



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

WRIT PETITION NO. 1435 OF 2008

Murlidhar Limbaji Mapari,
Age 35 years, Occ. Nil,
R/o C/o Raghoji Laxman Shingne,
Deolgaon Mahi, at present.
Tal. Deolgaon Raja,
Dist. Buldhana

.....Petitioner

VERSUS

1. The Secretary
Mauli Magas Vargiya Shikshan Sanstha,
Wazer (Bk.),
Tal. Jintoor, Dist. Parbhani.
2. The Head Master,
Sant Tukaram Vidyalyaya,
Dhanaora,
Tal. Jintoor, Dist. Parbhani.
3. The Registrar,
Yashwantrao Chavan Maharashtra Open University,
Nashik.
4. The Education Officer (Secondary),
Zilla Parishad,
Parbhani.

.....Respondents

Ms. P. S. Talekar h/f Talekar and Associates, Advocate for Petitioner
Mr. V. H. Dighe, Advocate for Respondent Nos. 1 and 2
Mr. R. R. Tandale, AGP for Respondent/State

CORAM : R. M. JOSHI, J.
RESERVED ON : 30th JULY, 2025
PRONOUNCED ON : 05th AUGUST, 2025

JUDGMENT :-

1. This petition takes exception to the order dated 31.10.2007 passed by School Tribunal, Latur under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “MEPS Act”) bearing Appeal No. 107/2006 dismissing the said appeal filed by the petitioner.

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

The petitioner was appointed as Assistant Teacher in Sant Tukaram Vidyalaya, Dhanora, run by Mauli Magas Vargiya Shikshan Sanstha, Wazer. He worked from 01.07.1992 to 27.12.2001. It is his case that he was initially appointed as untrained Assistant Teacher for subject Mathematics on the basis of B.Sc. qualification. The said appointment order came to be issued on 01.07.1992 by Respondent No.1-Trust. This appointment was duly approved by Education Officer (Secondary), Zilla Parishad, Jalna. His services were continued in Sant Tukaram Vidyalaya, Dhanora, Tal. Jintoor, by order dated 10.06.1993. He, thereafter, worked continuously for more than a period of three years. Petitioner claims that in the meanwhile he applied for the admission to B.Ed. course in Yashwantrao Chavan Maharashtra Open University, Nashik. The said proposal seeking an admission for B.Ed. course

was recommended by the Head Master of the said school. After getting admission for the said course, he successfully completed the same in the year 1996. He, therefore, came to be confirmed in the service by order dated 27.02.1997. His appointment was also approved with effect from 06.07.1998 as a trained teacher as he had acquired the requisite qualification.

3. It is further case of the petitioner that the Registrar of Yashwantrao Chavan Maharashtra Open University, Nashik had informed Zilla Parishad, Parbhani, regarding cancellation of appointment of the petitioner to the B.Ed. Course by letter dated 14.09.2001. On the basis of the said communication, Education Officer (Secondary), Zilla Parishad, Parbhani directed Head Master of the school to terminate the services of the petitioner. Pursuant to the said order of the Education Officer, Management passed a resolution dated 27.12.2001 terminating the services of the petitioner on 27.12.2001. Petitioner filed an appeal challenging said termination before the School Tribunal, Aurangabad under Section 9 of the MEPS Act. It is his further case that he filed Writ Petition bearing No. 271/2002 taking exception to the order dated 27.05.2000 cancelling the admission to B.Ed. course issued by Yashwantrao Chavan Maharashtra Open University, Nashik. This Court granted rule. The said petition remained pending till the decision of the School Tribunal in the appeal, so also challenge thereof in the present petition. The School Tribunal

upheld the termination on the ground that petitioner's admission of B.Ed. course was canceled by the University.

4. Post filing of the petition subsequent events have occurred which are not in dispute. This Court in Writ Petition No. 271/2002 passed order dated 27.08.2014 and allowed the petition holding that the decision arrived by the University was without following principles of natural justice. The decision of University, therefore, was set aside with liberty to undertake a fresh enquiry by giving an opportunity to petitioner to explain his case. The university again canceled the admission of petitioner on the ground that the petitioner has failed to submit copy of approval order issued by Education Officer to the service of the petitioner as untrained teacher. The said order dated 14.08.2018 came to be taken exception by the petitioner by filing Writ Petition No. 13510/2019. This petition came to be allowed by Division Bench of this Court. The order passed by University is set aside. The challenge to the judgment and order dated 04.10.2022 passed by the Division Bench was unsuccessful before the Supreme Court in Special Leave Petition No. 19335/2023.

75. The questions in this petition arise for consideration and determination are as to whether the termination of the petitioner could be held to be illegal and he would be entitled for reinstatement and backwages with

consequential benefits i.e., retiral benefits. There is no dispute about the fact that the petitioner is shortly attaining the age of superannuation and is due to retire in August, 2025. Thus, question permitting the petitioner to actually work on reinstatement does not arise.

6. Learned counsel for petitioner submits that the termination of petitioner came to be effected only for the reason that his admission to the B.Ed. course was canceled by University. She drew attention of the Court to the communication issued by Education Officer directing the school to terminate the services of the petitioner and the resolution passed by the Management terminating his services on 27.12.2001. It is submitted that once the order passed by University of canceling his admission to the B.Ed. course is set aside and has attained finality, the order of termination must be held to be illegal. She submits that consequence of termination being held illegal, is that, the relief of reinstatement of the petitioner with full backwages and continuity of service would follow. She drew attention of the Court to the statement made by the petitioner before the School Tribunal indicating that the petitioner is not gainfully employed during the relevant time. Learned counsel, therefore seeks directions according. To support the submissions reliance is placed on the judgment of Hon'ble Supreme Court in case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and others (2013) 10***

Supreme Court Cases 324.

7. Learned counsel appearing for the Management and learned AGP opposed the petition. Though, it is not conceded that this would be the case of holding the termination to be illegal but they hardly could make any submissions to support the order of termination. It is the contention of the counsels that the petitioner was not holding the requisite qualifications and since the B.Ed. qualification acquired by the petitioner was canceled by the University, he was not having requisite qualification to work as an Assistant Teacher at all relevant time. It is thus submitted that the Management is not at the fault in terminating the services of the petitioner and Education Officer also was justified in calling upon the Management to terminate him from services. It is argued that the termination is effected in the year 2001 and though now in the year 2022, the order passed by the University of canceling the admission is set aside, there was no order obtained from this Court seeking permission to join the services. It is submitted that in the petition, no submission has been made that the petitioner is not gainfully employed after passing of the order by Tribunal. It is argued that the principle of “No Work-No Pay” would apply to the present case. It is further pointed out that after termination of the service of petitioner, by following due procedure, appointment has been made of another Teacher on the said post and as such it

would not be permissible to pay the wages to two different persons so also retiral benefits in respect of the same post.

8. This is a peculiar case wherein the parties to the dispute cannot be said to be at fault for actions being taken from time to time. Admittedly, petitioner was untrained teacher and was required to obtain the necessary qualification to continue in the services of the school. He, therefore, applied through school for obtaining requisite qualifications of B.Ed. from Yashwantrao Chavan Maharashtra Open University, Nashik. He acquired the said qualification of B.Ed. and, therefore, was made permanent in service. It is University, who has declared the admission of the petitioner to be invalid and as a result of which the petitioner ceased to have the qualification of B.Ed. In the light of this fact, Education Officer directed termination of the petitioner from service. The Management of the school therefore, by passing resolution, terminated the service of the petitioner. The School Tribunal negated the appeal filed by the petitioner essentially on the ground that his appointment is not as per the provisions of Section 5 of MEPS Act and that he is not holding requisite qualification, by judgment dated 31.10.2007.

9. Pertinently, though the petitioner had challenged the order of University of cancellation of his admission in Writ Petition No. 271/2002,

there was no stay granted to the order of University during the pendency of the said petition. This petition came to be decided on 27.08.2014 i.e., after the judgment and order passed by Tribunal. This Court though sets aside the order of the University but permits a fresh inquiry to be done and appropriate order to be passed after giving an opportunity of hearing to the petitioner. Pursuant to this order, University again cancelled the admission of the petitioner. This cancellation by order dated 14.08.2018 continued and remained on record till the same was set aside on 04.10.2022 by order passed by Division Bench of this Court in Writ Petition No. 13510/2019. This order was taken exception too in SLP No. 19335/2023 before the Supreme Court which came to be decided on 04.07.2023. It is thus on 04.07.2023, the order passed by this Court in Writ Petition No. 13510/2019 attain the finality. Now in view of the said order, the admission of the petitioner for B.Ed. course stood restored and consequently he can be said to have acquired requisite qualification of B.Ed. and said acquisition of the qualification would relate back to the date on which the same was conferred upon the petitioner. In view of this fact, now it needs to be held that the termination of petitioner for non acquisition of the qualification cannot sustain and must be declared as illegal. Consequently his order of termination deserves to be set aside and accordingly set aside.

10. Now question arises as to whether the petitioner would be entitled

for full backwages and consequential service benefits. It is sought to be argued on behalf of the respondents that in place of the petitioner, another teacher came to be appointed and since he worked during the relevant period, he was paid wages. According to them, no wages can be paid to two different persons in respect of the same post, so also retiral/pensionary benefits.

11. As observed earlier, there is no fault of the parties to the petition in effecting termination of the services of the petitioner. The Management of the school, therefore, cannot be held responsible for illegal termination of the services of the petitioner nor it could be said to be a wrong committed by Education Officer (Secondary) in directing management so.

12. Ordinarily, an employee once makes statement that he was not gainfully employed during the relevant period, he would be entitled to receive backwages. The facts appearing in this petition are however peculiar in nature. Here, in this case, it is pertinent to note that the University has canceled his admission to B.Ed. course by order dated 14.09.2001. This order of University was challenged in Writ Petition No. 271/2002 however no interim relief was granted therein staying the said order passed by the University. Thus, practically, during the entire period of pendency of the Writ Petition No. 271/2002, the petitioner was not qualified to hold the post in question. As a

result of which he could not have been allowed to work even if he wished so. The order of University dated 14.09.2001 came to be set aside only on 27.08.2014. This Court, however, on merit, does not set aside the order of University but the order came to be set aside only on the ground that the opportunity of hearing was not given to the petitioner. A fresh inquiry therefore, was allowed. Pursuant to the fresh inquiry, University again passes order canceling the admission of petitioner on 14.08.2018. Pertinently, though petition was filed in the year 2019 being Writ Petition No. 13510/2019 even in this second round of litigation, there was no stay to the order of University of cancellation of the admission. This order came to be set aside finally on 04.10.2022. Thus, it can be said that on 04.10.2022, right accrued to the petitioner to work. Thus from the said date, it could be said that the petitioner would be entitled to receive full backwages till his date of superannuation.

13. Though, there was challenge to the order passed by University by the petitioner by filing petition before this Court, the order of University was not sought to be stayed or was not stayed by this Court during this relevant time. The said period is quite long i.e., from 14.09.2001 till 04.10.2022 during which he has not worked. This Court, therefore, is of considered view that for in-action on the part of the petitioner to seek any relief of stay to the order passed by University, the petitioner cannot be said to be entitled to receive

backwages during this period. Having regard to the extraordinary circumstances involved here in this case and for above reasons petitioner would not be entitled to receive backwages for the period prior to 04.10.2022.

14. However, since the order of termination is held to be illegal with restoration of the qualification of B.Ed. of the petitioner retrospectively and that he was not at fault and as his services are not terminated for any act attributable to him, he is held to be entitled for the continuity of service and for all retiral/pensionary benefits. It is, therefore, directed that the respondents to pay full backwages to the petitioner from 04.10.2022 till the date of his superannuation. Respondents are further directed to pay all consequential benefits to the petitioner except for the backwages for the period from 27.12.2001 to 04.10.2022, including pensionary benefits.

15. Petition stands partly allowed in above terms.

(R. M. JOSHI, J.)

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