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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 432 OF 2025

Lokseva Udyog Sheti and Shikshan
Vikas Sanstha Through Its Secretary ... Petitioner
V/s.
Shailendra Shivaji Maske and Ors. ... Respondents

Mr. Abhijit A. Devkhile for the Petitioner.

Ms. Anant Vadgaonkar for Respondent No.1.

Ms. Savita Prabhune, AGP for Respondent No.2-State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 7, 2025

P.C.:

1. Challenge in the present writ petition is directed against the order dated 21st November 2024, passed by the learned Presiding Officer, School Tribunal, Pune Region at Solapur, in Appeal No. 24 of 2022. By the said order, the learned Tribunal was pleased to allow the appeal preferred by respondent No.1 herein, thereby setting aside the action of the petitioner-Management in preventing respondent No.1 from discharging duties on the post of Assistant Teacher in the non-grant-in-aid school conducted by the petitioner.

2. It is the case of respondent No.1 that he came to be appointed on the post of Assistant Teacher in the year 2017, upon following due process of selection against a sanctioned post. It is

further contended that respondent No.1 possessed the requisite educational qualifications prescribed for the said post and was eligible and qualified to be appointed thereto. Respondent No.1 diligently served the institution till the year 2020. However, according to respondent No.1, in the year 2022, he was abruptly denied the opportunity to report for duty and resume service, thereby compelling him to institute the statutory appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as “the MEPS Act”).

3. The petitioner-Management contested the said appeal by filing its written statement, contending inter alia that respondent No.1 was unauthorisedly absent from duty from 15th June 2021 till the date of filing of the appeal. It was submitted on behalf of the petitioner that, despite issuance of letters directing respondent No.1 to report for duty, respondent No.1 failed to resume his duties without offering any justifiable reason. It was further contended that although the Management had the option of initiating disciplinary proceedings against respondent No.1 on account of his alleged unauthorized absence, no inquiry was in fact conducted. On this premise, it was contended by the petitioner-Management that there was no order of termination passed against respondent No.1. Consequently, it was urged that the appeal filed by respondent No.1 under Section 9 of the MEPS Act was not maintainable in law.

4. Upon appreciation of the pleadings and the material placed on record, the learned School Tribunal recorded a finding that the

initial appointment of respondent No.1 was made by following due procedure of law. The Tribunal placed reliance on the documents produced, namely, the approval to the sanctioned post, the advertisement inviting applications, the list of eligible candidates, the resolution of the petitioner-Management dated 11th June 2017 appointing respondent No.1 to the post of Assistant Teacher, the joining report of respondent No.1, and the consequential approval granted by the Education Officer to his appointment. The Tribunal accordingly concluded that respondent No.1 was validly appointed and was entitled to protection under the provisions of the MEPS Act.

5. It is pertinent to note that no issue regarding lack of requisite qualification of respondent No.1 or the absence of a sanctioned vacant post was raised by the petitioner-Management either before the School Tribunal or in the present proceedings. In the absence of any challenge to the foundational validity of the appointment of respondent No.1, the learned School Tribunal has rightly recorded a finding that the services of respondent No.1 could not have been terminated without conducting a disciplinary inquiry in accordance with law.

6. The Tribunal has placed reliance on the settled principle that once an employee acquires the status of a permanent employee, his services cannot be dispensed with except by following the procedure prescribed under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules framed thereunder. The law is well settled that even in cases of alleged abandonment of service or unauthorized absence, an

inquiry is mandatory before dispensing with the services.

7. In the present case, considering the reasons recorded by the learned School Tribunal and upon being satisfied that respondent No.1 had acquired the status of a permanent employee and that no inquiry was conducted prior to his termination, I am of the considered view that the order of reinstatement passed by the learned School Tribunal does not suffer from any infirmity warranting interference under Article 226 of the Constitution of India.

8. However, upon a careful perusal of the impugned order, it appears that the learned School Tribunal has directed the payment of back wages to respondent No.1. On examination of the record, it is evident that the appeal memo filed by respondent No.1 does not contain any specific averment asserting that he was not gainfully employed elsewhere after the alleged termination. Further, no affidavit to that effect has been filed by respondent No.1 during the pendency of the appeal proceedings before the Tribunal.

9. The Hon'ble Supreme Court in *Dipali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others*, (2013) 3 SCC 330, has laid down the law that an employee claiming back wages must specifically plead and assert that he/she was not gainfully employed elsewhere after termination. Only upon such assertion being made on oath, does the burden shift on the employer to prove otherwise. In the absence of such pleading or affidavit, respondent No.1 has failed to discharge the initial

burden of proof, thereby disentitling him from the relief of back wages.

10. Therefore, in my considered view, the direction issued by the learned School Tribunal to grant back wages to respondent No.1 cannot be sustained in law and deserves to be set aside.

11. At this stage, the learned Advocate for the petitioner submitted that during the pendency of the appeal before the School Tribunal, the school has been closed down, and further that the school is a non-grantable institution. It was urged that in view of the closure, the procedure prescribed under Rule 25 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, need not be followed.

12. In my considered opinion, the said submission is devoid of merit. The power of the School Tribunal to grant the relief of reinstatement is predicated upon the finding of illegal termination of service without following due process of law. The closure of the institution during the pendency of the appeal cannot obliterate or nullify the illegality committed at the time of termination. Reinstatement is the natural consequence where the termination is found to be illegal unless there are supervening circumstances which completely frustrate the relief. Mere closure of the institution during litigation, without compliance of due process for closure under the MEPS Act and Rules, cannot affect the Tribunal's power to order reinstatement.

13. If indeed the school has been closed, it would be open to the petitioner-Management to either amicably settle the matter with

respondent No.1 by offering adequate monetary compensation to the satisfaction of the teacher in lieu of reinstatement, or else to comply with the reinstatement order passed by the Tribunal in accordance with law. The choice in this regard would rest with the petitioner-Management.

14. With these clarifications and modifications, the writ petition stands disposed of. No order as to costs.

(AMIT BORKAR, J.)