, his termination was legal and correct. The impugned judgment is passed after two rounds in the High Court.

6. The learned School Tribunal on recording the various observations on the facts and evaluating the evidence produced by the respective parties believed the appellant and discarded the defence of respondents. He held that the termination is illegal and null and the writ petition deserves to be allowed.

7. Learned counsels for both sides have argued at length.

8. The first question that goes to the root of the dispute is, "Can the appellant be terminated without departmental inquiry?".

9. To bolster the arguments, learned counsel for the respondent relied on the case of *Maharashtra Vidya Prasarak Mandal Khamgaon and others Vs. Vijay Sukhalal Rajput and others : 2019 (4) Mh.L.J. 606* and *Shalini Gajananrao Dalal Vs. New English High School Association through its Secretary and others ; 2010 (3) AIR Bom. R. 275*.

10. Per contra, learned counsel for the appellant argued that the appellant never applied for the post of Teacher in the reserved category. He had completed his probation satisfactorily. Therefore, he could not be dismissed unless a departmental inquiry was conducted against him. Management misused the blank papers and terminated the appellant with a cool mind. Since he never applied for the post reserved for scheduled castes, there is no question of playing any fraud. He had faced the walk-in interview. The advertisement was also silent about post reservations. Until the termination, the respondents never issued a single letter to him. The respondent, under the influence, has managed to correct the category from the Education Officer two to three days before his retirement. The evidence led upon does not prove the allegation. Simultaneously, the issue of whether the

appointment of the appellant was in a reserved category or in an open category should also be dealt with.

11. There are two appointment orders. The appellant produced one in which his post is shown as the Incharge Head Master, and the second is produced by the respondents disclose that he was appointed as an Assistant Teacher. Both orders are of the same date. However, there was variance in the contents thereof. The appointment order of the respondent includes the undertaking to furnish the caste validity certificate within six months. The advertisement in the newspaper also did not mention inviting applications for different categories. It is evident that during the education, the appellant took advantage of reservation and obtained the education scholarships. It has been explained that though the appellant belongs to a scheduled caste, he never applied for the post reserved for a scheduled caste. He never furnished any undertaking to produce the caste validity certificate. The respondents never asked for the caste validity certificate. Both parties led evidence and produced a bunch of documents. Evaluating the documents placed on record about the appointment of the appellant, the learned Tribunal held that the appellant proved that his appointment was against the

open category. It is the contention of the respondent that the appellant submitted an application on 14.07.2002 below Exh.61, requesting them to appoint him in a reserved category. However, the said document does not bear the acknowledgment. The document does not prove that it was an application filed by an appellant seeking his appointment against the reserved category. As discussed above, the advertisement also did not mention the posts reserved for open and reserved categories. The appellant has an explanation that since those were the first appointments of the school, therefore, in his appointment letter, he has been mentioned as appointed as "Incharge Head Master". In the cadres of employees in private schools, the Incharge Head Master is not the cadre. There are cadres of teaching and non-teaching staff as well as the Head of the school. Section 2(9) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("Act 1977" for short) has defined the "Head of a school" or "Head". That means a person, by whatever name called, in charge of the academic and administrative duties and functions of a school conducted by any Management and recognised or deemed to be recognised under this Act, and includes a principal, vice principal, headmaster, headmistress, assistant headmaster, assistant

headmistress or superintendent thereof. The said Section also defines the term "teacher" in clause 26. That means a member of teaching staff, and includes the Head of a school. The definition of the "Head of the school" or "Head" indicates that he has to discharge the administrative duties and the function of a school conducted by the Management as well as the acts recognised under this Act. He is also required to look into financial matters and supervise administrative and financial matters apart from his duties as a teacher. Every Management has to appoint a Head of a school. The senior most person amongst the teaching staff should be appointed as Head of the school. The appellant had a case that he was the person appointed first amongst others by the respondent. It was the first appointment of the school. Therefore, his appointment was shown as Incharge Head Master. In fact, he was selected as Assistant Teacher. Rule 3 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1981 ("Rules 1981" for short) provides for the qualifications and appointment of a Head. It has been provided in the said rules that the qualifications for the appointment of a Head of a primary school having an enrolment of students above 200 or having standards I to VII he shall be the seniormost trained teacher, who has put in not less than five years' service and of

any other primary school he shall be the senior most teacher in the school. For secondary school, including night school or junior college of education, he shall be a graduate possessing a Bachelor's degree in teaching or education of a statutory University or any other qualification recognised by the Government as equivalent thereto and should have experience of not less than five years total full-time teaching after graduation in secondary school or junior college.

12. The facts of the case reveal that at the initial stage, the respondent did not publish an advertisement inviting the aspirants for the post of Head of the school. The Management did not prefer to appoint the appellant as a regular Head of the school. Therefore, an interregnum arrangement was made by showing his appointment as Incharge Head Master. Rule 3(5) (b) speaks of filling up the post of the Head. Management has to seek permission to advertise the post, and applications for the same should be made at least two months in advance. The Education Officer may relax the period of two months in the case of new schools or in emergency cases wherein the vacancy could not have been anticipated. How the advertisement is to be published has also been provided therein. On reading this clause (b) Sub Rule 5 of Rule 3, it clears that even in the case

of new schools, the Management was to advertise the post in two daily newspapers, one of which shall be a Marathi newspaper having wide circulation in the region wherein the primary schools or secondary schools or junior colleges were taken. The advertisement placed on record is not disputed and does not indicate that it was an advertisement for the post of Head Master. The respondent also never disputed it till the dispute arose. However, the respondent had come with the case that the appointment order indicating the Incharge Head Master was not the appointment order. His real order is for the Assistant Teacher, which they have produced. The Rules 1981 provides for the format of the appointment order in Scheduled D. It includes six columns. Column two is about the nature of the appointment, whether it is purely temporary for a specific period in the leave/deputation vacancy. It specifically indicates the termination of the services without notice after the expiry of the period for which the employee has been appointed. Below it or in the column, the appointment should be on probation for a period of two years. In both orders of the appointment placed on record, it has been indicated that the appointment of the appellant was from 14.07.2002 to 14.07.2004. However, this format does not include any endorsement of the undertaking to furnish the caste certificate,

nor does it indicate that the appointment is in a peculiar category i.e. reserved or open.

13. The appellant was appointed in the 2002. At that time, there was no provision to indicate the vacancies for the post of teachers in detail and details of the subject with roster point. The amendment was done in 2017 in Rule 9 of Rules 1981. Before the said amendment, Rule 9 was providing for the appointment, the employees desirous of applying for such posts were to make an application in writing, giving full details regarding name, address, date of birth, educational and professional qualifications, experience etc., attaching with true copies of the original certificates. Sub Rule 7 of Rule 9 provided that the Management has to reserve 34% of the total number of posts of teaching as well as non-teaching for the members of scheduled castes, scheduled tribes, denotified tribes, nomadic tribes and other backward classes. The said Sub Rule gives the percentage of the posts reserved for the above categories. It was provided in Sub-rule 8 that whether any post is reserved for the categories under Sub Rule (7), the Management had to advertise the vacancies at least in one newspaper having wide circulation in the region, and they had to notify the vacancies to the employment exchange of District

or the District Social Welfare Officer etc. Sub Rule (3) was providing for that it was not necessary for candidates other than those belonging to various sections of backward communities for whom posts were reserved under Sub Rule (7). The so-called application, as the respondent alleged, submitted by the appellant does not bear his caste. So it can safely be believed that the appellant never applied for the post reserved for the specified caste under sub Rule (7).

14. It is a requirement of Rule (9) of Rules 1981 that a person desirous of being appointed as a teacher should apply for such posts by making an application in writing, giving full details. However, subsequent to dealing with this issue by the High Courts, it has been held that the appointment should be democratic, and all aspirants should be entitled to know the vacant posts. To avoid nepotism, the law on this issue was developed by judicial pronouncements that the Management shall issue an advertisement inviting applications from the aspirants to face the interview for every appointment. It was the recognised procedure for the appointment of the staff under M.E.P.S. Rules. Therefore, the Management advertised the posts. Management invited the aspirants for a walk-in interview along with the original testimonials.

15. The Learned Tribunal has correctly observed that the so-called application Exh.61 does not bear the endorsement of the acknowledgment, outward number and doubts the order of the appointment of the appellant against the reserved category. The approvals granted to the post to the appointment of the appellant were also for and against the reserved post. For a longer period, the respondents kept silent. The mess started when the school received government aid in 2009. Surprisingly, the Education Officer, by a letter dated 27.02.2009, clarified that the approval to the post of the appellant was inadvertently approved from the open category. However, it should be presumed from the reserved category. The Tribunal evaluated the evidence of the Education Officer, and it transpired that the Officer issuing this letter retired 2-3 days after the issuance of the letter. He correctly observed that the oral and documentary evidence established that initially on 24.02.2009, the appointment of the appellant was approved against open category. However, to believe in correcting the mistake of the appointment in a wrong category, the proposal of approval was not produced. The letter issued by the Education Officer was not supported by the orders of approval and the proposal sent by the Management, i.e., the respondent. The so-called *Mafinama*, i.e., the apology letter Exh.64

submitted by the appellant, also does not bear the acknowledgment. Looking at the *Mafinana* with bear eyes, it clearly appears that the said paper was managed. Its contents also do not link that it was an apology letter from the appellant about getting the appointment from a open category instead of a scheduled caste category.

16. Learned counsel for the respondent has vehemently tried to argue that the appellant was Incharge Head Master at the relevant time, knowing that he does not have a caste certificate of Scheduled Caste. Therefore, though he applied for his appointment from a reserved category, he got the approval for his post from the open category. Reading the contents of the *Mafinama* Exh.64, it appears that it does not address any Authority. It is written on a notebook paper. It also does not bear the outward number and endorsement of its acknowledgment. Evaluating the facts, it appears that the proposal for approval of the employees of the respondent/school came to be forwarded for the first time in 2008-2009 as per the approval order Exh.4/6 produced by the appellant. The appellant had resigned from the post of Incharge Head Master in 2006. Therefore, he had no reason to prepare the papers for approval in 2008-2009. During that period, another person

was the Head of the school. For the sake of believable documents, it is difficult to accept the case of the respondent, who said that the appellant had committed fraud with the Management and secured the appointment under the scheduled caste category. It cannot be accepted that the allegations of fraud have been established against him. To corroborate the contention, the respondent relied upon the handwriting expert, who opined that the signatures on the papers produced before him were of the same person. However, the documents that were sent to him were not established. With regard to the peculiar defense of the appellant that at the time of the appointment, the Management had obtained the signature on blank papers, the burden was heavy on the respondent to prove that he had submitted the *Mafinama* and application for appointment in the Scheduled Caste category voluntarily. The appellant served around seven years with the Management without any complaint against him. From time to time, approvals were granted to the post of the teachers and non-teaching staff including the appellant.

17. Learned counsel for the respondent has vehemently argued that the evidence of the Tahsildar, Kandhar, is most relevant to believe the allegation of playing fraud. It is evident

from the evidence that the caste certificate that the appellant produced at the time of his application was never issued by the Tahsildar, Kandhar. The Tahsildar, Kandhar, intimated to the respondent by letter Exh.72 that the file with respect to the caste certificate of the appellant is not available with their office or there is no outward and inward register. The evidence of the witnesses from the Tahsildar Office was simply that the record of the so called caste certificate is not available. However, it did not produce the inward and outward register showing that the appellant has applied for the caste certificate. Evaluating the evidence from the witness from the Tahsildar Office, Kandhar, that does not lead to the conclusion that the caste certificate was obtained by fraud and it was false. Every person appointed in a reserved category has to secure the caste validity certificate from the Caste Scrutiny Committee. This process of obtaining the Caste Validity Certificate should be done within six months from the appointment. The facts of the case reveal that the Management never asked the appellant to furnish the caste validity certificate for a longer period. The approvals for a sufficient period against the open category fortify the case of the appellant that he was never appointed against the post reserved for scheduled caste.

18. Learned counsel for the respondent has referred to the civil list and argued that the appellant had appointed against the scheduled caste category. However, the said documents Exh.69, 70, 106, 107, and 107(a) neither appear the appellant's signature nor the employees in the remark column. The concerned employees should sign Such a document accepting the categories for which they were appointed. In the absence of the signatures of the appellant and other staff, his documents would not assist the respondent to believe that the appellant accepted his appointment against the Scheduled category. Evaluating the evidence, the learned School Tribunal has correctly arrived at the conclusion that the appointment of the appellant was in open category and correctly disbelieved the case of respondent.

19. Learned counsel for the respondent has vehemently argued that the learned Tribunal did not appreciate the evidence on facts. Therefore, his findings are perverse. The Tribunal has failed to consider the correction of the approval order dated 27.02.2009. The learned Tribunal has incorrectly shifted the negative burden of the Management to prove that the appellant was appointed from the S.C. category. The initial burden was on the appellant to prove that he was appointed

from the open category and he never applied from the said category. This Court has considered the evidence and held that the Tribunal did not make a mistake in appreciating the evidence. Learned counsel for the respondent is right in arguing that the burden was upon the appellant to prove that his signatures were obtained on blank papers and those had been misused. The primary burden is on the person who says a particular thing exists. In the above paragraphs, this Court discussed the various documents placed on record, their nature, and their effect. The material the respondent placed on record appears inconsistent and does not inspire confidence that those documents were genuine. The requisite provisions of law or the practice of the daily business of the society i.e. endorsing the acknowledgment, giving the inward and outward number to the letters, have not been followed. Looking at the documents with a bare eye also does not appear to be prepared in a natural course. The apology letter apparently seems to have been adjusted on the papers. The appellant produced the document that inspired confidence and rebutted the case of the respondent, who tendered the apology and applied for the post reserved for the scheduled caste. This Court also considered the expert evidence. The expert opinion is a corroborative piece of evidence. Primarily, the burden was

on the Management to prove the allegations leveled against the appellant. The foundational facts have not been proved. Therefore, the expert opinion was not binding upon the Court.

20. The learned counsel for the respondent has raised the crucial question of the nature of the appointment. He vehemently argued that the appointment of the petitioner was for a particular period. Therefore, he cannot be deemed to be confirmed, or his appointment was on probation.

21. To bolster his argument, he relied on the case of *Ramkrishna Chauhan and others Vs. Seth D.M. High School and others ; 2013(3) AIR Bom.R 106*. A single bench has referred the issue to the larger bench formulating the question for answer. The said question was as follows :

"Would it be open to the School Tribunal to hold that an employee would be deemed to be on probation within the meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 on the ground that an appointment was made in a clear or permanent vacancy, notwithstanding the fact of the letter of the appointment specifically stipulated that the appointment has been made in a temporary capacity?"

22. The facts of that case were that the petitioner was qualified to teach in a secondary school. His appointment was

as a full-time assistant teacher. Initially, he was appointed for the academic year, though the appointment was against a clear, open, and permanent vacancy. The appointment order dated 17.07.1997 was made over to the petitioner on 30.03.1998. On the same day, he was issued a letter of termination, terminating his services w.e.f. 30.04.1998. The petitioner was then continued as an assistant teacher in the following academic year. However, he was not given any formal appointment letter in that regard. The petitioner was issued a letter of termination, terminating his service w.e.f. 30.04.1999. Again, in the next academic year (1999-2000), the petitioner was continued as an Assistant Teacher without issuing any fresh appointment order. Lastly, he was served with a termination letter dated 29.04.2000. He had impugned the said order. While the appeal was pending, the Management had issued him an appointment order dated 10.06.1999 indicating that the petitioner was appointed on probation. During the probation period, however, few memos were issued to the petitioner, which, according to the petitioner, were unrelated to his work. The Tribunal dismissed the appeal of the petitioner and held that since the initial appointment order of the petitioner was purely on a temporary basis for a limited period, the petitioner cannot be appointed on probation. Under

this premise, the Hon'ble Full Bench discussed the relevant provisions of Act 1977.

23. It has been observed in paragraph No.13 that by virtue of the mandate of Section 5(1), there is an implicit obligation on the Management to fulfill that requirement at the earliest, to wit, before the commencement of a new academic year. That is so because a permanent vacancy is one, which is in respect of a sanctioned post and in the case of an aided school, entitles the Management to receive the commensurate grants from the Government. Further, the sanctioned post for a school is prescribed by the State Authority, keeping in mind the benchmark to be maintained for imparting high-quality education and maintaining discipline in the school - commensurate with the strength of the students of the school. Thus, keeping the permanent vacancy unfilled for a long period may entail diluting the imparting of quality education. A fortiori, though the Management has implicit power to appoint a duly qualified person on contractual employment, even against the permanent vacancy, must be only an interim arrangement till a suitable candidate is found in the selection process. It cannot be continued on year to year basis in succession. If the Management holds the selection process in a

prescribed manner but wants to appoint the selected candidate on a temporary basis, it must contemporaneously record tangible reasons as to why the selected candidate is not suitable to be appointed on probation against the permanent vacancy. In that event, the appropriate authority can consider the challenge to the appointment on a temporary basis instead of probation against a permanent vacancy. In spite of the availability of a suitable candidate identified in the selection process held to fill in the permanent vacancy, the Management cannot appoint him on temporary basis against the permanent vacancy. Any other view would be the antithesis to the mandate of Section 5(1) of the Act and against the principle underlying exposition of the Apex Court in the case of Ratan Lal and others Vs. State of Haryana and others, as it would be hit by Articles 14 and 16 of the Constitution of India.

24. In paragraph No.16, it has been observed that the question is whether the Management has unbridled power and authority to appoint a duly qualified person on a temporary basis against the permanent vacancy. As aforesaid, the Management is, primarily, under an obligation, in law, by virtue of Section 5(1), to fill in the permanent vacancy as soon as possible. To wit, if a permanent vacancy is caused by any

reason, before the commencement of the new academic year, the Management must take immediate steps to fill in that vacancy by appointing a duly qualified person, after following the prescribed procedure, on probation, for a period of two years. That means the selection process must be held to, as far as possible, culminate with the selection of a duly qualified person before the commencement of the new academic year. However, for some fortuitous or tangible reason, such a selection process cannot be commenced, or, for that matter, completed, there would be nothing wrong if the Management were to appoint a duly qualified person on a contractual or temporary basis for a limited duration, so that, in the meantime, the prescribed procedure to select a duly qualified person, to fill in permanent vacancy is completed and the selected person can be appointed on probation, against the permanent vacancy. The Full Bench has laid down the law that the Management has the power to appoint a qualified person on a temporary basis against the temporary vacancy. However, the Management should not get a suitable person against the permanent post. For doing so in the selection process as prescribed, the Management has to record the tangible reasons for doing so. The Management may appoint a duly qualified person on a temporary basis against the permanent and vacant

post, which the Management cannot appoint before the commencement of the new academic year and cannot complete the selection process. The mandate of the law is that the Management is under obligation to appoint the staff as soon as possible. The respondent has no case that he did not get a suitable candidate to appoint against the permanent vacancy. A new school started, and the appellant was appointed first. He was the senior most among the candidates selected. There was a need for the administration of the school. He was shown appointed as Incharge Head Master against his real appointment as an Assistant Teacher.

25. The Hon'ble Full Bench in the above case has also held in paragraph No.26 of the said judgment, that however, we are bound by the exposition of the Apex Court in the case of *Hindustan Education Society Vs. S. K. Kaleem S. K. Gulab Nabi and others; 1998 (2) Bom. Cases Reporter 146 (Supreme Court)*, which had occasion to consider Section 5 of the Act. In that case, the appointment of respondent No.1 therein was against a clear vacancy but on a purely temporary basis, for a limited period of eleven months. After considering Section 5(1) and (2) of the Act, the Court opined that the respondent cannot be treated as a permanent employee or that he was

appointed on probation. Even in the case of *Bhartiya Gramin P. Sanstha* (supra), the Apex Court was dealing with the person appointed for a period of two years. No doubt, in that case, the appointment was on a purely temporary basis because of the non-availability of reserved candidates to fill the permanent vacancy. But, the principle reiterated in this decision is that when the appointment letter expressly states the terms and conditions, it is not open to assume that the appointment was on probation merely because of the availability of permanent vacancy.

26. The learned Tribunal held that it is worth mentioning here that the appellant's appointment was on a probationary period. Both appointment orders i.e. appointment orders produced by the appellant Exh.62 show that the appointment of the appellant was for the probationary period.

27. To fortify his view, he relied on the case of ***Mahatma Phule Krida Prasarak Mandal, Solapur and another Vs. Sumati Tukaram Kashid and others; 2011 (1) Mh.L.J. 302*** and *Ramkrishna Chouhan Vs. Seth D. M. High School*. In the case of *Ramkrishna Chouhan* (supra), it has been observed that the School Tribunal cannot disregard the terms and conditions of the letter of the appointment if it expressly provides that the

appointment is on a temporary basis for a limited period. Learned Tribunal further held that it cannot be said that the appellant was temporary employee of respondent/Management. The services of the appellant were not disputed with the respondent/School till alleged date of termination. As such, the appellant, with his continuous services, become deemed a confirmed employee of the respondent/school.

28. Section 5 of the Act 1977 provides that every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to provisions of Sub-section 3 and 4, he shall, on completion of his probation period of two years, be deemed to have been confirmed. Rule 10 of Rules 1981 provides for the categories of employees. They are categorized into permanent and non-permanent. Non-permanent employees are divided further as temporary or on probation. When an employee is appointed purely on a temporary vacancy for a specified period, he is called a temporary employee. For example, employees appointed on leave vacancy are on deputation or appointed on reserved post for a particular reason and for particular period.

29. The appointment orders placed on record by both the respondent and the appellant mentioned that his appointment

was purely temporary for a period from 14.07.2002 to 14.07.2004 in the leave/deputation vacancy. After the expiry of the above period, his services shall stand terminated without any notice. Each case has its own facts and circumstances. The facts of this case are peculiar that it was the first appointment of the staff of the school. No employees were appointed before the appellant was appointed. Therefore, there was no question about appointing a person for the leave or deputation vacancy. The intention is gathered from the letter of appointment with the circumstances. As discussed above, for the appointment on temporary post against leave and deputation, there must be a permanent employee appointed who is on long leave, and post is vacant. Therefore, the intention of the Management/respondent was clear that the appointment of the petitioner was on probation for two years. He has completed the probation satisfactorily. Hence, his services were deemed to be confirmed as provided under Section 5(2) of the Act.

30. Rule 28 of the Rules 1981 provides for removal or termination of the service. The services of temporary employees other than those on probation may be terminated by Management at any time without assigning any reason provided the Management shall give calendar month's notice

or one month's salary in lieu of the notice. The case of the respondent was based upon the fraud played while obtaining the appointment order. As far as the termination or the removal from services of the permanent employees and where the punishment or the penalty is major, the Management shall hold the departmental inquiry.

31. The Court has held that the Management/respondent failed to prove that the petitioner had fraud played while getting the appointment. Therefore, the ratio laid down in the cases of *Maharashtra Vidya Prasarak (supra)* and *Shalini Dalal (Supra)* would not assist him.

32. To sum up, the Court concludes that the appellant was appointed on a the clear post in the open category on a a probationary period. He had completed his probation satisfactorily. No allegations against him of playing fraud have been proved. Hence, he could not be terminated without departmental inquiry. The action of termination on the respondent's part is illegal and violates the legal provisions. The reasons and findings recorded by the learned Tribunal are legal, proper, and correct. Hence, the writ petition deserves to be dismissed.

33. For the reasons mentioned above, the writ petition stands dismissed.

34. Rule made discharged. No order as to costs.

(S. G. MEHARE, J.)

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