

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO. 10737 OF 2019**

1. Shreemati Nathibai Damodar
Thakarsey Women's University (SNDTU),
1,Nathibai Thackersey Road,
New Marine Lines, Mumbai-400020.
Through the Vice Chancellor
2. The Registrar
Shreemati Nathibai Damodar
Thakarsey Women's University (SNDTU),
1,Nathibai Thackersey Road,
New Marine Lines, Mumbai-400020.
Through the Vice Chancellor
3. The Principal
SNDT Arts & Commerce Junior College
For Women, Karve Road, Pune-411038 Petitioners

Versus

1. Miss Smita Govind Takale
Age – About 41 years
R/At C-2, Amar Classic, Hadapsar,
Pune-411038

2. The Deputy Director of Education
Pune Division
Pune-411001

.....Respondents

WITH

WRIT PETITION NO. 10645 OF 2019

1. Shreemati Nathibai Damodar
Thakarsey Women's University (SNDTU),
1,Nathibai Thackersey Road,
New Marine Lines, Mumbai-400020.
Through the Vice Chancellor
2. The Registrar
Shreemati Nathibai Damodar
Thakarsey Women's University (SNDTU),
1,Nathibai Thackersey Road,
New Marine Lines, Mumbai-400020.
Through the Vice Chancellor
3. The Principal
SNDT Arts & Commerce Junior College
For Women, Karve Road, Pune-411038

..... Petitioners

Versus

1. Miss Aruna Manohar Dhanavade

Age – About 41 years
R/At Mauli 72, Sheela Vihar Colony
Paud Road, Pune-411038

2. The Deputy Director of Education
Pune Division
Pune-411001

.....Respondents

Mr. Ashwin Thool a/w. Mr. Jaymangal Dhanraj, Ms. Disha Vardhan for the petitioner in both the Petitions.

Mr. Suryajeet P. Chavan for the Respondent No. 1 in both the Petitions.

Ms. Vaishali Nimbalkar, AGP for respondent no. 2 – State in both the Petitions.

CORAM : GAURI GODSE, JJ.

RESERVED ON : 22nd JANUARY 2024

FURTHER HEARING ON : 23rd APRIL 2024 &

2nd MAY 2024

PRONOUNCED ON : 7th MAY 2024

JUDGMENT:

1. After the arguments were concluded in the petitions and judgment was reserved, I came across the decision of the Hon'ble

Supreme Court in the case of ***Chhatrapati Shivaji Shikshan Prasarak Mandal v. Dattatraya Rupa Pagar***¹. The legal principles laid down in the said decision would have a direct bearing on the outcome of the petitions. Since the said decision was not cited at the time of arguments, the petitions were listed on 23rd April 2024 to enable the parties to make their submissions. Learned counsel for the respective parties made further submissions on 2nd May 2024 and concluded their arguments.

2. Both the aforesaid Writ Petitions are filed by the original opponent (“management”) for challenging the Judgment and Order passed by the School Tribunal, allowing the appeals filed by both the respondents (“teachers”) for challenging their termination. The School Tribunal allowed the appeals, declaring the termination of petitioners as illegal and directing the management to reinstate the respondents with back wages.

3. Learned counsel for the management pointed out the brief facts of both petitions as under :

¹ (2012) 13 SCC 534

- Respondent No. 1 in Writ Petition No. 10737 of 2019 (“Smita”) was initially appointed as a part-time Shikshan Sevak on a temporary basis for the period from 11th June 2007 to 30th April 2008. She was given breaks in service during summer vacations after every appointment and continued in service.
- Pursuant to the post rendered vacant in view of the retirement of a teacher, i.e. Dr.Jyoti Telang, an advertisement was published on 14th September 2011 for appointing a full-time Shikshan Sevak.
- Smt. Vandana Patil was appointed pursuant to the said advertisement; hence, Smita preferred an appeal before the Deputy Director of Education/Respondent No. 2, challenging the appointment of Vandana Patil.
- On 14th June 2014, Smita was communicated regarding her termination on 14th June 2014 with effect from 16th June 2014.
- On 30th September 2014, the Deputy Director of Education passed an order directing the management to appoint Smita as a full-time teacher of Economics.

- Vandana Patil challenged the said order by filing a writ petition in this Court, on the ground that the order passed by the Deputy Director of Education was without jurisdiction. Hence, this Court stayed the directions issued by the Deputy Director of Education.
- Smita filed an appeal before the school tribunal challenging her termination with effect from 16th June 2014. The appeal was allowed, and Smita was directed to be reinstated with back wages. Hence, the management filed the Writ Petition No. 10737 of 2019.
- Respondent No. 1 in Writ Petition No. 10645 of 2019 (“Aruna”) was appointed as a clerk on a temporary basis for the period from 9th August 2010 to 8th June 2011.
- Subsequently, Aruna was appointed as a teacher on a temporary basis for the period from 8th June 2011 to 31st December 2011 on Clock Hour Basis (“CHB”).
- Aruna was thereafter again appointed as a clerk on a temporary basis for the period from 1st February 2012 to 30th

April 2012. Thereafter, Aruna was appointed as a teacher on a temporary basis for the period from 15th June 2012 to 30th April 2013 on CHB.

- Aruna was again appointed as a teacher on a temporary basis for the period from 17th June 2013 to 30th April 2014 again on CHB.
- On 30th June 2013, the post of Assistant Teacher was rendered vacant as Vishwanath Sathe opted for voluntary retirement.
- Aruna's last appointment was from 17th June 2013 to 30th April 2014.
- A newspaper advertisement was published on 23rd June 2015 for the appointment of full-time Shikshan Sevaks for different subjects. Aruna applied pursuant to the advertisement and also appeared for the written tests. The selection committee conducted interviews on 26th May 2015; however, Aruna was not selected.
- The Deputy Director of Education passed an order on 15th July 2015 directing the management to reinstate Aruna. According

to the management the said order was without jurisdiction.

- On 4th May 2017, Aruna filed an appeal before the School Tribunal to challenge her otherwise termination with effect from 14th June 2014. Since there was a delay in filing the appeal, an application for condonation of delay was also preferred, and the same was allowed.
- The appeal was allowed, and Aruna was directed to be reinstated with back wages. Hence, the management filed the Writ Petition No. 10645 of 2019.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

4. In both the aforesaid appeals under Section 9 of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act") the petitioners appeared and filed their reply and opposed the reliefs claimed by Smita and Aruna in their respective appeals. The petitioners denied the contention of Smita and Aruna that they were appointed on clear vacant posts. It was contended that their appointments were on an adhoc basis and without following any procedure. The petitioners contended that the

particulars of the appointment letter clearly showed that both the aforesaid appointments were temporary and on an adhoc basis. It was thus denied that Smita and Aruna were appointed as full-time teachers by following the procedure for appointment of Assistant Teacher on a full-time permanent basis.

5. It was further contended that Smita and Aruna had participated in the selection process pursuant to the advertisement; however, they were not selected. Hence, Smita and Aruna were not entitled to claim the benefit of deemed permanency.

6. The petitioners further denied the contention of Smita and Aruna that they were entitled to deemed permanency. The petitioners specifically contended that appointment of Smita and Aruna was on CHB for a temporary period. It was contended that the workload assigned to Smita and Aruna was not of a part-time teacher and thus approvals by the education departments regarding the appointments of Smita and Aruna were also on CHB. Thus, their appointment was never on a regular basis, which could entitle them to claim permanency.

7. The School Tribunal, after considering the contentions raised on behalf of both parties, held that the services of Smita and Aruna were illegally terminated. The School Tribunal held that at the relevant time, there was a clear and permanent vacancy in the case of Smita, and hence, the workload assigned to Smita and the period of her appointment showed that she was appointed on a clear and permanent vacancy available with the petitioners.

8. The Tribunal further held that Smita had worked with the petitioners for a considerable period, and hence, the petitioners cannot terminate her services on the ground that her appointment was not done by following procedure. In the case of Smita, the Tribunal held that her first appointment was issued on 11th June 2007 and later on, she was appointed on a year to year basis; hence, there was no dispute between the parties that appointments were only on a temporary basis. The contention of the petitioners that the appointment orders were not issued by the management after following due procedure and that the same were only issued by the Principal was not accepted by the Tribunal by holding that the

principal was authorized to appoint Smita for a specific period. Hence, it was held that, if it is presumed that the appointment was irregular; her services would not have been continued by the management.

9. Thus, in the case of Smita tribunal came to the conclusion that the ratio laid down by this court in the case of ***Balasaheb Ramchandra Burke and Others vs. The President and others***² was squarely applicable to her case. It was thus held that Smita was appointed on a year to year basis by issuing consecutive orders, and hence the petitioners were not entitled to raise objection that the appointments were not made after following due procedure.

10. In the case of Smita, the Tribunal further held that the record indicated that the workload given to Smita was of a part-time teacher and not on CHB. The Tribunal further held that once it was established that she was appointed on clear vacant and permanent post, the petitioners were required to follow the procedure laid down under Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("MEPS Rules") for terminating the services of

² BCR-2016(3)197

Smita. Hence, the Tribunal held that the termination of Smita was illegal. Thus, the Tribunal allowed the appeal by holding that Smita had acquired the status of deemed permanency in the post of Full-Time Assistant Teacher. She was allotted the workload of a Full-Time Teacher. Thus, it was held that once her appointment was held to be illegal, Smita was entitled to back wages from the date of filing the delay condonation application in filing an appeal before the Tribunal.

11. So far as the case of Aruna is concerned, the Tribunal held that she was issued appointment orders on year to year basis on clear, vacant and permanent posts. It was held that after the retirement of Mr. Vishwanath Sathe, an Assistant Teacher who was a Full-Time teacher, the workload of the said teacher was handed over to Aruna. Hence, the management had initiated the procedure for appointment by issuing an advertisement, which was a mere formality, and though Aruna had participated in the said procedure, she was not given an appointment for the permanent post. Thus, the Tribunal held that at the relevant time when Aruna was appointed there was a clear

vacancy and hence the consecutive appointments issued in favour of Aruna indicated that she was entitled to deemed permanency.

12. The Tribunal further relied upon the decision of this Court in the case of **Balasaheb Burke**, holding that in view of the orders appointing Aruna on a year to year basis, the petitioners were not entitled to contend that the appointment of Aruna was not after following the due procedure. Even in the case of Aruna, the Tribunal held that records indicated she was given the workload of Full-Time Teacher, though approval of her appointment was shown as on CHB. Hence, the Tribunal rejected the contention of the petitioners that Aruna was appointed on CHB only on a temporary post. Thus, it was held that Aruna was entitled to deemed permanency. The petitioners could not have terminated her services without following due procedure. Hence, it was held that Aruna was entitled to reinstatement and also back wages from the date of filing the delay condonation application before the Tribunal, i.e. on 4th May 2017.

13. Learned counsel for the petitioners submitted that for claiming deemed permanency the appointments to the posts of Shikshan

Sevaks as claimed by both the aforesaid teachers is required to be done in view of the Government Resolution dated 13th October 2000 and has to be done in terms of Section 5 of the MEPS Act read with Rule 9 of the MEPS Rules. He submitted that in the present case procedure under Section 5 of the MEPS Act read with MEPS Rules is not followed; hence appointment of both teachers would be covered by the terms of appointment as temporary Shikshan Sevak.

14. In view of Rule 10 of MEPS Rules, the appointment of both teachers is on a temporary basis. In terms of Rule 10(1) and Rule 10(2), it is clear that both teachers were appointed on a temporary basis to fill a temporary vacancy and for a fixed period. He thus submitted that both the teachers were not entitled to claim deemed permanency as their appointments were not made in terms of the procedure prescribed under Section 5 of the MEPS Act read with Rule 9 of the MEPS Rules.

15. In support of his submissions, learned counsel for the petitioners relied upon decision of the Hon'ble Full Bench of this court in the case ***of Ramkrishna Chauhan vs. Seth D.M.High***

School and Others³ and submitted that if a teacher is not been able to satisfy that the appointment is by following due process of due selection, the teacher is not entitled to claim deemed permanency. He, in particular, relied upon paragraphs 24, 26 and 28 of the said decision in support of his submission that sub-section (2) of Section 5 of the MEPS Act is only an enabling provision that, if management intends to fill up a permanent vacancy has to appoint a person duly qualified on probation for a period of two years.

16. He further relied upon the proposition of law laid down in the decision of the Full Bench that sub-section (2) of Section 5 cannot be construed as a deeming provision or a legal fiction to treat every appointment made against a permanent vacancy to be on probation. He thus submitted that as held by this court in the decision of the Full Bench the deeming provision or legal fiction applies to a person who has been appointed on probation and completes the probation period of two years and that the second part of the said sub-section cannot come to the aid of an employee who was in fact appointed on purely temporary basis for a limited period. He submitted that in

³ 2013(2)Mh.L.J.713

paragraph 19 of the said decision it is clarified that the question under consideration before the Full Bench had no application to the appointment of Shikshan Sevak. However, he submitted that the proposition laid down in the said decision clearly provides that only an employee appointed to a permanent vacant post by following due procedure on probation can claim deemed permanency on completion of probation period.

17. Learned counsel further relied upon the decision of this court in the case ***of Priyadarshini Education Trust and Others vs. Ratis (Rafia) Bano d/o. Abdul Rasheed and Others***⁴. He relied upon the said decision in support of his submission that the case of Smita and Aruna are not covered under the parameters of deemed permanency or on probation. Learned counsel for the petitioners further relied upon the decision of the Hon'ble Supreme Court in the case of ***Pragati Mahila Samaj and Another vs. Arun S/o. Laxman Zurmure and Others***⁵. He submitted that the Hon'ble Supreme Court, in the said decision, has held that once the initial appointment is not against a permanent vacancy and that a teacher is not

⁴ 2007(6)Mh.L.J.667

⁵ (2016) 9 SCC 255

appointed by the management by following the procedure prescribed under Section 5 of the MEPS Act, the teacher is not entitled to claim deemed permanency.

18. Thus, the learned counsel for the petitioner submitted that when the aforesaid teachers were not appointed to any permanent vacancy by following due procedure, there was no question of any illegal termination. He thus submitted that the appointment orders of both teachers would show that their appointments were on a temporary basis and for a fixed period. Hence, the Tribunal had no jurisdiction under Section 11 to direct the petitioners to appoint the teachers as permanent. He submitted that in absence of any record showing that the said teachers were appointed on permanent vacancy they are not entitled to deemed permanency. Hence, the order passed by the Tribunal directing reinstatement in fact amounts to directing the petitioners to appoint the said teachers on a permanent basis.

19. He thus submitted that even an order directing payment of back wages is illegal in the present case. He thus submitted that the

impugned order in the case of both teachers being without jurisdiction deserves to be quashed and set aside by allowing both the petitions filed by the management.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

20. Learned counsel appearing for both the teachers submitted that they were appointed on part-time basis and not on temporary basis. He further submitted that the respondents were given workload of full-time teachers. Therefore, as and when vacancy had arisen the said teachers should have been given permanent appointment. He submitted that first appointment in the case of Smita, though indicated that appointment was for a fixed period, Smita was continued in service by issuing subsequent orders. However, in subsequent orders issued on 5th June 2008, clause (5), which provided for appointment for a period of three years as Shikshan Sevak, was deleted. He submitted that since Smita was not permitted to continue in service, a representation was filed before the Deputy Director of Education, and by order dated 30th September 2014 Deputy Director of Education had directed the

petitioners to appoint Smita as Full-Time Teacher for Economics. He submitted that the said order was challenged by the petitioners by filing a writ petition in this court. However, the said writ petition was subsequently withdrawn. He submitted that thereafter last extension was issued in favour of Smita on 17th June 2013 for the academic Year 2013-2014. However, Smita was not allowed to join services in October 2014, and hence, by treating the same as otherwise termination, Smita correctly filed an appeal before the Tribunal.

21. He thus submitted that Smita was working on a permanent vacant post with the workload of a part-time Teacher, hence she was entitled to deemed permanency. He submitted that once Smita was entitled to deemed permanency her services cannot be terminated without following due procedure under Rule 28 of the MEPS Rules. Thus, it was submitted that in view of the order dated 30th September 2014 Smita's appointment stood confirmed on permanent post. Learned counsel thus submitted that though the appointment of Smita was approved on CHB for 9 hours, she was given the workload of a Full-Time Teacher. He thus submitted that Smita was

entitled to deemed permanency.

22. Learned counsel for the teachers further submitted that even in the case of Aruna, she was given consecutive orders after the expiry of the period of the first appointment, and thus, she completed the requirement to claim deemed permanency.

23. The learned counsel for the teachers submitted that the decisions relied upon by the learned counsel for the petitioners would not have any bearing on the present case as they were entitled to deemed permanency as they were continued after expiry of the fixed period in terms of the appointment order. With regard to the decision of the Full Bench in the case of ***Ramkrishna Chauhan*** is concerned, learned counsel for the teachers submitted that the said decision does not deal with appointments as Shikshan Sevaks. Hence, the proposition laid down in the said decision would not apply to the facts of the present case.

24. Learned counsel for the teachers further submitted that the perusal of the record would show that they were given the workload of part-time teachers on permanent posts. Hence, once the post was

rendered vacant and the teachers were already given the workload of full-time teachers, they both were entitled to deemed permanency. Thus, he submitted that the decisions relied upon by the learned counsel for the petitioners would not affect the teachers' rights to claim deemed permanency.

25. Learned AGP on written instructions submitted that the appointments were approved only on a part-time basis and the appointments of the said teachers were never approved on permanent vacant posts.

CONSIDERATION OF SUBMISSIONS AND FINDINGS:

26. I have considered the submissions made by both parties and perused the record. The GR dated 13th October 2000, provides for appointments as Shikshan Sevak. Annexure 'A' of the GR prescribes the scheme for appointment as Shikshan Sevak. The scheme of the GR provides that an appointment as Shikshan Sevak is to be made for a period of three years. After completing three years of satisfactory service as Shikshan Sevak, he will be eligible for appointment as a teacher in the prescribed pay scale and the service

already rendered by him will be considered for post-retiral benefits.

27. The Hon'ble Supreme Court in the case of ***Chhatrapati Shivaji Shikshan Prasarak Mandal***, while dealing with the claim of deemed permanency of a teacher appointed as Shikshan Sevak held in paragraphs 7 and 8 as under:

*“7. We have heard the learned counsel for the parties and perused the record. In our view, the order passed by the Presiding Officer of the Tribunal was ex facie erroneous and the High Court committed serious error by refusing to quash the same. A reading of the terms and conditions embodied in the letter dated 3-9-2002 issued by the Chairman of Appellant 1 shows that Respondent 1 was appointed for a fixed period with a clear stipulation that he will not be treated on a par with regular teachers or government employees and after completing three years' satisfactory service as Shikshan Sevak, he will be eligible for appointment as teacher in the prescribed pay scale and the service already rendered by him will be considered for post-retiral benefits. **It is neither the pleaded case of Respondent 1 nor has any document been produced before this Court to show that Respondent 1 had been appointed as a teacher after regular selection and he was appointed on probation. Therefore, the Tribunal was clearly in error in holding that Respondent 1***

had been appointed on probation and on completion of three years, he will be deemed to have been confirmed.

8. The service of Respondent 1 was terminated strictly in accordance with the terms and conditions of his appointment. Therefore, the issue of approval or non-approval of his appointment by the Education Officer was inconsequential and even if one of the reasons put forward by the appellants to justify their action was legally unsustainable, the termination of the service of Respondent 1 could not have been declared illegal by relying upon the High Court's judgment in St. Ulai High School v. Devendraprasad Jagannath Singh [(2007) 1 Mah LJ 597]."

emphasis applied

28. Thus, as per the proposition of law laid down by the Hon'ble Supreme Court in the case of ***Chhatrapati Shivaji Shikshan Prasarak Mandal***, Smita, who is admittedly appointed as Shikshan Sevak, her appointment was for a fixed period with a clear stipulation that she will not be treated on a par with regular teachers or government employees and after completing three years satisfactory service as Shikshan Sevak, she will be eligible for appointment as teacher in the prescribed pay scale and the service already rendered

by her will be considered for post-retiral benefits. Thus, without being appointed as a teacher after regular selection and on probation, the Tribunal was clearly in error in holding that Smita was deemed to have been confirmed.

29. It was Smita's contention that she time and again made representations to the management and also to the Education Officer for her appointment as a full time teacher on a regular basis; however, she was not given the appointment. In the process of appointment on a regular basis through advertisement, Smita was not selected. In the said process, when another candidate, Vandana Patil, was selected, Smita made a representation before the Deputy Director of Education, who directed management to appoint Smita. However, in a writ petition filed by Vandana Patil, the said direction is stayed. Thus, it is clear that Smita was never appointed on regular basis as per the prescribed procedure under Section 5 of MEPS Act read with Rule 9 of the MEPS Rules. Admittedly Smita's appointment is as Shikshan Sevak. Thus, the case of Smita is squarely covered by the proposition of law laid down by the Hon'ble Supreme Court in

the case of ***Chhatrapati Shivaji Shikshan Prasarak Mandal***.

Hence, the termination of Smita cannot be termed as illegal and she is not entitled to reinstatement.

30. Aruna's appointment was temporary on CHB. She also participated in the appointment process initiated through an advertisement for filling up a vacant post after a teacher opted for VRS. However, she was not selected. Her appointment was approved on CHB. However, Aruna claimed to be working as a full time teacher and claimed to have been given a full workload. However, the record indicates that she was never appointed on a clear vacancy by following the prescribed procedure under Section 5 of the MEPS Act, read with Rule 9 of the MEPS Rules. The Hon'ble Full Bench of this Court, in the case of ***Ramkrishna Chauhan***, held that if an appointment is on a purely temporary basis, it cannot be assumed that the appointment is on probation for claiming deemed permanency by disregarding the terms and conditions of the appointment letter. The Hon'ble Full Bench of this Court, in the case of ***Ramkrishna Chauhan***, held in paragraphs 24 and 28 as under;

*“24. The other legal principle, which is indisputable, is that, if the parties accept the terms and conditions stipulated in the appointment order, later on, it is not open to the employee to challenge that appointment, being contrary to the Rules or on the ground that the terms and conditions stipulated therein were not legally valid. This legal position is restated in para 8 of Kalpataru Vidya Samasthe (supra). In the facts of the present case, it is noticed that the initial appointment of the Writ Petitioner, in the leading Writ Petition, was on temporary basis for a limited period. After his service was terminated, once again he was appointed in the following academic year, on the same post but, on temporary basis. When the said Petitioner was appointed in the succeeding academic years, he had become fully aware about the terms and conditions of his initial appointment, yet he continued to be in the employment, without any demur. **Suffice it to observe that if the appointment order mentions that the appointment is on temporary basis or for a limited period, it is not open to the employee to assume that he was appointed on probation against permanent vacancy, nor it is open to the School Tribunal or the Court of law to assume that fact. That is a question of fact to be pleaded and proved in appropriate proceedings, on case to case basis. We hold that there is no legal fiction or deeming provision that every appointment made against the permanent vacancy, is deemed to be on probation, though the Management makes that appointment on temporary***

basis, having found that the candidates appeared in the selection process were unsuitable.

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."

emphasis applied

31. Learned counsel for the teachers relied upon the decisions of this court in the case of ***President, Mahila Mandal Sinnar and Another vs. Sunita Bansidhar Patole***⁶ and ***Maulana Azad Educational Trust and Others vs. Uzma Khanam Mirza Moin Ullah Baig***⁷. The aforesaid decisions are relied upon by the learned counsel for the teachers in support of his contention that merely because management chooses to issue appointment orders every year, the appointment order of the teacher would no *ipso facto* be termed as temporary appointment order.

⁶ 2007 (2) Mh.L.J. 105

⁷ 2016 (4) ALL MR 34

32. Learned counsel relied upon paragraph 14 of the said decision to support his contention that the appointments of both teachers are as per sub-section (1) of Section 5 of the MEPS Act, and hence, they are entitled to deemed permanency as per sub-section 4 of Section 5 of the MEPS Act. He thus submitted that this court, in the case of ***President, Mahila Mandal Sinner***, held that once it is clear that the post wherein the teacher was appointed was a permanent vacancy unless it is specifically disclosed, the appointment is meant to be filled as per provisions of Section 5(1) of the MEPS Act. Thus, once there is an appointment in accordance with the provisions of law comprised under Section 5(1) and the candidates so appointed complete a period of two years of service, the provisions of Section 5(2) are attracted.

33. The decision in the case of ***Maulana Azad Educational Trust*** is relied upon in support of his contention that once a teacher has been working continuously for two academic years, however, and is appointed to a temporary post, such employee will stand to gain advantage of Section 5(2) of the MEPS Act and will be deemed to

have become permanent.

34. Learned counsel for the teachers submitted that this court in the decision of the case of ***Shikshan Prasarak Mandal vs. Presiding Officer, School Tribunal and Others***⁸ held that the provisions such as deeming provision of Section 5(2) of the MEPS Act cannot be overlooked which confers unfettered right on an employee to claim permanency having fulfilled all the conditions contemplated by the MEPS Act and the MEPS Rules framed thereunder.

35. Learned counsel for the petitioners sought to distinguish the aforesaid decisions. He submitted that the decision in the case of ***President, Mahila Mandal Sinner*** is impliedly overruled by the decision of the Full Bench in the case of ***Ramchandra Chauhan***. He submitted that the decision in the case of ***President, Mahila Mandal Sinner*** does not deal with the decision of the Hon'ble Supreme Court in the case of ***Hindustan Education Society and Another vs. SK Kaleem SK. Gulam Nabi and Others***⁹ which is relied upon

⁸ 2005 (4) Mh. L.J.485

⁹ 1997 (5) SCC 152

by the Full Bench. He thus submitted that the teachers are not entitled to claim any benefit based on the decision in the case of ***President, Mahila Mandal, Sinnar*** and ***Maulana Azad Educational Trust***.

36. I have perused all these decisions. In the case of ***President, Mahila Mandal Sinnar***, admittedly, the teacher was duly selected and appointed, however, the appointment order did not disclose that it was meant for any fixed period and that it was temporary. Thus, in such facts, this Court held that the appointment had to be considered as in terms of Section 5(1) of the MEPS Act. In the present case Aruna was not duly selected in any selection process. Her appointment was temporary and for a fixed period. Her appointment was approved on CHB. Smita was admittedly appointed as Shikshan Sevak. Hence, the decision in the case of ***President Mahila Mandal Sinnar*** is of no assistance in the present case.

37. Similarly, in the case of ***Maulana Azad Educational Trust***, also no appointment order was issued, and thus the teacher was not officially communicated in writing that she had been selected and

appointed temporarily and had no right of continuance. In the case of **Swati Patil**, the appointment was as Shikshan Sevak. As recorded hereinabove the legal principle regarding the appointment as Shikshan Sevak is settled by the Hon'ble Supreme Court in the case of **Chhatrapati Shivaji Shikshan Prasarak Mandal**. Hence, none of the decisions relied upon by the learned counsel for the teachers is of any assistance to the present case.

38. In the case of the **Hindustan Education Society**, the Hon'ble Supreme Court has held that an appointment made purely on a temporary basis and for a limited period cannot be considered a permanent appointment.

39. The legal principles settled by the Hon'ble Supreme Court in the case of **Chhatrapati Shivaji Shikshan Prasarak Mandal** are squarely applicable to Smita's appointment as a Shikshan Sevak, and thus, she is not entitled to claim permanency. The decision of the Hon'ble Full Bench, in the case of **Ramkrishna Chauhan**, is squarely applicable to the facts of both teachers. In the case of Aruna, an appointment order is not produced on record. She was

initially appointed as a clerk, then she was appointed as an assistant teacher on a temporary basis for a limited period, and then again, she was appointed as a clerk for some time. Thereafter, she was again appointed as assistant teacher for a limited period on a temporary basis. Her appointment was approved on CHB. Thus, it is clear that she was never appointed after following the due procedure. She accepted her approval on CHB and continued to work on those terms and conditions. Hence, even Aruna cannot be said to be entitled to claim permanency. Thus in view of the settled legal principles in the decision of Hon'ble Supreme Court in the case of ***Chhatrapati Shivaji Shikshan Prasarak Mandal*** and the decision of the Hon'ble full bench of this Court in the case of ***Ramkrishna Chauhan***, the other decisions relied upon by the learned counsel for the teachers are of no assistance in the present case.

40. The School Tribunal failed to consider the legal principles settled in the aforesaid decisions and disregarded the terms and conditions of the appointment of both teachers. Thus, I find that the

School Tribunal's judgment in both petitions cannot be sustained in law.

41. Hence, for the reasons recorded above, both petitions are allowed by passing the following order;

- (i) The judgment and order dated 8th April 2019 passed by the School Tribunal, Pune, in Appeal No. 44 of 2017 is quashed and set aside, and Appeal No. 44 of 2017 is dismissed.
- (ii) The judgment and order dated 8th April 2019 passed by the School Tribunal, Pune, in Appeal No. 9 of 2018 is quashed and set aside, and Appeal No. 9 of 2018 is dismissed.
- (iii) Both the petitions are allowed in the above terms, with no order as to costs.

[GAURI GODSE, J.]

RAJESHWARI
RAMESH
PILLAI

Digitally signed
by RAJESHWARI
RAMESH PILLAI
Date:
2024.05.08
11:06:50 +0530