



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4648 OF 2007

Sayyed Mainoddin Dadakhan
Age. 24 years, Occ. Service,
R/o. Kadri Nagar, Ausa,
Taluka Ausa, Dist. Latur.

.. Petitioner

VERSUS

1. The President,
Kendriya Education Society, Ausa,
Taluka Ausa, Dist. Latur.

.. Respondents

2. The Head Master,
K.B. Haseena Urdu Girls High School,
Khadakpura Ausa, Taluka Ausa,
Dist. Latur.

3. The Education Officer (Secondary)
Zilla Parishad, Latur.

4. The Superintendent of Pay Unit,
Zilla Parishad, Latur.

Mr. S.S Jadhavar, Advocate for the petitioner.

Mr. D.S. Mali, Advocate for respondent No.1 & 2.

Mr. R.B. Dhaware, AGP for respondent Nos. 3 and 4.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 16.10.2025
PRONOUNCED ON : 03.12.2025

J U D G M E N T :-

01. Heard learned Advocate Mr. S.S. Jadhavar for the petitioner,

learned Advocate Mr. D.S. Mali for respondent Nos. 1 and 2 and learned AGP Mr. Dhaware for respondent Nos. 3 and 4-State.

02. In this petition, Rule has been issued by this Court vide order dated 26.11.2007.

03. An order passed by the learned Presiding Officer, School Tribunal, Latur dated 24.07.2007, in Appeal No. 254 of 2006 is under challenge. The petitioner/original appellant is aggrieved by dismissal of the appeal. Respondent No.1 is the Management. Respondent No.2 is the School. Respondent No.3 is the Education Officer (Secondary), Zilla Parishad, Latur and respondent No.4 is the Superintendent of Pay Unit, Zilla Parishad, Latur.

04. It is case of the petitioner that he was qualified and eligible to be appointed to the post of Peon in the Secondary School. The respondents appointed him by following due procedure. Appointment was given on 10.06.2002 on probation basis. It is further case that on completion of two years probation period, the petitioner became permanent. Though the petitioner was permanent, respondent Nos. 1 and 2 without following any procedure and without conducting any

inquiry, orally terminated the services of the petitioner from 22.01.2006.

05. The petitioner, therefore, approached the School Tribunal by filing an appeal under Section 9 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act [for short "MEPS Act"], thereby challenging the otherwise termination. His services were protected by an interim order. However, by way of the impugned judgment and order, the appeal came to be dismissed, by holding that the petitioner could not prove that he was duly selected and appointed to the post of Peon. The School Tribunal also recorded that the petitioner failed to show that the advertisement was issued for the post of Peon and any procedure was followed for giving appointment.

06. Before the School Tribunal, it was case of the Management that the petitioner was never appointed by following due process of law. Copies of the muster roll etc. produced before the School Tribunal are fabricated documents, forged by the petitioner and therefore no reliance can be placed on the muster roll etc.

07. Learned Advocate Mr. Jadhavar for the petitioner vehemently argued that the petitioner was duly appointed by following proper

procedure. The advertisement was published in the newspaper. The Management, however, never gave copy of the appointment order to the petitioner, nor produced advertisement before the School Tribunal and deliberately suppressed the material. The learned Presiding Officer, School Tribunal failed to appreciate the copies of muster-roll showing petitioner's name in the muster along with other employees. He submits that even regular salary was not paid. Towards salary he was only paid Rs. 50,000/- at only once. There are letters on record to show that the proposal for approval of the petitioner's service was sent to the Education Officer. He thus submits that inspite of overwhelming material on record the learned Presiding Officer committed error. Learned Advocate for the petitioner relies upon following judgments :-

- i) Smt. Rajashree Sarjerao Lokhande & Ors. Vs. Hareshwar Shikshan Prasarak Mandal & Anr., AIR 2008 (1) Bom. 256.
- ii) New Education Institute, Nashik & Ors. Vs. Mahejabin Ashfak Ahmed Shaikh & Ors., 2008(1) AIR Bom R 256.
- iii) Matoshri Ramabai Ambedkar Vidyarthi Vasatigruh Turst & Anr. Vs. Bharat D. Hambir & Anr., 2009(2) ABR (NOC) 238 (BOM).
- vi) Deepak T. Kaul Vs. Sanjeevani Vidhyalaya Trust, Pune, AIR 2020 OnLine Bom. 1633.
- v) Abdul Rafique Abdul Hamid Vs. Yavatmal Islamia Anglo Urdu Education Society, 2014 (5) ABR 161.

08. Learned Advocate Mr. Mali for respondent Nos. 1 and 2 vehemently opposes the petition. He supports the impugned judgment.

He submits that the petitioner could not produce material documents such as advertisement issued for the post of Peon, appointment order etc. The muster roll produced by the petitioner is false and fabricated document. There is clear finding recorded by the learned Presiding Officer to that effect. So far as the payment of amount of Rs. 50,000/- is concerned, he submits that it was not an amount towards salary but was amount given to the petitioner out of personal relationship, as the President of the Trust happens to be son of cousin of mother of the petitioner and that cannot be said to be a salary. No salary bill etc. is produced on record. He relies upon copies of staff list and staff sanctioned for the year 2023-24. He also relies upon following judgments :-

- i) Priyadarshini Education Trust & Ors. Vs. Ratis (Rafia) Bano Abdul Rasheed, 2007(6) Bom. C.R. 79.
- ii) Vasant Shikshan Prasarak Mandal through its President & Ors. Vs. State of Maharashtra & Ors., 2017(1) Mh.L.J.67.

09. The learned AGP strongly supports the order. He submits that there is no record with the Zilla Parishad, showing that any advertisement was approved for post of Peon. At no point of time any proposal was received for approval of the petitioner's appointment etc.

10. In the case of **Smt. Rajashree Sarjerao Lokhande [supra]**, it was a case that a teacher was shown to have acquired deemed permanency. It was shown that the teacher was continuously working from 1988 till 2004. It was held that in such circumstances she cannot be deprived of her claim of permanency. In that case services were confirmed by the Management against the post reserved for OBC vide letter dated 22.09.2003. The appointment was also ratified by the Education Officer. She was recognized as a person belonging to Kunbi community. It is thereafter the Management terminated her services stating that she does not belong to Kunbi. In that view it was held that after approving services against OBC category, it was not open for the Management to terminate services on the count that the teacher does not belong to OBC.

11. In the case of **New Education Institute [supra]**, there appointment was against clear and vacant post. Still the management had appointed a teacher only for one year. It was held that the Management ought to have appointed the teacher on probation for two years.

12. In the case of **Matoshri [supra]**, it was clearly shown on the

basis of documents on record that the employee was duly appointed by following requisite procedure for selection. The appointment was on probation basis. The services were continued even after two years and in that view his services were held to be of permanent nature and termination was set aside.

13. In the case of **Deepak T. Kaul [supra]**, it was shown that the petitioner was appointed against a clear and vacant post by following due process. The stand of the Management was that his services were not duly approved and was therefore terminated.

14. In the case of **Priyadarshini [supra]**, it is held that to claim benefit of deemed permanency under section 5(2) of the MEPS Act, it is necessary that the teacher must have been duly selected and appointed on a clear vacancy, which is lacking in the present case.

15. In the case of **Vasant Shikshan Prasarak Mandal [supra]**, it was held that prior permission of the Education Department is necessary. It was a case where prior permission of Education Department regarding availability of suitable surplus candidate was not taken. Without such permission, fresh candidate was appointed. The proposal

for approval of such appointment was refused by the Education Officer for violation of mandatory provision of section 5(1) the MEPS Act and proviso to the same.

16. In the present case, it is a matter of fact that the petitioner has not produced on record copy of advertisement. He could not show that the Education Officer had granted permission to publish advertisement to fill up post of Peon in the respondent-school. He could not produce even order of appointment. On one hand, he could not produce these vital documents under the pretext that these documents are withheld by the management and on the other hand, he produced on record copy of muster roll, letter of the Headmaster to the Education Officer seeking approval etc.

17. Though it is a case that the muster roll produced by the management on record is fabricated as per the allegation, this Court cannot deal with the same. So far as payment of Rs.50,000/- is concerned, same cannot be considered towards salary. There is nothing on record to show that any salary was paid to the petitioner or salary bills were sent to the Zilla Parishad. This Court finds substance in the arguments of learned Advocates for the respondents that the petitioner

has failed to produce on record copy of advertisement, appointment order etc. Rule 9(3) of the MEPS Rules requires that prior to issuance of advertisement, it is necessary to take permission from the Education Officer. The same is not appearing on record. The petitioner's case in this regard is that the Management has deliberately not given original appointment order to the petitioner, cannot be accepted. It is also stand of the Education Officer that there was no sanction to the advertisement granted by the Authorities to fill up post of the Peon. There is also no case that any proposal was sanctioned by the Management.

18. Considering all the above, this Court finds that no case is made out to allow this petition. No illegality or perversity is pointed out in the impugned order passed by the Tribunal. The impugned order of the learned Tribunal does not require any interference.

19. Writ Petition stands dismissed. Rule discharged.

[KISHORE C. SANT, J.]