



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 6688 OF 2024**

1. Ahilyabai Holkar Shikshan
Prasarak Mandal, Karepur,
Through its Secretary
Mukesh S/o Balasaheb Rajemene
Age : 35 years, Occ : Service,
R/o Triveni, plot no.8,
Vishal Nagar, Latur.
2. Nilesh s/o Balasaheb Rajemene
Age : 41 years, occ : Service as Principal,
Late Janardhanrao Rajemene Uccha Madhyamik,
Ashram School, Janwal,
Tq. Chakur, Dist. Latur.
3. Yogesh s/o Deeliprao Kadam
Age : 37 years, Occ : Service as Jr. Lecturer
Late Janardhan Rajemene Uccha
Madhyamik Ashram Shala,
Janwal, Tq. Chakur, Dist. Latur.

..PETITIONERS

VERSUS

1. Balasaheb s/o Devidasrao Pawar,
Age : 41 years, Occ : Junior Lecturer,
R/o Zari (Kh), Tq. Chakur,
Dist. Latur
2. The Assistant Commissioner,
Social Welfare Office, Latur,
Dist. Latur.
3. The Regional Deputy Commissioner,
Social Welfare Office, Latur,
Dist. Latur.

..RESPONDENTS

...

Mr.VD. Sapkal, senior advocate a/w Mr. A.D. Khedkar i/b
Mr.M.S. Thur, Advocate for petitioners.
Mr. VD. Salunke, Advocate for respondent no.1
Mr. N.D. Raje, AGP respondent/State.

CORAM : ROHIT W. JOSHI, J.
RESERVED ON : 21st JULY, 2025
PRONOUNCED ON: 28th JULY, 2025

JUDGMENT :

The present petition is filed challenging the judgment and order dated 18.03.2024 passed by the learned Presiding Officer, School Tribunal, Latur in Appeal No.23/2019. Respondent No.1 had filed the said appeal stating that his services as Junior Lecturer in late Janardhan Rajemene Higher Secondary Ashram School, Janwal came to be terminated by way of otherwise termination on 15.06.2015. The learned Tribunal has quashed and set aside the otherwise termination dated 15.06.2015 and has issued directions to petitioner nos.1 and 2 to reinstate respondent no.1 in service with continuity and full back wages from the date of termination till the date of reinstatement.

2. Petitioner No.1 is a trust registered under the Maharashtra Public Trust Act (hereinafter referred to as "MPT Act"). It runs Ashram School named late Janardhanrao Rajemene Higher Secondary Ashram School, Janwal.

Respondent No.1 claims that he came into contact with President and Secretary of petitioner no.1, who informed that the trust has received permission to start a Junior College from the year 2008 and that if he was interested in working in the said college then for initial period of six months he will have to render honorary service in the college. It is his case that he was informed that an advertisement for recruitment will be issued for the academic year 2009-2010 in which he can participate for regular appointment on the post of Junior Lecturer. Respondent No.1 contends that accordingly, advertisement was issued for the post of Junior Lecturer and he was called for interview for the post of Junior Lecturer (Chemistry) on 07.06.2009. He states that he was rendering services with the said Ashram School. According to him, the Ashram School was admitted to 25% grant-in-aid in the academic year 2012-2013 and 100% grants from the academic year 2015-2016. He has alleged that in the year 2014-2015, the petitioner-management had made a demand of donation of Rs.10,00,000/- and since he expressed inability to honour the demand due to financial constraints his services were terminated. He contends that when he went to school to join the services after summer vacation on the opening day of the

session on 15.06.2015, he was restrained from signing the Muster Roll. Respondent No.1 has stated that this act of restraining from signing the Muster Roll amounts to otherwise termination.

3. The respondent no.1 filed appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, which came to be registered as Appeal No.23/2019, with averments as above.

4. Respondent No.1 holds the following educational qualifications which he acquired as under :-

- (i) 2001 : B.Sc. Chemistry, Zoology and Fisheries
- (ii) 2003 : B.Ed.
- (iii) 2004 : M.Sc. - Chemistry
- (iv) 2011 : M.Sc. - Zoology

5. It will be pertinent to mention here that respondent no.1 has filed photocopy of appointment order dated 08.06.2009 along with the appeal. It is his contention in the appeal that the original appointment order was retained

by the petitioner-management.

6. On being served with the notice in the appeal, petitioner nos.1 and 2 entered appearance and filed reply opposing the appeal. Petitioner Nos.1 and 2 denied the appointment order placed on record by respondent no.1. They denied that respondent no.1 joined service on the post of Junior Lecturer w.e.f. 15.06.2009. However, it is their contention that at the request of respondent no.1 he was allowed to take some classes in the school in order to enable him to acquire teaching experience. They, however, denied that respondent no.1 was a regular employee. The petitioners came up with a specific contention that respondent no.1 was not qualified for appointment to the post of Junior Lecturer. In this regard, the contention of the petitioners is that initially they had issued advertisement dated 01.10.2008 calling applications for appointment to various posts of Junior Lecturers including the post of Junior Lecturer (Biology-Chemistry). The prescribed qualification in the advertisement was M.Sc. B.Ed.-Biology. It is stated that since duly qualified candidate was not received for appointment second advertisement was issued in the month of June, 2009. The

educational qualification again was specified as M.Sc. B.Ed.-Biology. The petitioners further contended that third advertisement for the same post with the same qualification was issued on 27.05.2012. It is their contention that pursuant to the said advertisement, petitioner no.3 was selected and appointed on the said post of Lecturer (Biology-Chemistry).

7. The petitioners specifically contended that respondent no.1 was also not eligible for appointment to the said post on regular basis since he did not hold the essential qualification of M.Sc.(Biology) at the relevant time.

8. As regards the appointment order, the petitioners had denied the issuance of appointment order in favour of respondent no.1. The petitioners stated that respondent no.1 had lodged a complaint against them with the authorities in the Social Welfare Department. It is contended that the said authorities had initiated an inquiry in the matter and found that respondent no.1 was not appointed in the Ashram School as alleged by him. The petitioners have placed reliance on report dated 28.07.2015 issued by the Regional Deputy

Commissioner to contend that respondent no.1 was falsely contending that he was appointed on the post of Junior Lecturer in the said school. With respect to the appointment order, the petitioners relied upon supplementary report issued by Officers of the Social Welfare Department, in which it is stated that respondent no.1 had made a statement that the appointment order issued by petitioner nos.1 and 2 in his favour was taken back by them, and therefore, respondent no.1 did not possess the appointment order. It is stated that respondent no.1 had expressed that he could not even produce the copy of the appointment order.

9. As stated above, the learned Tribunal has allowed the appeal vide judgment and order dated 18.03.2024. The learned Tribunal has held that respondent no.1 was appointed on the post of Junior Lecturer against a clear vacant post. It is held that respondent no.1 was holding the requisite qualification for appointment to the said post. With respect to the name of respondent no.1 not being reflected in the muster, learned Tribunal has held that the Muster was maintained by petitioner nos.1 and 2, and therefore, merely because the name of respondent no.1 did not appear in Muster Roll, that

by itself will not debar his claim. It is held that services of respondent no.1 were terminated by way of 'otherwise termination'. In view of such finding, the learned Tribunal has ordered that respondent no.1 should be reinstated in service with continuity and full back wages.

10. Mr. V.D. Sapkal, the learned senior advocate for the petitioners contends that respondent no.1 was never appointed in the Ashram School on regular basis. His contention is that at the request of respondent no.1, he was allowed to conduct a few classes in the Ashram School for which the appointment order was also not issued. In support of his contention, he draws attention to the inquiry report furnished by officials of Social Welfare Department on the complaint made by respondent no.1. His contention is that the appointment order dated 08.06.2009 relied upon by respondent no.1 was never issued and that it is forged document prepared by respondent no.1. Apart from this, he contends that the essential qualifications for appointment to the post is M.Sc. (Biology) with B.Ed. Mr. Sapkal states that although, respondent no.1 claims to be appointed on 08.06.2009, he has acquired the qualification of M.Sc.

(biology) in the year 2011. Placing reliance on the judgments in the matters of *State of Gujarat and others Vs. Arvindkumar T. Tiwari and another*, 2012 AIR (SC) 3281 and *Bhartiya Mahila Mandal, Chavani, Aurangabad and another Vs. Chagan Pavlasa Bhalekar and others*, 2012 (6) Mh.L.J. 368. He contends that appeal was liable to be dismissed solely on account that respondent no.1 was not duly qualified for appointment on the said post. The learned senior advocate criticizes the judgment delivered by the learned Tribunal and contends that the same is not sustainable either in the facts of the case or in law.

11. Per contra, Mr.VD. Salunke, learned advocate for respondent no.1 supports the judgment passed by the learned Tribunal contending that respondent no.1 was holding the qualification of M.Sc. B.Ed. as on the date of his appointment. He contends that this is the requisite qualification for appointment to the post of Junior Lecturer. He states that the petitioner-management had issued appointment order in favour of respondent no.1 pursuant to which respondent no.1 was regularly working on the post of Junior Lecturer. He has referred to certain documents showing that he was

discharging duties in the school to demonstrate that respondent no.1 was duly appointed vide appointment order dated 08.06.2009.

12. There are three advertisements on record, which are issued in the years 2008, 2009 and 2012. All these advertisements specify the requisite qualification as M.Sc. B.Ed. (Biology). Respondent No.1, who claims to be appointed on the post on 08.06.2009 acquired the academic qualification of M.Sc. (Zoology) in the year 2011. Thus, he did not possess the qualification mentioned in the advertisement as on the date of his alleged appointment. The prescribed qualification as per the Rules for appointment to the post of Junior Lecturer is degree in the relevant subjects along with B.Ed. The management had issued advertisement all through out prescribing qualification of M.Sc. (Biology) and B.Ed. It is, therefore, apparent that respondent no.1 was not holding the essential qualification as per the qualification as on 08.06.2009, which is the date on which he was appointed on the post of Junior Lecturer as per case set up by him. It is well settled that a candidate, who does not hold requisite academic qualification for appointment to a post cannot claim to be

holding the post as a regularly selected candidate. Such a candidate cannot have any claim over the post. The candidate, who does not hold the requisite educational qualification is not entitled to relief of reinstatement in service in the event of his termination. The learned senior advocate for the petitioners has rightly placed reliance on the aforesaid judgments in the matters of *Arvindkumar and Bhartiya Mahila Mandal*. Relevant observations in the matter of *Arvindkumar* are as under :-

"10. In *State of Orissa v. Mamata Mohanty* [(2011) 3 SCC 436 : (2011) 2 SCC (L&S) 83] , this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules, and would therefore, be void in law.

Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity.

Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See *Prit Singh v. S.K. Mangal* [1993 Supp (1) SCC 714 : 1993 SCC (L&S) 246 : (1993)

23 ATC 783] and *Pramod Kumar v. U.P. Secondary Education Services Commission* [(2008) 7 SCC 153 : (2008) 2 SCC (L&S) 244 : AIR 2008 SC 1817] .)"

13. Similar view is taken in the matter of ***Bhartiya Mahila Mandal (supra)***. The facts in the said case are strikingly similarly to the facts of the present petition. In the said matter, the candidate was not holding requisite qualification in the year 1988 when he was appointed in service. The qualification was acquired subsequently in the year 1999. In this context, the Hon'ble High Court has observed as under :-

"9. In the present case, admittedly, the respondent No. 1 was not duly qualified in the year, 1988. Therefore, in absence of necessary qualification required for the post of Assistant Teacher, the question of appointing the respondent No. 1 on a permanent vacancy as duly qualified person, would not arise. It is true that the respondent No. 1 has acquired necessary qualification in the year, 1999 and to that effect, certain benefits would be accrued to the respondent No. 1. However, the fact remains that at the time of first appointment in the year, 1988, the respondent No. 1 was not duly qualified. In my opinion, the school tribunal, has not considered the vital aspect of the matter and misread the documents, which were placed on record by the respondent No. 1."

14. Mr. Salunke, learned advocate for respondent no.1 has filed an additional affidavit to contend that respondent no.1 has acquired qualification of M.Sc. (Zoology) with permission of petitioner nos.1 and 2. He has filed additional affidavit dated 09.07.2025 in the present petition along with which letters dated 21.06.2009 and 28.06.2009 purportedly issued by petitioner nos.2 and 1 respectively are annexed. However, there are no pleading with respect to these documents in the appeal. That apart the said documents also cannot take the case of respondent no.1 any further, in as much as, even if the contention is accepted it will have to be held that respondent no.1 was not holding the requisite qualification as on the date of his alleged appointment.

15. It must also be stated that on a complaint made by respondent no.1, the officials of the Social Welfare Department have conducted inquiry. In this inquiry, respondent no.1 stated that he did not have copy of the appointment order issued in his favour. However, photostat copy of alleged appointment order is filed on record in the appeal. Before the Inquiry Committee, respondent no.1 stated that the appointment order was not provided to him and in

the appeal, respondent no.1 has stated that the petitioners had provided a photostat copy of the appointment order by retaining the original. It will be pertinent to state that in the inquiry conducted by the Social Welfare Department, respondent no.1 could not even produce the photostat copy of the appointment order. Likewise, inspection of the Muster Roll in the said inquiry indicated that the name of respondent no.1 did not appear in the Muster Roll. In this regard, it needs to be stated that it is the case of the petitioners that respondent no.1 was not regularly appointed on the post of Junior Lecturer as alleged by him but was only permitted to conduct some classes on his request.

16. It is well settled by catena of judgments of this Court that burden of proof that appointment order is issued after following prescribed procedure is on the employee. In the case at hand, respondent no.1 has failed to prove the appointment and it has also come on record that he was not holding the requisite educational qualification on the date of his alleged appointment.

17. In view of the aforesaid, I am of the considered opinion that the learned School Tribunal has erred in allowing the appeal filed by respondent no.1. Perusal of the judgment by the learned Tribunal will demonstrate that the Tribunal has not recorded proper reasons to arrive at conclusions which are recorded in the judgment. The learned Tribunal has failed to advert to inconsistencies in the stand of respondent no.1, viz-a-viz, appointment order in the inquiry conducted by the Social Welfare Department on his complaint and the pleadings in the appeal. The learned Tribunal has also failed to consider that the advertisement clearly mentions the prescribed qualification as M.Sc.-Biology-B.Ed. and respondent no.1 was holding the qualification of M.Sc. - Chemistry-B.Ed. on the date of his alleged appointment. Admittedly, he has acquired the qualification of M.Sc. - Zoology in the year 2011 after his alleged appointment in the year 2009.

18. In the light of aforesaid, the petitioners have made out a case for interference. The judgment and order passed by the learned Tribunal is unsustainable and warrants interference. The petition is allowed by quashing and setting aside the judgment and order dated 18th March, 2024 passed

by the learned Presiding Officer, School Tribunal, Latur in Appeal No.23/2019.

19. The parties to bear their own costs.
20. Civil Applications, if any, stand disposed of.

[ROHIT W. JOSHI, J.]

sga/2025