



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

WRIT PETITION NO. 12685 OF 2024

Nita Dinkar Patil

VERSUS

The State Of Maharashtra Through Its Secretary And Others

Mr. V. D. Sapkal i/b Mr. S. R. Sapkar a/w Mr. Y. A. Jadhav, Advocate for
Petitioner

Mr. S. B. Jadhav, AGP for Respondent Nos. 1 and 2

Mr. N. N. Desale, Advocate for Respondent No. 3

CORAM : R. M. JOSHI, J.

DATE : 07th April, 2025

PER COURT :-

1. None appears for Respondent Nos. 4 and 5 in spite of service of notice. Their absence indicate that they have no inclination to oppose the petition. Hence, petition is decided in their absence.

2. Petitioner is taking exception to the impugned order dated 07.10.2024 passed by School Tribunal in the appeal filed under Section 4 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. (for short “the Act”) being appeal No. 18/2014.

3. Petitioner claims to have been appointed as “Shikshan Sevak” by Respondent No. 4 - Management for a period of 3 years. After satisfactory

completion of a period of 3 years as Shikshan Sevak, the Education Officer of Zilla Parishad, Dhule has granted approval to the said post. She claims to have been confirmed in service with effect from 01.10.2009. Her proposal was sent for confirmation to the post of Assistant Teacher with effect from 01.10.2009. There is no dispute about the fact that approval was granted by the Education Officer to the said appointment. Petitioner claims that Respondent Nos. 4 and 5 terminated from service with effect from 03.02.2014 without conducting any inquiry or providing any reason for termination. Since, the said termination is otherwise termination, she preferred appeal under Section 9 of the Act before the School Tribunal. Contesting respondent caused appearance and filed reply so also Education Officer filed affidavit before the School Tribunal. School Tribunal by passing impugned order, dismissed the appeal. Hence, this petition.

4. Learned senior counsel appearing on behalf of the petitioner has drawn attention of the Court to the reply filed by Respondent-Management before the School Tribunal. It is his submission that in the said reply, there was no issue raised with regard to the validity of appointment of petitioner to the post of Assistant Teacher. It is his submission that in absence of any such dispute being raised by the management firstly, it was not open for the Tribunal to frame issue in that regard and to dismiss the appeal by recording finding that

the appointment of the petitioner is not in accordance with the rules. It is his submission that it is a fit case for allowing the appeal filed before the School Tribunal, since management has not claimed the termination of petitioner by following due process of law or conducting any inquiry against her.

5. Learned counsel appearing on behalf of Education Officer submits that an affidavit filed indicating validity of the appointment of petitioner to the post of Shikshan Sevak as well as Assistant Teacher.

6. Perusal of the record indicates that respondent - management appeared before the School Tribunal and resisted the grant of relief on all other grounds but for taking exception to the legality of the appointment of petitioner to the post of Assistant Teacher. No doubt, there is contention raised in the reply that some misconducts were committed by the petitioner and that she has stopped signing muster roll. In so far as the findings of the School Tribunal with regard to the validity of the appointment and confirmation of the petitioner as Assistant Teacher is concerned, the said issue never arose for determination of the Tribunal in absence of any plea being raised by other side. This Court, therefore, finds substance in the contention of the learned counsel for the petitioner that the issue with regard to the appointment of the petitioner as Shikshan Sevak by following due procedure of law or otherwise ought not

to have been taken up or decided by the Tribunal. In any case, there is affidavit filed by the Education Officer confirming the correctness of the legality of the petitioner. As such, on both counts, findings recorded by the School Tribunal cannot sustain.

7. A careful perusal of the order impugned indicates that no finding is recorded by the Tribunal on the issue as to the oral termination of the petitioner as claimed by her. Such finding of fact cannot be recorded for the first time in exercise of the writ jurisdiction. Hence, Court finds no other option but to relegate the appeal back to the Tribunal for decision afresh.

8. Impugned order, therefore stands set aside. Appeal No. 18 of 2024 is relegated to the Tribunal for decision afresh as per law. Since appeal is of year 2014, same be decided within a period of 6 months.

9. Petition stands allowed in above terms.

(R. M. JOSHI, J.)

bsj