

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6529 OF 2002
WITH
INTERIM APPLICATION (ST) NO.37707 OF 2024
IN
WRIT PETITION NO. 6529 OF 2002

Shankar Bhagwat Satpute

.. Petitioner

Versus

The President, Co-ordination Committee, Vidya
Mandir Vairag and Ors.

.. Respondents

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- Ms. Anita Agarwal a/w. Ms. Ashwini B. Jadhav, Advocate for Petitioner.
- Mr. N.V. Bandiwadekar, Senior Advocate a/w. Mr. I.M. Khairdi, Advocate for Respondent Nos.1 and 2.
- Mr. Y.D. Patil, AGP for Respondent No.3 – Education Officer.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 06, 2025.

P.C.:

1. Present Writ Petition impugns judgement and order dated 17.01.2002 passed by the Additional School Tribunal, Pune Region, Solapur dismissing the Appeal No.97 of 2000 filed by Petitioner challenging termination order dated 27.03.2000 issued by Respondent Nos.1 and 2.

2. Briefly stated, facts germane for adjudication of the Writ Petition are as follows:-

2.1. One Mr. Shivaji Birmal Solankar was working as a full-time teacher in Respondent No.2 - School which receives 100% grant-in-aid

from the State Government and is run by Respondent No.1. The division in which he was working was reduced / cancelled and therefore on 01.09.1994 he was retrenched w.e.f. 01.10.1994. Against the said order, Mr. Shivaji Solankar filed Appeal No.222 of 1994 before the School Tribunal, Solapur.

2.2. In the interregnum, on 27.06.1998 Respondent No.4 - Mr. Sunil Trimbak Kale was appointed in a vacant post of teacher in Respondent No.2 – School. On 15.04.1999 approval was granted to the appointment of Respondent No.4 by Respondent No.3 – Education Officer.

2.3. However in the the meanwhile on 22.03.1999 the School Tribunal allowed Appeal No.222 of 1994 filed by Mr. Shivaji Solankar and Respondent Nos.2 and 3 were directed to reinstate him with backwages. In compliance of the aforesaid order, on 16.04.1999 the Respondent No.2 – School reinstated Mr. Shivaji Solankar and discharged Respondent No.4 from the services.

2.4. On 31.07.1999, a teacher working in higher secondary school of Respondent No.1 attained the age of superannuation and retired from services and on 01.08.1999 that vacancy was filled by promoting one teacher namely Mrs. Darade from the Secondary School and proposal for approval of her appointment was forwarded to the Deputy Director Education which was pending.

2.5. Thereafter on 02.08.1999 the vacancy which had arisen in the Secondary School i.e. Respondent No.2 - School due to promotion of Mrs. Darade was filled by appointing Petitioner. This appointment of the Petitioner was made in lieu of the advertisement dated 03.03.1999 issued by Respondent No.1 and Petitioner was issued appointment order dated 31.07.1999. Thereafter a proposal was submitted to Respondent No.3 – Education Officer however owing to backlog, proposal of the Petitioner was not approved and was intimated to him by order dated 22.10.1999.

2.6. In the meantime, on 14.03.2000 the Deputy Director of Education rejected the proposal and did not grant approval for appointment of Mrs. Darade in the Higher Secondary School and therefore she had to be repatriated to the Secondary School in her original position. Owing to repatriation of Mrs. Darade, on 27.03.2000 services of the Petitioner were discontinued by issuing termination order.

2.7. In the interregnum, another teacher of Secondary School of Respondent No.2 retired on 01.02.2000 and in his place again Respondent No.4 was appointed and by order dated 23.03.2000 his appointment was approved by Respondent No.3 – Education Officer.

2.8. In the above backdrop, against that order dated 27.03.2000 Petitioner filed Writ Petition No.5236 of 2000 in this Court. By order

dated 04.10.2000, the Division Bench of this Court disposed of the Writ Petition by granting liberty to Petitioner to file Appeal within 4 weeks.

2.9. In view of the above Petitioner filed Appeal No.97 of 2000 before the School Tribunal, Solapur which was dismissed by order dated 17.01.2002.

2.10. Hence, the present Writ Petition.

3. Ms. Agarwal, learned Advocate for Petitioner would submit that appointment of Petitioner was in lieu of the advertisement published by Respondent No.1 which was against a regular and permanent vacancy. She would submit that the appointment order of Petitioner nowhere mentions that it was a temporary post as sought to be contended by Respondent Nos.1 and 2. She would submit that though appointment of Petitioner was initially for a period of two years on probation it cannot be construed that he was appointed on a temporary post. She would submit that though Petitioner belongs to VJ-NT category, his appointment was made against an open category post considering his educational qualifications.

3.1. She would submit that as per Section 5(3) of the Maharashtra Employees of Private Schools (Conditions of service) Regulation Act, 1977, services of probationers cannot be terminated unless their services are found to be unsatisfactory. She would submit

that services of the Petitioner in the present case have not been terminated for being unsatisfactory but due to some extraneous reason whereas Respondent No.4 appointed subsequent to Petitioner was continued in service by Respondent Nos.1 and 2.

3.2. She would submit that the finding recorded by the School Tribunal that there was no vacant post in Respondents' School is erroneous as there was one vacant post owing to repatriation of the teacher from higher secondary school to secondary school and therefore the post of teacher in higher secondary school remained vacant. She would submit that nowhere in the appointment order of Petitioner it was mentioned that his appointment was a conditional appointment subject to approval to appointment of the teacher in the Higher Secondary School and his appointment was done against a sanctioned vacant post.

3.3. She would submit that the School Tribunal has not considered the aforesaid facts and dismissed the Appeal filed by Petitioner on ground that there was no vacant post. She would submit that despite the orders of this Court of considering the application of Petitioner against any vacant post which may arise, Respondent Nos.1 and 2 have failed to consider the same which has caused tremendous loss to him.

3.4. In view of her above submissions, she would urge the Court to allow the Writ Petition and quash and set aside the order dated 17.01.2002 passed by the School Tribunal.

4. *PER CONTRA* Mr. Bandiwadekar, learned Senior Advocate appearing for Respondent Nos.1 and 2 would support the order passed by the School Tribunal and would submit that Petitioner was appointed only on probation due to the vacancy which had arisen owing to promotion of one teacher who belonged to NT category to the Higher Secondary School and Petitioner's contention that he was retrenched from services therefore cannot be countenanced as he was on probation in place of the promoted teacher and given termination order citing his termination as the school had only one reserved post for NT category and the said promoted teacher was repatriated to her original post due to rejection of her proposal. He would submit that the order dated 17.01.2002 passed by the School Tribunal is a well reasoned order considering all facts and circumstances and does not call for any interference. He would therefore urge the Court to dismiss the Writ Petition.

5. Mr. Patil, learned AGP for Respondent No.3 – Education Officer would draw my attention to the Affidavit-in-Reply dated 07.05.2025 filed by Ms. Swati Ashish Havele, Deputy Education Officer and submit that Respondent No.4 against whose post Petitioner is

claiming appointment has passed away in the year 2024 and his legal heirs are claiming pension benefits from the State Government which is pending due to *inter se* family dispute. He would submit that the appointment of Petitioner was not done by following due process of law and is contrary to provisions of Section 5 of the MEPS Act. He would therefore urge the Court to dismiss the Writ Petition being devoid of merits.

6. I have heard Ms. Agarwal, learned Advocate for Petitioner, Mr. Bandiwadekar, learned Senior Advocate for Respondent Nos.1 and 2 and Mr. Patil, learned AGP for Respondent No.3 – Education Officer and with their able assistance perused the record and pleadings of the case. Submissions made by the Advocates have received due consideration of the Court.

7. In the present case it is seen that though Petitioner belongs to VJ-NT category, his appointment was done by Respondent No.1 – Institution in the Respondent No.2 School against open category post as can be seen from the advertisement published by Respondent No.1. It is admitted that the position against which Petitioner was appointed was undoubtedly a sanctioned vacant post.

8. It is seen that the advertisement was published in March 1999 prior to promotion of Mrs. Darade from the Secondary School to the Higher Secondary School in August 1999 and therefore it cannot

lie in the mouth of Respondent Nos.1 and 2 to contend that appointment of Petitioner was done due to the vacancy arising due to promotion of Mrs. Darade to the Higher Secondary School and owing to her repatriation services of Petitioner had to be terminated. There is nothing placed on record to show that Petitioner was appointed on temporary basis. *Prima facie*, on above admitted facts termination of the Petitioner is clearly invalid and contrary to law.

9. It is surprising to see that though Respondent No.4 was appointed subsequent to Petitioner, his services were continued and instead the Petitioner who was senior to him was terminated from services. Be that as it may, owing to his demise on 22.01.2024 there is now a vacancy available in the Respondent No.2 – School as informed by Mr. Patil and Mr. Bandiwadekar.

10. Petitioner is out of service since 27.03.2000 and will attain the age of superannuation i.e. 58 years in 2029 and considering the above facts and circumstances of the case, in my opinion, it would be appropriate to reinstate the Petitioner on the said post with continuity in service. However Petitioner shall not be entitled to any backwages during the period from 27.03.2000 upto his date of reinstatement. In that view of the matter, the Writ Petition is allowed giving the following directions:-

- (i) Impugned order dated 17.01.2002 passed by the School Tribunal, Solapur in Appeal No. 97 of 2000 is quashed and set aside;
- (ii) Respondent Nos.1 and 2 are directed to immediately reinstate the Petitioner within a period of one (1) week from the date of this order with continuity in service but without any backwages;
- (iii) Respondent Nos.1 and 2 are directed to compute the pay fixation of Petitioner as per the 5th, 6th and 7th Pay Commission within a period of 4 weeks from today; Respondent Nos.1 and 2 are directed to update the service book of Petitioner by giving continuity in service notionally within a period of four (4) weeks and forward the proposal for approval of Petitioner's appointment to the Respondent No.3;
- (iv) Respondent No.3 – Education Officer is directed to obtain sanction from the Competent Authority within a period of four (4) weeks thereafter;
- (v) Respondent No.3 – Education Officer is directed to ensure that Petitioner is approved in services against the sanctioned post and his monthly salary and all emoluments shall be paid to him in accordance with law as directed in this order.

- 11.** All parties shall act on a server copy of this order.
- 12.** With the above directions, Writ Petition is allowed and disposed. In view of the disposal of the Writ Petition, pending Interim Application (St.) No.37707 of 2024 is accordingly disposed.

[MILIND N. JADHAV, J.]

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