



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 WRIT PETITION NO. 2847 OF 2008

MUDRIKA VISHWANATH SHINGADE
VERSUS
AHILYADEVI HOLKAR SHIKSHAN PRASARAK MANDAL AND ORS

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Mr. V. D. Gunale, Advocate for the Petitioner
Mr. Vivek Dhage, Advocate for Respondent Nos.1 to 3
Mr. S. K. Shirse, AGP for Respondent/State

CORAM : R. M. JOSHI, J.
DATE : 30th JULY, 2025

PER COURT :-

1. This Petition takes exception to the order dated 15th February, 2008 passed by the Divisional Social Welfare Officer, Latur in Appeal No. 01 of 2006, wherein the challenge to the termination of the Petitioner by Respondent-School was held to be proper and Appeal came to be dismissed.

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

(i) The Petitioner claimed to have qualification of S.S.C. and Certificate in Craft Teacher. Respondent Nos.1 to 3 invited applications from the eligible candidates for the post of 'Assistant Teacher' in Respondent No.2-School and for that purpose advertisement was issued. It is further claimed by the Petitioner that pursuant to the advertisement,

she applied to the said post and was interviewed by the Selection Committee. It is claimed that she was appointed on clear, vacant and permanent post by order dated 1st April, 1994. It is however, claimed that the Respondents have not issued such order in her favour. It is further case of the Petitioner that she was continued in the service considering her performance and that the proposal was sent to the District Social Welfare Officer for approval and the approval came to be granted for academic year 1995-96. Though thereafter she was continued in service but the proposal of the approval was not forwarded to the Authority and therefore, she made complaint in this regard on 19th December, 1996. According to the Petitioner in the year 1997, the Petitioner was transferred by the Respondents from School at Ausa to Ahmedpur where she continued to work till 1998 i.e. upto the date of her termination of her service. It is claimed that on 24th July, 1998 when as usual she reported for the work, she was told not to resume duty from 25th July, 1998 and thus, her services are terminated orally.

(ii) The Petitioner approached to the School Tribunal by filing Appeal bearing No. 147/2004. The Tribunal, however, dismissed the Appeal by holding that it has no jurisdiction to entertain the Appeal. The Petitioner therefore, preferred Appeal bearing No. 01/2006 before the Divisional Social Welfare Officer taking exception to the dismissal of her

from the service. Since the said Authority dismissed the Appeal, this Petition.

3. Learned Counsel for the Petitioner submits that the Petitioner was appointed on 1st April, 1994 after following due procedure of recruitment and hence, in view of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act (for short 'MEPS Act'), she could not have been appointed on temporary basis, but ought to have been appointed on probation and it needs to be considered accordingly. To support his submission, he placed reliance on the judgment of this Court in case of ***The New Education Institute Nasik & Ors. Vs. Mahejabin Ashfak Ahmed Shaikh & Ors., 2007(6) ALL MR 516.*** He also took aid of the judgment of this Court in case of ***The Maharashtra Shikshan Sanstha & Anr. Vs. The Presiding Officer, School Tribunal & Ors., 2007(2) ALL MR 269.*** It is submitted by relying upon these two authorities that there cannot be appointment of the Petitioner as a temporary when due procedure for recruitment has been followed and her initial appointment is against the permanent and vacant post. It is his further submission that there is record indicating approval being granted by the Social Welfare Officer to the said appointment of the petitioner for academic year 1995-96. It is argued that thereafter she was transferred to the school at Ahmedpur, wherein she had acquired a

necessary qualification in tailoring subject. It is his submission that since the Petitioner was refused to sign the muster roll, her signature does not appear thereon, and that she came to be terminated orally with effect from 24th July, 1998. By referring to the reply of the Respondents before the Divisional Social Welfare Officer, it is submitted that the contention of the Management about resignation of the Petitioner from service is not sustainable in law. It is his submission that resignation ought to have been in the hand writing of employee in duplicate. So also the same must be forwarded to the Management by registered A.D. post. It is his further submission that the acceptance of the resignation has not been communicated and as such it cannot be held that Petitioner has ceased to be employee. By referring to the provisions of Section 7 r/w Rule 40 of the MEPS Act, it is contended that the case of the Respondents Management of resignation of the Petitioner from the service is not sustainable. It is argued that the Petitioner has continuously worked for four years and since thereafter her services are terminated orally and without complying with the mandatory provisions of the Act, it is a fit case for setting aside the impugned order and directing reinstatement of the Petitioner in service with back wages and consequential benefits.

4. Learned Counsel for the Respondents submits that in order to seek any relief of reinstatement, the Petitioner at the first instance must

establish that her appointment was after following due procedure of recruitment as contemplated by the Act and the same is against clear, vacant post. By referring to the reply filed before the Authority, it is contended that once it is disputed that the appointment was not by following due procedure of law, the burden is on the Petitioner to prove the same. It is contended that there is no evidence to indicate so. Apart from this by referring to the documentary evidence on record it is submitted that the appointment of the Petitioner is by order dated 1st April, 1994 and the appointment was for a specific period. In this regard reference is also made to the resolution passed by the Respondent-Management for appointment of the Petitioner in leave vacancy created by sending Shri. Umakant Dawale, an untrained teacher, for training. It is argued that there is ample material placed on record to indicate that after completion of the academic year 1995-96, the Petitioner was not in employment, and that this is not the case to cause interference in the impugned order. To support his submission he placed reliance on the following judgment:-

- (a) Smt. Mangala d/o Keshav Mule Vs. President and others in Writ Petition No. 584/1997, dated 22/07/2016,
- (b) Ramkrishna Chauhan Vs. Seth D. M. High School & Ors., 2013(3) ALL MR 1 (F.B.),
- (c) Vishnu Ramchandra Patil Vs. Group Gram Panchayat & Ors., 2013(3) All MR 16,

(d) Vice-Chancellor, Lucknow University, Lucknow, Uttar Pradesh Vs. Akhilesh Kumar Khare & another, AIR 2015 SC 3473,

(e) Swami Vivekanand Shikshan Sanstha and another Vs. Presiding officer, Nagpur and Others, 2016(3), Mh.L.J., 50.

5. As per the law laid down by the Division Bench of this Court in case of *Anna Manikrao Pethe vs The Presiding Officer, School Tribunal 1998(3) All MR 155*, in order to seek any relief of reinstatement, it is incumbent on the part of the Tribunal under the MEPS Act to frame the issue with regard to the approval of the school as well as the appointment of the employee/teacher in accordance with the provisions of the Section 5(2) of the MEPS Act. The Division Bench of this Court in the case has also held about approval granted by the Education Officer to be a condition precedent for maintaining such challenge to the termination, however, Full Bench of this Court in case of *St. Ulai High School Vs. Devendraprasad Jagannath Singh and Ors., 2007(1)Mh.L.J., 597*, has not confirmed the said third condition, however, has affirmed the first two conditions prescribed by the Division Bench for the purpose of grant of any relief in favour of employee under the provisions of the MEPS Act. This Court finds no reason to apply the said judgment to the present case for the reason that the appointment is claimed under the provisions of the MEPS Act and Rules framed thereunder.

6. The above position of law thus mandates an employee to satisfy the Tribunal, herein this case Appellate Authority, at first instance that the appointment is made against the clear vacant post and after following due procedure for recruitment. Though in the memo of appeal it is sought to be contended on behalf of the Petitioner herein before the Authority that her appointment was pursuant to the advertisement and interview, there is no material placed on record to hold so. This would become relevant in view of the denial of the Respondents in the reply to that effect.

7. As against this, the documentary evidence on record clearly shows that resolution was passed on 26th April, 1996, whereby the appointment of the Petitioner was made for the academic year 1995-96 on the leave vacancy created by sending a untrained teacher for training. The order of appointment also indicates that the appointment was for the particular academic year. Admittedly, there is approval granted to the said appointment for academic year by District Social Welfare Officer, Latur. Moreover, the documents placed on record by the Petitioner obtained under the Right to Informant Act also supports the contention of the Respondents about the appointment being for academic year 1995-96 on temporary basis.

8. It is sought to be contended on behalf of the Petitioner that

forcible resignation was obtained from her and also that there was misuse of the signatures of the Petitioner. The Petitioner claims that though the Management has transferred her from Ausa to Ahmedpur, she was not permitted to sign on the muster role. There is, however, no material on record in order to indicate that after the expiry of the temporary period of appointment for the academic year 1995-96, she was continued in the service. In order to direct reinstatement of Petitioner in service, it is incumbent to record at least finding that the Petitioner continued in the service after the period of temporary appointment was over. There is no evidence to hold so. Thus, even accepting for the sake of arguments the contention of the Petitioner that the alleged resignation submitted by her is not in consonance with the provisions of the MEPS Act, the question remains as to whether she could claim continuity of service after she ceased to be in service on expiry of period of her appointment.

9. In this regard reference can be made to the Full Bench of this Court in case of *Ramkrishna Chauhan Vs. Seth D. M. High School* (supra) which recognizes the power of the Management to appoint a person even contractual basis against the permanent vacancy by way of interim arrangement. It is held that Section 5(2) of the MEPS Act cannot be construed as taking away the implicit power of the Management to make

a contractual employment. Herein this case since it is not proved that the appointment of the Petitioner has been effected against the vacant clear post by following due procedure of recruitment, the question of regularization of her services as sought before the Appellate Authority does not arise.

10. In view of the above discussion, no case is made out to cause any interference in the impugned order. Hence, Writ Petition stands dismissed.

(R. M. JOSHI, J.)

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