



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

**WRIT PETITION NO. 5083 OF 2014**

1. Tukaram Shikshan Sanstha, Kadoli,  
Tq. Kurkheda, District : Gadchiroli,  
through its Secretary, Pundlik  
Ramchandraji Aakre, aged about 50  
years, Occ. Headmaster, R/o.Kadoli  
Tq. Kurkheda, District :Gadchiroli.
2. Tukaram Ucha Madhyamik Vidyalaya  
and Junior College, Kadoli,  
Tq. Kurkheda, District Gadchiroli,  
through its Principal, Falgun Fakirji  
Meher, aged : major, Occ.: Service,  
R/o.Kadoli, Tq. Kurkheda,  
District :Gadchiroli,
3. Tukaram Shikshan Sanstha, Kadoli,  
Tq. Kurkheda, District Gadchiroli,  
through its President.

.... **PETITIONERS.**

**// VERSUS //**

1. Naresh Gangaram Nakhare,  
aged major, Occu. Service,  
R/o. Post Pimpalgaon (Sadak),  
Tahsil : Lakhani, District :  
Bhandara.
2. The Deputy Director of Education,  
Nagpur Division, Nagpur.

.... **RESPONDENTS.**

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Dr. R.S.Sundaram, Advocate for Petitioners.  
Shri P. N. Shende, Advocate for Respondent No.1.  
Shri U.R.Phasate, A.G.P. for Respondent No.2.

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**CORAM : ANIL S. KILOR, J.**

**DATE OF RESERVING THE JUDGMENT : 14/02/2024**

**DATE OF PRONOUNCING THE JUDGMENT : 15/02/2024**

**ORAL JUDGMENT :**

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. This writ petition takes exception to the judgment and order dated 31/07/2014 passed by the School Tribunal allowing the complaint filed by the respondent No.1 and thereby directing the petitioners to reinstate the respondent No.1 on the post of Assistant Teacher with 50% back wages.

The brief facts of the present case are as under:

4. It is the case of the respondent No.1 that he is qualified to be appointed as Junior College Lecturer/ Trained Graduate Teacher. He belongs to OBC Category and he was appointed first time in the petitioner No.3-college in the academic sessions 1999-2000, after issuing the advertisement and following due procedure, on clear and

permanent vacancy. The respondent No.1 was continued till 2002-03 and during this period i.e. 1999-2003, the petitioner college was not receiving the grant in aid. However, from 2003-04 college started receiving grants and accordingly the respondent No.1 was appointed as Shikshan Sevak. The Deputy Director of Education granted approval to the said order of appointment of the respondent No.1 as Shikshan Sevak.

5. The petitioners, feeling aggrieved by the same and considering the fact that the respondent No.1 was continuous in service from 1999 and on the date of appointment as Shikshan Sevak he was working as Junior College Lecturer, he filed writ petition viz. W.P. No. 2875 of 2009 which came to be allowed vide order dated 26/04/2010. This Court by the said order directed the Deputy Director to rectify/ revoke the earlier approval and consider the petitioner's case as Junior College Lecturer.

6. In the meantime, the respondent No.1 was terminated w.e.f. 01/05/2006 and therefore, he filed an appeal before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred as "the MEPS Act").

7. The petitioners opposed the said appeal by filing written statement on the ground that the appointment of the respondent No.1 was not as per Section 5 of the MEPS Act and there was no sanctioned post available. It is further submitted that the services of the respondent No.1 was terminated during the probation period after the appointment of the respondent No.1 on the post of Shikshan Sevak, on finding that his work was not satisfactory.

8. The learned Tribunal after appreciating the respective cases of both the parties, dismissed the appeal vide judgment and order dated 23/09/2011. The said judgment and order was the subject matter of challenge in Writ Petition No.1359 of 2012 which was partly allowed and the matter was remanded back to the Tribunal for deciding the appeal afresh.

9. On remand, the impugned judgment and order was passed by the School Tribunal allowing the appeal preferred by the respondent No.1 and directing the petitioners to reinstate the respondent No.1. It is further directed to pay 50% back wages. Hence, this petition.

10. I have heard the learned counsel for the respective parties.

11. Shri Sunderam, learned counsel for the petitioners submits that the learned Tribunal committed an error in allowing the appeal without going into the validity of the issue whether the appointment was made as per Section 5 of the MEPS Act.

12. It is submitted that from 2003-04 the petitioner college started receiving grants and therefore, the respondent No.1 was appointed as 'Shikshan Sevak' on a fixed honorarium for a period of three years which was the period of probation and since the services of the respondent No.1 were found not satisfactory the respondent No.1 was terminated.

13. It is submitted that the learned Tribunal failed to consider the fact that on the date of termination the respondent No.1, he was on probation and his services could be terminated on the ground of unsatisfactory work.

14. The learned counsel for the petitioners further submits that from 1999 onwards the appointment of the respondent No.1 was granted on temporary basis as there was no sanctioned post. He, therefore, submits that there is no illegality committed in appointing

the respondent No.1 on the post of 'Shikshan Sevak' immediately after the college started receiving grants.

15. On the other hand, Shri Shende, learned counsel for the respondent No.1-employee and the learned A.G.P. supports the impugned judgment and order and pray for dismissal of the writ petition.

16. In light of the rival submissions of the parties, I have perused the record from which following facts emerge as admitted facts:

- a) The respondent No.1 was working as Junior College Lecturer in the petitioners' college from 1999 till his termination in the year 2006.
- b) The college was not receiving grant-in-aid till 2002-03, and started receiving the same from 2003-04.
- c) In the academic year 2003-04 the respondent No.1 was appointed as 'Shikshan Sevak' and his appointment was approved by the Deputy Director of Education. However, the High Court directed to rectify the said order of approval and treat the respondent No.1 as 'Junior College Lecturer' and not as 'Shikshan Sevak'.

- d) The Management applied to the Deputy Director of Education seeking permission to terminate the services of the respondent No.1, making therein numerous allegations to justify the termination.
- e) The Deputy Director granted permission to terminate the services of the petitioner.
- f) The petitioner was terminated vide order dated 22/04/2006 w.e.f. 01/05/2006.

17. From the above referred facts, it is evident that this Court vide order dated 26/04/2010 in Writ Petition No. 2875 of 2009 held that the respondent No.1 is a Junior College Lecturer and not Shikshan Sevak and accordingly the directions were issued to the Deputy Director of Education for rectifying the order of approval. Hence, the submissions of the learned counsel for the petitioners that the respondent No.1 was a probationer working on a post of Shikshan Sevak and his services were terminable on the ground of unsatisfactory performance, cannot be accepted.

18. The fact that the respondent No.1 was continuously working from 1999 till 01/05/2006 shows that there was a permanent vacancy on which the respondent No.1 was appointed.

19. As far as submission of the petitioners that there was no sanctioned post is concerned, the petitioners have not brought on record any material in support of the said contention. Except mere words, there is nothing on record to reach to the conclusion that there was no sanctioned post.

20. Moreover, the fact that the respondent No.1 was appointed as Shikshan Sevak after issuing the advertisement in 2003-04 falsifies the case of the petitioners that there was no sanctioned post.

21. Thus, as this Court not considered the respondent No.1 as Shikshan Sevak, he cannot be considered as on probation.

22. However, even if for a moment it is considered that the respondent No.1 was on probation, still the order of termination is illegal as it is without holding enquiry against the respondent No.1. The letter issued to the Deputy Director for permission to terminate the services of the respondent No.1 depicts that, certain serious allegation and charges were levelled against the respondent No.1 which amounts to a stigma. Therefore, the termination is not simpliciter and hence, enquiry was to be conducted by the petitioners before terminating the services of the respondent No.1.

23. Furthermore, if the respondent No.1 is not considered on probation and in view of the fact that he was continued in service from 1999 till 01/05/2006 and as such he is considered to have attained the status of 'deemed permanency', again it is binding on the management to hold enquiry before terminating the respondent No.1.

24. Thus, in both the matters, even if the respondent No.1 is considered as deemed confirmed or on probation the termination order is bad in law as no enquiry was conducted.

25. The respondent No.1 has filed on record numerous documents to show that before appointing him due process was followed i.e. resolution passed by the management and an advertisement was issued. According to the petitioners, the documents are forged and bogus one.

26. It is a settled law that, to prove the forgery, evidence needs to be led. However, the petitioners failed to lead any evidence before the School Tribunal in this regard. In the circumstances, the case of the petitioners that the documents filed by the respondent No.1 are forged one cannot be accepted in absence of any cogent evidence.

27. As far as back wages are concerned, the learned Tribunal has observed thus :

*“33. During pendency of this appeal an affidavit is filed by the appellant on 3.4.2014 mentioning that the termination he was not in any gainful employment of any Government service but he has earned Rs.8,73,457/- from 22.4.2006 till filing of this affidavit dated 3.4.2014 by doing work on contract basis. The said amount is honorarium and therefore as per him he is entitled to get full monthly salary after deducting this amount. It is submitted orally that his monthly salary might be Rs.25-30 thousand per month (no document produced). The said affidavit shows that during the period of last 8 years he has earned Rs.1,08,000/- per year and Rs.9-10 thousand per month approximately. So he has earned 1/3 amount of his salary per month. It is argued on behalf of respondents that it is not necessary to grant relief to full back wages or back wages as he has earned the amount. I am not agree with the same because definitely he would have received his full monthly salary if he had not been terminated illegally from the service. However, considering all these facts and circumstances in my opinion the order of 50% back wages would meet the end of justice and would be a proper order of back wages.”*

28. The petitioners have failed to point out that the respondent No.1 has earned more than the amount mentioned by him or equivalent to the salary otherwise he would have received, had he not been terminated.

29. In the circumstances, I do not find any perversity in granting 50% back wages to the respondent No.1.

30. Having held that the termination of the respondent No.1 is bad for the above referred reason, I do not find any error or illegality committed by the learned School Tribunal in allowing the appeal and directing the petitioners to reinstate the respondent No.1 and to pay 50% back wages.

31. Accordingly, the writ petition is **dismissed**. No order as to costs.

( ANIL S. KILOR, J )

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