

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11234 OF 2024

Rajaram Gunda Bajbale

.. Petitioner

Versus

President / Secretary,
Malludevi Shikshan Prasarak Manda, Ghorpadi,
Taluka – Kavathemahankal, District – Sangli and
Ors.

.. Respondents

.....

- Ms. Archana Gaikwad, Advocate for Petitioner.
- Mr. Jay Kholiya a/w. Mr. Harshal Khavale and Mr. Rohan Mamande, Advocates for Respondent Nos.2 and 4.
- Ms. Snehal Jadhav, AGP for Respondent No.3.

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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 04, 2025

P.C.:

1. Heard Ms. Gaikwad, learned Advocate for Petitioner; Mr. Kholiya, learned Advocate for Respondent Nos.2 and 4 and Ms. Jadhav, learned AGP for Respondent No.3.

2. This Writ Petition assails the validity and legality of judgement and order dated 20.11.2017 passed by the Presiding Officer, School Tribunal, Kolhapur in Appeal No.17 of 2016.

3. Briefly stated, the relevant facts required for adjudicating the present Writ Petition are as follows:-

3.1. Respondent No.1 is a Public Trust which manages the New English School, Dudhebhavi, Taluka – Kawathemahankal, District –

Sangli.

3.2. In the years 2002 – 2003, there were two vacant posts of peons in the School for which Respondent No.1 issued an advertisement for recruitment process in the local newspaper in Daily ‘Agradut’ on 26.08.2002 and invited Applications from suitable persons. In response to the said advertisement, Petitioner applied for the post of peon. Recruitment and procedure was carried out as per the procedure prescribed under the Maharashtra Employees of Private Schools, Regulations Act, 1977 and the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short ‘**M.E.P.S, Act**’ and ‘**M.E.P.S Rules**’) and Petitioner was selected from the reserved category and appointed as peon on and from 16.09.2002 initially on probation on clear vacant post.

3.3. His letter of appointment was issued which is appended at page No.12 of the Writ Petition alongwith appointment order but Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli did not sanction the proposal for approval of appointment of Petitioner despite the School pursuing it. It is seen that since the year 2003 onwards, the proposal for approval of Petitioner on the sanctioned post of peon was sent every year by Respondent No.2 – Head Master of the School managed by Respondent No.1 – Trust but the same was neither approved nor rejected by Respondent No.3 and

was kept pending as it is.

3.4. In the meanwhile, Petitioner continued to serve the School, completed his probation on 16.09.2004 and even thereafter continued to be in the service of Respondent No.1 in the School. Thus by virtue of provisions of Section 5(2) of the M.E.P.S. Act, Petitioner became a permanent employee of the School.

3.5. The service record and credentials of the Petitioner are clean and unblemished right from the beginning until the present controversy which erupted in the year 2016 which is almost 14 years later. It is seen that on 17.01.2016, Respondent Nos.1 and 2 obstructed Petitioner from signing the muster roll on the ground that there was no approval accorded by Respondent No.3 to the proposal of his appointment and therefore they expressed their unwillingness to continue his services.

3.6. Thus on 17.01.2016, Respondent Nos.1 and 2 orally terminated the services of Petitioner without following the due process of law. This action of Respondent Nos.1 and 2 being arbitrary, *malafide* and illegal was challenged by Petitioner before the School Tribunal by filing statutory Appeal No.17 of 2016 against order of termination.

3.7. By virtue of the impugned judgement and order dated 17.01.2016, the learned Presiding Officer of the School Tribunal,

Kolhapur partly allowed the Appeal and rejected the prayer of setting aside the order of termination dated 17.01.2016, as also prayer for re-instatement. Being aggrieved, Petitioner approached this Court by way of filing the present Writ Petition.

4. Ms. Gaikwad, learned Advocate for Petitioner would submit that despite Petitioner being in service for more than almost 14 years, without following the due process of law, his services were terminated abruptly without any reason. She would submit that Petitioner was appointed on a sanctioned vacant post by following the due process of law and therefore his abrupt termination on the premise that his proposal of appointment was not sanctioned even after 14 years despite the Management repeatedly pursuing it with Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli cannot be an acceptable reason since Petitioner is deemed to be permanent employee under the by provisions of M.E.P.S. Act and Rules thereunder.

5. She would submit that the learned Tribunal failed to consider non-approval by Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli to the proposal of appointment of Petitioner as a ground for termination of service which cannot be considered as a ground for termination especially in view of decision of this Court *St. Ulai High School Vs. Devendraprasad Jagannath Singh*¹.

¹ 2007 (1) Mh.L.J. 597.

She would submit that action of termination of Respondent Nos.1 and 2 is completely highhanded, illegal and cannot be countenanced in law in view of various decisions of this Hon'ble Court and Supreme Court and the said decision is illegal.

6. She would submit that Petitioner was appointed after following the due process of recruitment and selection by inviting Application from eligible persons from the public at large by public advertisement and rendered impeccable and unblemished service for 14 years in the School of Respondent No.1.

7. She would submit that said regular service of permanent character cannot be abruptly terminated without assigning any reason whatsoever and Petitioner is therefore entitled not only to reinstatement but also entitled to full backwages in the present facts and circumstances.

8. I have heard Ms. Gaikwad, learned Advocate for Petitioner; Mr. Kholiya, learned Advocate for Respondent Nos.2 and 4 (School) and Ms. Jadhav, learned AGP for Respondent No.3 (Education Officer) and with their able assistance perused the record of case. Submissions made by learned Advocates have received due consideration of Court.

9. The judgement and order dated 20.11.2017 passed by the School Tribunal, Kolhapur holds that the Appeal is partly allowed by rejecting the prayer for setting aside termination order and relief of

reinstatement with backwages. The only solace offered to the Petitioner is compensation at the rate of full salary for six (6) months and preferential right over post of peon as and when clear vacancy arise. These reasons on the face of record in the above facts of the case are not sustainable at all and are clearly *malafide*.

10. Perusal of said judgement shows that the only objection which is recorded by Education Department is that there is no approval of appointment of Petitioner. It states that the said objection is noted by the learned Tribunal in paragraph No.16 which records that in the year 2011, directly names of Appellant are entered into the staffing pattern but since there is ban to recruitment till absorption of the surplus teachers in view of the Government Resolution dated 02.05.2012, the said objection has been considered. This reason once again is not applicable to the facts of the Petitioner's case by any yardstick.

11. *Prima facie*, in my view in the facts and circumstances of the present case, the above objection is completely misplaced as been made applicable to Petitioner's case before me. The factual position on record in the present case which is admitted by all parties is that Petitioner was appointed as a peon on 16.09.2002 against clear vacancy, on sanctioned post and by following due process of law.

12. Thereafter the proposal for his appointment against

sanctioned post was sent to Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli on 15.01.2003 but the said proposal since the year 2003 onwards was not considered by Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli for reasons best known to him. This conduct of the Respondent No.3 has no explanation at all. There is no explanation whatsoever given with respect to the reason as to why the said Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli sat over the proposal from the year 2003 onwards without taking any action thereupon. This action clearly smacks of *malafides*.

13. Affidavit-in-Reply filed by Respondent No.1 – Trust running the School categorically states that they had pursued the pending proposal every year with Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli despite which the said Respondent No.3 – Education Officer did not take any action whatsoever.

14. Record shows that the Trust and Head Master of School where Petitioner was employed kept on repeatedly sending the proposal for approval of Petitioner every year, year after year, but the same was neither approved nor rejected by Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli.

15. The action on the part of Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli is *prima facie* highhanded,

arbitrary and deserves to be deprecated. It is also seen that learned Tribunal has observed the fact that in this entire episode, Petitioner continued to serve the Organisation and School against the sanctioned post for more than 14 years and without there been any fault whatsoever of Petitioner in not getting his appointment approved. The fact and issue of approval of Petitioner against the sanctioned post was between the Management of School and the Education Officer. Once this is the case then Petitioner cannot be faulted with.

16. Affidavit-in-Reply filed on behalf of Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli refers to relies upon Government Resolutions dated 02.05.2012, 06.02.2012 and 11.12.2020. In my opinion, the said Resolutions will have no effect whatsoever on pendency of approval to be granted to the proposal of Petitioner in the present case. Once it is an admitted fact that Petitioner was appointed after following the due process of law and recruitment and selection procedure in the years 2002 - 2003 then it was the duty of the Education Officer to sanction the said proposal without any delay. No fault whatsoever can be found with Petitioner in such a case.

17. The action of Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli is not only highhanded but cannot be countenanced by the Court. The case of Petitioner is duly covered

by the decision of the Division Bench of this Court in case of ***Chandane Kishor Digambar and Anr. Vs. The State of Maharashtra and Anr.***² which *prima facie* holds that once appointment of Petitioner was prior to the issuance of Government Resolutions dated 02.05.2012 and 06.02.2015, then in that case, the Petitioner is required to be considered as eligible for appointment and he cannot be terminated.

18. Thus in the present case, termination of Petitioner rather oral termination of Petitioner on 17.01.2016 is illegal and contrary to the statutory provisions envisaged under the M.E.P.S. Act, 1977 and M.E.P.S. Rules, 1981. The impugned judgement and order dated 20.11.2017 is therefore quashed and set aside, thus allowing Appeal No.17 of 2016 in its entirety by passing the following further order and direction for implementation:-

- (i) The judgement and order dated 20.11.2017 is quashed and set aside;
- (ii) Appeal No.17 of 2016 filed by Petitioner stands allowed;
- (iii) Termination order dated 17.01.2016, is quashed and set aside;
- (iv) Petitioner is directed to be reinstated by Respondent – Management and School alongwith full backwages and

² Writ Petition No.8532 of 2017 and 8527 of 2017 decided on 23.08.2017.

continuity of service by giving him all due service benefits of increment, pay scale and pay as applicable alongwith continuity in service according to the latest Pay Commission in accordance with law;

(v) The Trust, Management and Head Master of School where Petitioner shall be reinstated shall prepare the entire service book and calculate and compute entire backwages alongwith all due benefits alongwith continuity in service in favour of Petitioner and submit the said completed service book alongwith proposal to Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli within a period of one week from today unfailing and positively;

(vi) If the Trust, Management and Head Master of the School is required to send a fresh proposal in view of earlier proposal not been considered or invalidated then they shall be at liberty to immediately prepare and send a fresh proposal within one week from today alongwith details of computation and calculation of arrears of backwages and all other benefits to Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli as directed hereinabove but for no reason there shall be

any dereliction or delay in the timeline which has been stated hereinabove;

(vii) After the Trust, Management and Head Master of the School produces and submits the complete Service Book alongwith details of all calculations for backwages to Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli, the said Respondent No.3 – Officer is directed to obtain sanction from the Competent Authority within a period of two weeks from the date of submission of the proposal as directed;

(viii) All arrears of dues of backwages shall be paid over to the Petitioner by Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli within a period of four (4) weeks from today;

(ix) In the event if there is any delay in making computation and payment of the aforesaid backwages granted to Petitioner by Respondents concerned, Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli shall be held personally responsible and liable to pay interest at the rate of 9% per annum beyond the aforestated stipulated period on the entire amount of backwages and arrears due and payable to Petitioner

from his salary;

(x) The Secretary, Education Department of State Government of Maharashtra is directed to take appropriate Departmental action against Respondent No.3 – Education Officer (Secondary), Zilla Parishad, Sangli who is responsible for not taking any action on the proposals sent by the School every year from the year 2003 onwards and inform the Court by a Compliance Report as to what action has been taken on the said delinquent Officer who handled the said proposals within a period of four weeks from today;

(xi) Learned AGP shall place a copy of this order before the Secretary of the Education Department of the State of Maharashtra for compliance and report.

19. All concerned shall act on server copy of this order for preparation of proposal and according sanction to the proposal of the School and for payment of arrears without insisting on a certified copy and ensure that the aforesaid timelines are strictly followed.

20. With the above directions, Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]