

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3290 OF 2002

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Abhinav Shetkari Shikshan
Mandal, Gooddeo & Anr.

... Petitioners

V/s.

Madhukar Eknath Ahire & Anr.

... Respondents

Mr. Dilip Bodake for the petitioners.

Mr. Mihir Desai, Senior Advocate i/by Ms. Sanskruti
Yagnik for respondent No.1.

Mrs. V.S. Nimbalkar, AGP for respondent No.2/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 22, 2024

P.C.:

1. The challenge in this writ petition is to the order dated 6 April 2002 passed by the School Tribunal granting reinstatement of respondent No.1 on his original post of Assistant Teacher with effect from 2002 along with consequential benefit including continuity of service and full back wages from 1 July 1999.

2. Respondent No.1 was appointed as Assistant Teacher for a period from 1996 to 1997 with effect from 1 July 1996 to 30 April 1997. On 31 March 1997, petitioner terminated services of respondent No.1. According to the petitioners, for academic year 1997-1998 there was no workload, hence, respondent No.1 was

not appointed. However, on 11 June 1998 respondent No.1 applied for appointment and accordingly he was appointed temporarily for one academic year from 30 June 1998 to 30 April 1999. Again respondent No.1's services were terminated on 30 April 1999.

3. Respondent No.1, therefore, filed Appeal before the School Tribunal challenging his termination.

4. There was one round of litigation in relation to application for condonation of delay. However, after condonation of delay petitioners filed their written statement contending that the appointment of respondent No.1 was temporary. There was no vacancy. The School Tribunal by order dated 6 April 2002 allowed the Appeal by directing the petitioners to reinstate respondent No.1 to his original post of Assistant Teacher along with full back wages and continuity of service. The petitioners have, therefore, filed present writ petition.

5. Learned Counsel for the petitioners invited my attention to the appointment orders and submitted that respondent No.1 was appointed purely on temporary basis for fixed period. There was neither advertisement nor any procedure was followed before appointing the respondent No.1. The School Tribunal without considering ingredients of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act" for short) has allowed the Appeal holding that respondent No.1's appointment was against the candidate belonging to backward class and, therefore, under Rule 9(9) of the

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (“MEPS Rules”), respondent No.1’s appointment need to be treated as regular appointment. According to him, therefore, such approach is impermissible.

6. Per contra, Mr. Desai, learned Senior Advocate on behalf of respondent No.1 submitted that respondent No.1 was appointed on the post reserved for candidate belonging to Nomadic Tribe and, therefore, the temporary appointment as mentioned in the appointment order need to be construed as regular appointment as the appointment order could not have been issued on probation. He submitted that lack of procedure is lapse on the part of the Management and, therefore, the Management cannot take benefit of their own wrong. In support of his submissions, he placed reliance on the judgment of the Apex Court in the case of **Shakuntala Ganpatsa Shirbhate v. Industrial Weaving Cooperative Society & Ors** reported in 1995 SCC (L&S) 144, **Kankawali Shikshan Sanstha & Ors. v. M.R. Gavali & Ors.** reported in (2005) 13 SCC 638, **Vilas Jijabrao Chavan v. Grushneshwar Shikshan Sanstha & Ors.** unreported judgment in Writ Petition No.1593 of 2022 (Aurangabad Bench).

7. Rival contentions fall for consideration.

8. It is well settled that the teacher governed by the provisions of the MEPS Act is entitled to the benefit of permanency, if he satisfies (i) he was eligible; (ii) appointment was made after due procedure; and (iii) he was appointed against a clear vacancy. Even if one of the parameter is absent, the teacher is not entitled

to the relief of permanency as per Section 5(2) of the MEPS Act.

9. In the facts of the case, undisputedly the appointment of respondent No.1 was without following due procedure. Therefore, one of the mandatory ingredient of Section 5(2) of the MEPS Act is not fulfilled. The submission on behalf of respondent No.1 relying on judgments in the case of **Kankawali Shikshan Sanstha** (supra) and **Shakuntala Ganpatsa Shirbhate** (supra) is concerned, the Apex Court in the referred judgments held that by virtue of sub-rule (9) of the MEPS Rules if the member of one backward class referred in the said Rule is unavailable, the person belonging to other category of backward can be appointed. Other backward class candidate is entitled to regular appointment in the first year. The said view is thereafter followed in the case of **Kankawali Shikshan Sanstha** (supra). However, the fact remains that the respondent No.1's appointment was without following due procedure of law. The Single Judge of this Court in **Vilas Jijabarao Chavan** (supra) noted the conduct of the Management of appointing teachers without following due process. The Single Judge of this Court observed in paragraph 16 as under:

“16. This Court has come across hundreds of matters in which the facts reveal that the Management do not follow these rules and procedure and after a passage of few years, they indulge in oral termination of an employee on the pretext that his very appointment was illegal. I, therefore, deem it proper to penalize this Management for having committed a wrong in the first place and for having attempted to take advantage of its own wrong.”

10. In view of the observations made in paragraph 16, the

learned Single Judge directed the Management to pay six months salary to the petitioner in the said case at the rate at which it was payable as on date under Section 11(2)(e).

11. Considering the view taken by the learned Single Judge of this Court, in my opinion, the equities can be balanced by passing similar orders as was passed by this Court in the case of **Vilas Jijabarao Chavan** (supra). Hence, following order:

- a) The impugned judgment and order dated 6 April 2002 passed by the School Tribunal in Appeal No.116 of 1999 is quashed and set aside;
- b) However, the petitioners are directed to pay six months salary to the respondent No.1 at the rate it is payable as on date under Section 11(2)(e) which is inclusive of allowances;

12. With this modification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)