



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO. 426 OF 2020

(Ku. Sarita Kashinath Dhanore ..vs.. Vanrai Vikas Sanstha, Yavatmal and others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.V. Lokhande, Counsel for the petitioner,
Mr. Y.P. Kaslikar, Counsel for respondent No.1,
Ms. K.P. Marpakwar, AGP for respondent No.3.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 07-05-2024

The challenge in the petition is to the order dated 23-9-2013 issued by respondent No.1-Society whereby the services of the petitioner came to be terminated.

2. The order of the termination is challenged on the ground that the appointment of the petitioner was as a permanent employee as could be inferred from the order dated 22-8-2005. Apart from above, it is claimed that respondent No.3 has approved the services of the petitioner from 2008. As such, it is claimed that the petitioner was a permanent employee of respondent No.1-Society. It is claimed that in case if the services of the permanent employee are to be terminated, the *lis* that was expected of respondent No.1 was to conduct an enquiry and take appropriate decision about the services of the petitioner. Further contention are, even if by communication dated 23-9-2013 the fact about termination of services of the petitioner was brought to

the notice of respondent No.3, the said conduct of respondent No.1 hardly justifies the termination of services of permanent/confirmed employee without any enquiry.

3. As against above, the learned Counsel appearing for respondent Nos.1 and 2 would urge that the appointment of the petitioner was against a clear vacancy and was duly approved by respondent No.3. It is claimed that the petitioner abandoned her service as could be noticed from the termination order dated 26-4-2013. It is claimed that the petitioner's petition is within limitation and as the petitioner had preferred an appeal with respondent No.3 and the said appeal came to be rejected by respondent No.3 on 20-3-2018, subsequent to which the petitioner has approached before this Court within a reasonable time.

4. As against above, the learned Counsel appearing for respondent Nos.1 and 2 submits that the petition not only suffers from delay and laches but also the petitioner has alternate remedy of approaching before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Condition of Services) Regulation Act, 1977 (for short "MEPS Act"). The further contentions are, the petitioner has herself abandoned the service by remaining absent from the school which has prompted respondent Nos.1 and 2 to terminate the services of the petitioner. Even otherwise, the post in question is

already filled in by appointing a fresh candidate who is not before this Court.

5. We have appreciated the aforesaid submissions.

6. The appointment and grant of approval to the petitioner as against a clear vacancy can be inferred from the orders to that effect produced on record at Annexures- I and II.

7. The services of the petitioner appear to have been terminated on 26-4-2013 by which time the petitioner has already put in almost eight years of service.

8. The termination of the petitioner is based on the factual matrix that she remained absent from 26-6-2012 till the date of termination i.e. 26-4-2013.

9. In such an eventuality, the continuation of the absence from the duty, it was for the respondent-management not only to suspend the petitioner but also to conduct an enquiry and pass appropriate order after the disciplinary proceedings are conducted.

10. Admittedly, in the case in hand, the petitioner who was a permanent employee, the respondent-management has not initiated any disciplinary proceedings but has straightway issued a termination order to the petitioner.

11. Such order is in violation of the principles of natural justice as neither the petitioner was served with a show cause notice nor an opportunity of hearing was granting to her. Even otherwise, we have observed that the services of the petitioner were terminated without conducting the disciplinary proceedings against her. As such, since the termination of the petitioner is in violation of the principles of natural justice, the bar of alternate remedy as is claimed under Section 9 of the MEPS Act of appeal being provided before the School Tribunal will not be attracted.

12. As far as the issue as regards the approaching before this Court at belated stage is concerned, no doubt the termination order is dated 26-4-2013 which was questioned by the petitioner before respondent No.3. Respondent No.3 in turn has decided the said proceedings by passing an order on 20-3-2018 informing the petitioner that the said authority has no jurisdiction to entertain the appeal.

13. The petitioner thereafter within a reasonable period i.e. three years approached before this Court questioning the order of termination. As such, the time consumed during pendency of the representation/appeal till 20-3-2018 has to be adjusted against the period of limitation. As such, it cannot be said that the petitioner has approached before this Court at belated stage.

14. In this background, we deem it appropriate to quash and set aside the impugned order of termination dated 26-4-2013. We direct the petitioner to be reinstated forthwith.

15. We further observed that it shall be open for the respondent-management to serve the charge-sheet on the petitioner for unauthorised absence for a period from 26-6-2012 till 26-4-2013 and may proceed in accordance with law.

16. We further direct respondent No.3 to consider the claim of the petitioner for releasing salary for the aforesaid period.

17. In case, if any third party is appointed against the post which fell vacant because of termination of services of the petitioner, it shall be open for respondent No.3 to deal with the said issue in accordance with law.

18. Petition stands partly allowed.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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