



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

WRIT PETITION NO. 12195 OF 2021

Ratnakar Rajaram Potdar .. Petitioner

Versus

Vidya Tulsidas Maktedar and others .. Respondents

Smt. Anjali Dube (Bajpai), Advocate for the Petitioner.

Mr. S. P. Joshi, AGP for Respondent No. 4.

Mr. S. S. Jadhavar, Advocate for Respondent No. 1.

Mr. S. R. Shirsat, Advocate for Respondent.

WITH

WRIT PETITION NO. 9092 OF 2022

Ratnakar Rajaram Potdar .. Petitioner

Versus

The State of Maharashtra

Through Its Principal Secretary and others .. Respondents

Mr. Prashant R. Nangare, Advocate for the Petitioner.

Mr. S. P. Joshi, AGP for Respondent Nos. 1 and 5.

Mr. Rahul A. Tambe, Advocate for Respondent No. 6.

CORAM : KISHORE C. SANT, J.

DATED : 08th JANUARY, 2025.

P C. :-

. Both the petitions are at the instance of the same petitioners. The respondents are the same except respondent No. 1 in Writ Petition No. 12195/2021. The respondent Nos. 1 and 6 in Writ Petition

No. 9092/2022 are not party in Writ Petition No. 12195/2021.

2. The Writ Petition No. 12195/2021 is arising out of order of rejection of intervention application of the petitioner in Appeal No. 103/2020 passed by the learned Presiding Officer, School Tribunal, Solapur dated 06.09.2021. The petitioner had filed an application for impleading him as a party in the said appeal. The Writ Petition No. 9092/2022 is filed challenging the judgment and order passed in Appeal No. 02/2016 by the learned Presiding Officer, School Tribunal, Solapur whereby the appeal of the petitioner came to be dismissed by order dated 28.04.2022.

3. The facts giving rise in short are that in the respondents school post of senior clerk had fallen vacant in November 2010 due to retirement of a senior clerk. The junior clerk who was working in the said school was eligible to get promotion to his post. The said person however was implicated in an offence and therefore, was absconding. As the said person was absconding he was placed under suspension by the management. In view of the above position, there was vacancy even of the post of junior clerk in the school. The Headmaster therefore sent a letter to the Education Officer on 30.05.2011 seeking permission to allow the Headmaster to fill up post of the Clerk. The said letter was replied by the Education Officer. It was stated that, if in

case the management is not functioning and if there is no school committee in existence, a non teaching staff can be appointed by the Headmaster for a period of one year on temporary basis. It is on the said letter the Headmaster appointed the petitioner to the post of Junior Clerk by letter dated 15.06.2012. His appointment was continued for a considerable period till 2016. It is the case of the petitioner that subsequently in 2016 he was terminated without any reason.

4. In view of termination, the petitioner had filed an Appeal No. 02/2016 before the learned School Tribunal. The learned School Tribunal initially allowed the appeal by judgment and order dated 08.07.2020. In Writ Petition No. 6927/2020 challenging the said order by the management, this Court set aside the order in the appeal and remanded the matter back to School Tribunal for fresh decision.

5. After remand, the learned Presiding Officer, School Tribunal dismissed the appeal. It is this order which is under challenge in Writ Petition No. 9092/2022. In the meantime, the respondent No. 1 in Writ Petition No. 12195/2021 was appointed to the post of Junior Clerk and subsequently she was also terminated. She approached the learned School Tribunal by filing an Appeal No. 103/2020. As the

petitioner's appeal was already allowed by that time, he filed an application seeking intervention in the Appeal No. 103/2020 stating that he is a necessary party as he was appointed to the said post and his appeal was allowed. This application came to be rejected by order dated 06.09.2021 which is the subject matter of Writ Petition No. 12195/2021.

6. Heard the parties of both sides.

7. The learned advocate for the petitioner vehemently argued that the petitioner was appointed by following due process of law by the order of the Headmaster. Since there was dispute between the management and as there was no control of any of the management the Headmaster had sought permission to fill up the post. The learned Education Officer had clearly replied that the Headmaster had the authority to appoint a non teaching staff when school committee is not in existence and when there is dispute in the management. He thus submits that, the Headmaster has rightly exercised his power and appointed the petitioner to the post of Junior Clerk. He was continuous till 15.01.2016 and thus he is deemed to be confirmed. The services of the petitioner could not have been terminated without following due process of law. The learned School Tribunal had

committed illegality in recording a finding that the petitioner has failed to prove that his appointment was by following due process of law. He thus submits that, other finding recorded by the learned School Tribunal that there was no vacant post available in the school is also against record in view of the letter by the Headmaster to the Education Officer. He thus prays for allowing the writ petition.

8. Mr. Jadhavar, learned advocate for respondent No. 1 in Writ Petition No. 12195/2021 vehemently opposes the writ petition. He submits that it was very much necessary for the petitioner to prove the fact that he was duly appointed to the post of Clerk. He specifically submits that even from the circular dated 23.12.1996 it is clear that such appointment can be made only for one year by the Headmaster. Within one year it is for the management to form a school committee and to fill up the post thereafter. He submits that the Headmaster is never authorised by the Education Officer to make appointment of any person on probation basis. The power is given only to handle the temporary situation. This power cannot be taken to be a power to appoint a permanent employee.

9. The learned advocate further submits that the Headmaster at the relevant time was placed under suspension as there were various

criminal proceedings pending against him. Even the petitioner's own case is that he was not allowed to sign the muster roll by the Headmaster. So the case of the petitioner is contrary to his own stand that he was appointed by the Headmaster. He thus prays for dismissal of the writ petition.

10. So far as Writ Petition No. 12195/2021 is concerned, Smt. Dube vehemently argued that when the petitioner had filed an application for intervention, the appeal of the petitioner was allowed by the learned School Tribunal. The outcome of Appeal No. 103/2020 would clearly affect the rights of the petitioner and therefore, it was necessary to allow the application. The learned advocate claims that the petitioner was appointed. The learned Presiding Officer has lost the site of this material aspect.

11. Mr. Shirsat, learned advocate appearing for the management submits that, in view of subsequent events this petition has become infructuous and the fate of the petitioner would depend upon the fate of Writ Petition No. 9092/2022. He submits that now the petitioner's appeal is rejected showing that he has no locus in Appeal No. 103/2020.

12. The learned A.G.P. also vehemently opposes the writ petition. He

submits that in view of circular dated 23.12.1996 the Headmaster is having power only to appoint any person on a non teaching post for one year on temporary basis. Taking the circular as it is, it is clear that no power is given to a Headmaster to give appointment on probation. Now the administrator is appointed because of the disputes in the management. He prays for dismissal of the writ petition.

13. The learned advocate Mr. Tambe for respondent No. 6 in Writ Petition No. 9092/2022 submits that the petition deserves to be dismissed.

14. From the record and from the submissions it is clear that, the petitioner was appointed by the Headmaster who was under suspension at the relevant time. Though the learned advocate for the petitioner submits that the permission to place the Headmaster under suspension was revoked by the Deputy Director of Education and it was directed to allow the Headmaster to be reinstated in the school from 05.06.2012 the Headmaster was thus very much in service. This Court finds that, to place an employee under suspension is right of the management. The only effect suspending the employee without approval is about the payment of subsistence allowance and nothing more. There is no order on record to show that the Headmaster was reinstated in service and was working on the date of appointment of

the petitioner. This Court has considered the observations and findings of the learned School Tribunal. This Court does not find any substance in both the submissions that the appointment of the petitioner was on vacant post and that the appointment was made by following due process of law. Though there is advertisement on record, but the said advertisement was issued by the Headmaster. The appointment order itself shows that the petitioner was appointed on temporary basis from 15.06.2012 for one year. The order further stipulates that after the said period of one year is over his services would be terminated without any intimation. There is no subsequent order showing that the petitioner was continued for next year as it is also case of the petitioner that he was not allowed to sign the muster roll. This also shows that there is no record to show that he has actually worked in the school even during the period of one year. From the pleading also it is seen that he was not allowed to sign the muster roll.

15. This Court finds that, the petitioner has failed to prove that he was duly appointed and was working in the school. Though the muster roll was produced by the petitioner, however, the said muster roll was not found in the management and for this reason this Court considered that the findings are rightly recorded by the learned School Tribunal to that effect. This Court need not record any findings so far as the

Appeal No. 103/2020 is concerned. No perversity is pointed out calling for interference in the impugned judgment. The Writ Petition No. 9092/2022 deserves to be dismissed.

16. In view of the above discussion, this Court finds that there is no merit even in the Writ Petition No. 12195/2021 and the same also deserves to be dismissed. Hence, the following order :

ORDER

. Both the writ petitions stand dismissed. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.