

Shabnoor

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

WRIT PETITION NO.8617 OF 2004

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- 1) R and D Establishment (Engrs)
Education Society, Dighi,
Pune 411 015
(Through its Secretary)

- 2) The Headmistress
Research and Development
Establishment (Engrs) School,
Kalas, Pune – 15

... Petitioners

V/s.

- 1) Shobha Lalsao Bhosale
Age – 30 Years,
Occup – Service,
Res. At Flat No.6 Laxmi Corner 7,
125/1, Jadhav Vasti,
Kalas, Pune – 15

- 2) The state of Maharashtra

... Respondents

Mr. Prafull B. Shah a/w Mr. Vaibhav Karpar a/w. Ms.
Gunjan Shah, for Petitioners.

Mr. Dilip Bodake, for Respondent No.1 a/w Mr. Sharad
T. Bhosale, for Respondent No.1.

Mr. S. D. Rayrikar, AGP for State/Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 23, 2024

ORAL JUDGMENT:

1. The petitioners are challenging the order dated 27 August 2004 passed by the School Tribunal in Appeal No.36 of 2003 allowing the appeal of respondent No.1 setting aside the termination order dated 11 April 2003 and directing petitioners to reinstate the respondent in services with full back wages and consequential benefits.

2. According to respondent No.1, by order dated 17 November 1995, she was appointed as Laboratory Assistant with effect from 20 January 1995. The appointment was neither in lieu of a temporary vacancy nor on a deputation basis. It was, therefore, obligatory for the Management to issue an appointment order in the prescribed form; hence she acquired the status of permanent employee after completion of 2 years from the date of her appointment i.e. on 17 November 1995. According to respondent No.1, though her appointment order states that her appointment was purely on an Ad-hoc basis and she was appointed as a full-time employee in the school till 11 April 2003. Petitioner Nos.1 and 2 terminated her services with effect from 16 April 2003. She, therefore, filed an appeal before the School Tribunal.

3. The petitioners filed a reply to the interim relief application which was treated as a written statement. In the said reply, the petitioners raised a defence that the post of Laboratory Assistant was not sanctioned by the Education Department and, therefore, her appointment was purely on an Ad-hoc basis and on consolidated payment of salary with the condition that it can be

terminated at any time. It is stated that respondent No.1 had no right to claim her appointment on clear vacancy as her services were utilized by the petitioner's school as and when required. The petitioners, therefore, prayed for the dismissal of the appeal.

4. The School Tribunal allowed the appeal by observing that the concept of Ad-hoc appointment cannot be imposed to defeat the rights of employees conferred under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977. The School Tribunal recorded a finding that given the length of service put in by respondent No.1, by implication of law, respondent No.1 completed 2 years of satisfactory services and, therefore, acquired the status of a permanent employee. The management has, therefore, filed the present writ petition.

5. Learned Advocate for the petitioners submitted that the appointment order clearly states that respondent No.1 was appointed on an Ad-hoc basis as a Laboratory Assistant on a consolidated salary of Rs.600/- per month and her services can be terminated at any time. He submitted that the post of Laboratory Assistant was not sanctioned and in the absence of a permanent vacancy, an appointment of respondent No.1 on an Ad-hoc basis was permissible. Moreover, he submitted that the full bench of this Court in the case of **Ramkrishna Chauhan Vs. Seth D. M. High School & Ors.**, reported in 2013 (3) ALL MR 1 has held that the management can appoint a person on a contractual basis against the permanent vacancy. He, therefore, submitted that the impugned order passed by the School Tribunal cannot be

sustained.

6. Per contra, the learned Advocate for respondent No.1 submitted that the continuation service of respondent No.1 for 8 years and 2 months is sufficient to raise an inference that there existed a permanent vacancy. He, therefore, submitted that paragraph 17 of the full bench judgment of this Court, takes away the power of the management to appoint a duly qualified person temporarily against a permanent vacancy. According to him, therefore, the School Tribunal by holding an enquiry as contemplated in paragraph 17 of the full bench judgment directed reinstatement of respondent No.1. According to him, Rule 10 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 contemplates two classes of appointment (i) permanent and, (ii) temporary. The concept of appointment on an Ad-hoc basis cannot be termed as a temporary appointment and, therefore, the School Tribunal was justified in allowing the application.

7. Mr. S. D. Rayrikar, learned AGP for respondent No.2, invited my attention to the reply filed by the Deputy Education Officer, Zilla Parishad wherein she stated that the post of Laboratory Assistant can be sanctioned only when the strength of students is more than 500 in the school. Therefore, the Laboratory Assistant's post cannot be termed a clear and permanent vacancy. In support of his statement, he relied on the strength of students of petitioners institution for the period from the academic year 1995-1996 to 2002-2003 to be less than 500 in the school.

8. I have heard both sides and perused the material produced on record. Based on the material on record, the following factual scenario emerges:

i) 17 November 1995 – respondent No.1 was appointed as Laboratory Assistant purely on an Ad-hoc basis with a condition he could be terminated at any time.

ii) Based on the affidavit in reply filed by the Education Officer in Writ Petition (ST) No.7209 of 2003, the strength of students from the academic year 1995-1995 to 2002-2003 appears to be less than 500 in the school.

iii) The post of the Laboratory Assistant is sanctioned only when the strength of students in the school is more than 500.

iv) The services of respondent No.1 were terminated on 11 April 2003.

9. The School Tribunal allowed the appeal of respondent No.1 observing that the concept of Ad-hoc appointment cannot be imposed to defeat the object of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 and on completion of 2 years of satisfactory services from the date of appointment, the respondent No.1 acquired status of permanent employee. In my view, the observations and the findings by the School Tribunal are contrary to the ratio laid down by the full bench of this Court in the case of **Ramkrishna Chauhan** (Supra).

10. The full bench of this Court answered the reference in paragraph 28 as under:

“28) Accordingly, we are inclined to answer the issue in the negative. We hold that it is not open to the School Tribunal to assume as of fact that the appointment made against a clear and permanent vacancy is deemed to be on probation, within the meaning of Section 5(2) of the Act. The School Tribunal cannot disregard the terms and conditions of the letter of appointment, if it expressly provides that the appointment is on temporary basis, for a limited term.”

11. Moreover, the Apex Court in the case of **Pragati Mahila Samaj And Another Vs. Arun S/o Laxman Zurmure And Others**, reported in (2016) 9 SCC 255 was considering a case of a teacher who was appointed for 2 years on a part-time basis in a private college for a fixed period. The Apex Court relied on the judgment in the case of **Hindustan Education Society And Another Vs. SK. Kaleem SK. Gulam Nabi And Others**, reported in (1997) 5 SCC 152 held that when the rights of parties are governed by the Act, it is necessary for the Court in the first instance to decide the rights in the light of mandatory provisions and considering the nature of appointment being temporary as a part-time lecturer. It was held that the respondent was not entitled to permanency.

12. Learned Advocate for respondent No.1 submitted that the full bench of this Court in paragraph 17 permitted the School Tribunal to hold an enquiry as to whether the exercise of power by management while appointing a teacher on a temporary basis for a limited period against a permanent vacancy was a colourable exercise of power and, therefore, according to him, the School Tribunal was justified in allowing the application. However, on a

careful reading of paragraph 17, it is evident that the full bench of this Court was considering a case of permanent vacancy and in the context of such permanent vacancy, the full bench had observed that the management cannot be permitted to take cover under the pretext of successively rejecting the candidates in the selection process on the ground of suitability and keep on appointing same person or different persons on contractual or temporary basis for limited duration, against a permanent vacancy. However, as held above, the material on record in the form of the affidavit filed by the Education Officer indicates that at the relevant time, the strength of students was less than 500 in the school and, therefore, the post of Laboratory Assistant was not sanctioned. Therefore, a permanent vacancy was not available with the petitioner's institution. In the absence of availability of permanent vacancy, it was open for the petitioner's institution to appoint respondent No.1 on an ad hoc basis.

13. The next contention on behalf of respondent No.1 is based on Rule 10 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977. Rule 10 contemplates two classes of appointment; (i) permanent and, (ii) temporary. According to respondent No.1, the Ad-hoc appointment is not contemplated by two categories of appointment and, therefore, such an appointment needs to be treated as a permanent appointment. However, it is well settled that an Ad-hoc appointment is always a temporary appointment and, therefore, such an appointment needs to be termed as an appointment on a

temporary basis.

14. For the reasons stated above, it appears that the appointment of respondent No.1 from purely on an Ad-hoc basis and could have been terminated at any time by the management. It is also evident that such an appointment was not against the permanent vacancy. Therefore, the School Tribunal was not justified in recording the findings that respondent No.1 became permanent after 2 years.

15. At this stage, Mr. Shah, learned Advocate for the petitioner submitted that the amount of Rs.99,000/-deposited by the petitioner towards back wages be directed to be returned to the petitioner. However, in the exercise of power under section 11(f) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act 1977 the said amount be treated as compensation for the services rendered by the *respondent* for a period of 8 years 2 months. Hence, the petitioner's request for a refund of the amount is rejected.

16. Hence, following order:

i) Rule made absolute in terms of prayer clause (b).

17. The writ petition stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 6 May 2024. The correction in line 7 of the paragraph 15, is shown in italicize.