



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1970 OF 2008

Prabhakar s /o Jaihindrao Wakle
age 30 years, occ. Service (Presently nil),
R/o Yevari, Post Mangrul,
Taluka Jalkot, District Latur. .. Petitioner

VERSUS

1. The District Social Welfare Officer
Latur, District Latur.
2. The Secretary,
Tirupati Shikshan Prasarak Mandal,
Hipparga (Kajal), Taluka Ammedpur
District Latur.
3. The Head Master
Sudhakarraoji Naik Prathamik Ashram
Shala, Tulshiram Tanda,
Taluka Ahmedpur, District Latur. .. Respondents

Mr. V. D. Gunale, Advocate for the Petitioner.
Mr. R. R. Tandale, AGP for the State.
Mr. K. V. Patil, Advocate holding for Mr. S. R. Barlinge, Advocate for
Respondent Nos. 2 and 3.

CORAM : R. M. JOSHI, J.
RESERVED ON : 24th JULY, 2025.
PRONOUNCED ON : 30th JULY, 2025.

JUDGMENT :

1. This Petition takes exception to the order passed by the
Divisional Social Welfare Officer, Latur in Appeal No. 5/2005 dated

25.09.2007 and 25.08.2008 whereby the Petitioner's Appeal came to be dismissed.

2. The facts which led to filing of the Petition can be narrated in brief as under :-

It is the case of the Petitioner that he is qualified as B.A. BP Ed. and is eligible for being appointed as Assistant Teacher in a school. He was appointed as Assistant Teacher on 14.08.1999 in Respondent No. 2-School which is undisputedly a primary Ashram school. The appointment was approved by Respondent No. 1-Social Welfare Officer for the academic year 1999-2000. It is further claimed that his appointment was also approved for subsequent academic years till 2004-2005. According to the Petitioner, Respondent No. 3 is a Ashram School is governed by the Ashram School Code. He claims that at the time of his appointment in the school for the academic year 1999-2000, he was the only teacher having requisite qualification. It is further claimed that the other assistant teachers to whom approval has been granted were qualified as HSC. It is also sought to be contended by the Petitioner that on 12.06.2002, Mr. Fulaji Devkate having qualification of BA BP Ed. was appointed in Respondent No. 3/school after the appointment of

Petitioner. He, however, was treated as permanent employee and all benefits of permanency were extended to him. Petitioner claims that in the academic year 2004-2005, he was declared as surplus teacher and his absorption was directed in other school. This, according to him, indicates that he was permanent teacher. Petitioner has also made allegations against Respondent No. 3/school with regard to obtainment of grants etc. It is claimed by the Petitioner that since complaints were made in respect of the same, they were terminated by impugned termination order dated 29.04.2005. It is claimed that since the Petitioner along with other terminated employees was declared as surplus employee and was undergoing process of absorption in other school, the management had no authority to terminate their services. Said termination is claimed to be illegal and hence Appeal was filed before Respondent No. 1 being Appeal No. 5/2007. By impugned judgment dated 25.09.2007, Respondent No. 1 quashed and set aside the impugned order of termination in respect of the other employees except present Petitioner. A grievance is also made that re-instatement has been granted to one of the employees who was not even appellant in the said Appeal.

3. During the pendency of the Petition, on the basis of representation made by the Petitioner, order dated 25.08.2008 came to be passed holding that since the Petitioner was appointed as a temporary teacher, he cannot be declared as surplus and hence on that ground the Appeal came to be dismissed. This order also is sought to be challenged by amending the Petition.

4. Respondents filed affidavit-in-reply denying the contentions and allegations made by the Petitioner. It is the case of the Respondents that the Petitioner was appointed temporarily and after the strength of the students was reduced, he could not be continued in service. It is further claimed that approval was granted to the appointment of Petitioner for a particular year and hence he cannot be said to be a permanent teacher.

5. Learned counsel for the Petitioner submits that the appellate authority has committed error in not granting relief to the Petitioner though the Petitioner and the other appellants have made out a case for setting aside the impugned termination. By drawing attention of the Court to the order dated 25.09.2007, it is contended that the authority has wrongly granted relief in favour of a person

who was not even appellant in the Appeal. This, according to him, indicates that the order in question has been passed in casual manner. He further argued that one of the teachers Devkate who was having similar qualification as held by the Petitioner, was appointed after the appointment of Petitioner however, he was given status of permanency and on that count his Appeal came to be allowed. It is his submission that there was absolutely no justification to cause discrimination between Petitioner and other appellants before the authority. It is his further submission that the Petitioner was already held surplus and was under the process of absorption in other school and as such, it was not open for the management to terminate his services. He also makes a grievance that the Petitioner was not sent for training/acquisition of requisite qualification inspite of there being such direction in G.R. dated 10.10.2000. Larned counsel for the Petitioner has drawn attention of the Court to Rule 28 of the MEPS Rules 1981, in order to submit that in any case termination of Petitioner could not have been effected without giving one month notice. According to him, even after representation was made to the appellate authority, the appellate authority though has passed order dated 25.08.2008, even then, the facts of the case are not considered in true spirit and this has led to

mis-carriage of justice. It is his submission that Petitioner has crossed the age limit to get another employment in any school and considering this amongst other grounds, the Petition be allowed.

6. Learned AGP and learned counsel for Respondent No. 3/school supported the impugned order. Learned AGP drew attention of the Court to G.R. dated 10.10.2000 which applies to primary Ashram schools. It is her contention that the said GR would apply only to the teachers who are approved as per the roster and that they should not be additional. Thus, it is her contention that since the Petitioner was not a permanent employee, there was no question of said GR being applicable to him. It is further argued that termination of Petitioner and others was not on account of any misconduct but it was a consequence of non-acquisition of requisite qualification. It is argued that there is no discrimination done with the Petitioner however, as his appeal came to be rejected for the reason that except for the Petitioner, others were found to be permanent employees. It is also pointed out that even as of today, Petitioner has not acquired the requisite qualification of D.Ed. On this amongst other grounds, the Petition is sought to be dismissed.

7. At the outset, it would be relevant to take note of the Judgments of Division Bench of this Court in the cases of **Anna Manikrao Pethe** and **Priyadarshini Education Trust** (supra). In the case of **Anna Pethe**, it is held as under :

“15. While disposing of this petition, we deem it appropriate to observe that when such applications under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 are filed before the School Tribunals by the teachers challenging any act of termination on the part of the management, it will be necessary for the Tribunal to frame and decide three preliminary issues, viz., whether the school was a recognized school as defined under the MEPS Act; whether the appointment of the concerned teacher was made as per Section 5 of the MEPS Act and the Rules thereunder; and whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the Act as well as the rules framed thereunder including the Government resolutions issued from time to time regarding reservations, etc. These preliminary points are required to be framed and decided before the appeal proceeds on merits and even if such points are not raised by any of the parties to the appeal, it would be proper on the part of the Tribunal to frame such issues suo motu before examining the merits of the case. In case the findings to any of the preliminary issues are in the negative, the appeal must fail then and there itself, so far as the relief of reinstatement/continuation in service is concerned.”

8. No doubt Full Bench of this Court in case of **St. Ulai High School** (*supra*) has not confirmed the requirement of approval of Education Officer as pre-condition. However, in view of specific finding of Divisional Bench on first two aspects that in case the findings to any preliminary issues are in negative, appeal must fail, so far as relief of reinstatement is concerned. This Court finds no reason for not applying these principles in the present case.

9. In view of above position of law, before granting any relief of reinstatement, it must be shown that School is recognized and that appointment of the teacher has been made in accordance with Rules. The teacher, therefore, needs to show at first instance that the appointment has been made by following due procedure laid down therein. Needless to say that initial burden would be on the teacher to prove the said case.

10. Apart from the fact that no such claim was made before the appellate authority and even before this Court, there is nothing to indicate that appointment of Petitioner was made by following due recruitment procedure.

11. At this stage, it needs to be recorded that initially the Petitioner has raised a grievance with regard to the appellate authority not having passed any specific order to his extent. The record further indicates that thereafter the appellate authority was moved by the Petitioner. After hearing the Petitioner, further order came to be passed on 25.08.2008. The said order is duly challenged in this Petition by carrying out amendment to the Petition. Having regard to the fact that subsequent order has been passed by the authority, now it cannot be said that the issue pertaining to the Petitioner was not considered and decided by the appellate authority.

12. There is no dispute about the fact that the Petitioner was appointed for academic years from 1999-2000. Approvals were granted for such fixed period of appointment. As against this, other appellants in Appeal No. 5/2005 were permanent employees of the school. Since it is now sought to be argued that discrimination has been caused against Petitioner, it would be relevant to take into consideration the appeal memo filed before the authority taking exception to the order of termination. Perusal of said appeal memo indicates that it was a case of all eight appellants that they are permanent employees. It is specifically so stated in the appeal memo.

During the course of hearing, however, it was revealed that except Petitioner, all other appellants are permanent teachers. Petitioner was found to have been appointed as temporary. Appeal memo claims that termination of their services has been done in defiance of the rules. If it is accepted that appointment of Petitioner was for specific/fixed academic year and that he was temporarily appointed, Rule 28 of the MEPS Rules contemplates issuance of one month notice to the Petitioner before termination of his services. Perusal of termination order dated 29.04.2005 indicates that termination was effected from 31.05.2005. It is thus clear that one month notice was duly served upon the Petitioner before terminating his services. It is not the case of the Petitioner that he was terminated for any misconduct nor it can be said so on the basis of the available material on record including the order of termination. Termination has been effected only for the reason that other employees have not acquired requisite qualification to work as a teacher in the school.

13. As far as non-acquisition of requisite qualification and its effect on continuation of employment is concerned, it would be relevant to take note of Government Resolution dated 10.10.2000, which holds the field. Vide Government Resolution dated 10.10.2000

time was extended for the untrained teachers to acquire requisite qualification. This Government Resolution applies to the primary Ashram schools. The said Government Resolution, however, specifically provides for its application to the teachers whose appointment is approved and that such appointment is in accordance with the roster. It further says that as on the date of appointment of a candidate he ought to have acquired the qualification of D.Ed. As far as present Petitioner is concerned, he claims that he had qualification of B.P. Ed. And it is claimed that it is equivalent to D.Ed. In order to support said submission, reference is made to Rule 2(1)(i) & 6 read with Schedule B of MEPS Rules, 1981. A careful perusal of the said schedule indicates that Clause II thereof would apply to the secondary school and not to a primary school. Admittedly, in the instant case, the Ashram school in which the Petitioner was appointed is a primary school. Thus, the said rule would have no application to the instant case.

14. Though it is sought to be canvassed now that similarly placed employees are granted benefit of the above Government Resolution and discrimination is caused against the Petitioner, however, there is a clear distinction in the nature of appointment of

Petitioner as compared to others. Admittedly, all other employees were permanent employees whereas the Petitioner was temporary teacher. Learned counsel for the Petitioner has attempted to draw attention of the Court to the appointment of one Devkar to claim that he ought not to have been made permanent in the employment. This submission cannot be taken into consideration for the simple reason that there is no challenge to the order passed by the appellate authority in favour of other appellants therein. The challenge in this Petition is restricted to non-grant of same benefits to the Petitioner. It would be therefore beyond the scope of this Petition to consider the said submission. Suffice it to say that all appellants except Petitioner in the said appeal were permanent employees whereas the Petitioner was not.

15. Now question arises as to whether it is a case of discrimination regardless of merit. There could have been substance in the said allegation provided that all appellants were on equal footing. Once it is held that the other appellants were regular employees and the Petitioner herein was temporary, question of this being called as discrimination would not arise.

16. The law on the point of re-instatement of an employee is clearly settled to say that at the first instance the employee is required to show that his appointment is in accordance with the rules framed under the Act and that only after establishing that his appointment is by following the due procedure of recruitment, he would not be entitled to seek re-instatement.

17. Needless to say that termination in question is not punitive and hence question of conducting of any enquiry before termination does not arise. The order of termination clearly indicates that it was duly communicated to the Petitioner when for want of acquisition of requisite qualification within reasonable time his services stand terminated with effect from 31.05.2005. If the reason for termination was incorrect and that the Petitioner had already acquired the requisite qualification, it was open for him to intimate so to the management which has not been done by the Petitioner. Moreso, even as of date, the Petitioner is not having the requisite qualification of D.Ed in order to get appointment as a qualified teacher in the school.

18. The above discussion leads to the conclusion that the Petition is sans merit. Since the order impugned cannot be termed as perverse, this Court finds no reason to cause interference therein. Hence, Petition stands dismissed.

19. Rule discharged.

(R. M. JOSHI)
Judge

dyb