

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2054 OF 2024

Shobha Madhukar Zambare

....*Petitioner*

: *Versus* :

State of Maharashtra & Ors.

....*Respondents*

Mr. Rahul Kadam i/by. *Ms. Usha A. Kharche, for the Petitioner.*

Ms. Aloka A. Nadkarni, AGP *for Respondent Nos.1 and 2.*

Mr. Shailendra S. Kanetkar, *for Respondent Nos.3 and 4.*

CORAM : SANDEEP V. MARNE, J.

Dated : 24 February 2025.

P.C. :

1) The petition challenges the judgment and order dated 10 March 2022 passed by the Presiding Officer, School Tribunal, Pune dismissing Appeal No.45/2019 filed by the Petitioner. In that Appeal, Petitioner had challenged her termination allegedly effected on 10 August 2019.

2) I have heard Mr. Kadam, the learned counsel appearing for the Petitioner, Ms. Nadkarni, learned AGP appearing for Respondent Nos.1 and 2 and Mr. Kanetkar, appearing for Respondent Nos.3 and 4.

3) It is the case of the Petitioner that she was appointed as a permanent teacher in the Respondent Management-School w.e.f 1 October 2011. In support of her claim of appointment as permanent

teacher, she relied upon order dated 2 November 2015 issued by the Education Officer (Primary), Zilla Parishad, Pune granting approval to her appointment on unaided basis w.e.f 1 October 2011. It is Petitioner's case that the Management orally terminated her by not permitting her to sign the muster roll on 10 August 2019. The Appeal preferred by the Petitioner challenging her alleged termination dated 10 August 2019 is dismissed by the School Tribunal on twin grounds of failure to prove permanent appointment, as well as failure to prove termination on 10 August 2019.

4) Mr. Kadam would strenuously rely upon approval order dated 2 November 2015 issued by the Education Officer in support of her contention that the same was issued under the provisions of Rule 8(2) of the Maharashtra Employees of Private Schools Rules 1981. He would submit that once the approval order was produced showing approval to the appointment w.e.f 1 October 2011, it was not necessary for the Petitioner to produce any other documentary evidence to prove her initial regular appointment. Mr. Kadam does not appear to be entirely wrong in contending so. In the light of approval order dated 2 November 2015 being produced by her, it was erroneous on the part of the School Tribunal to expect the Petitioner to prove the manner in which her appointment took place. Though ideally production of initial appointment order is a *sine-qua-non* for drawing an inference of regular appointment, it is the contention of the Petitioner that appointment order was deliberately not issued to the Petitioner on account of which she infact made a representation dated 29 August 2019 seeking copies of entire file by which proposal was sent for seeking approval to her appointment. Faced with the approval order dated 2 November 2019, Mr. Kanetkar would submit that the approval was granted only to temporary appointment of Petitioner and that there is nothing under the Rules which prevents grant of approval to a temporary

appointment. It is Mr. Kanetkar's contention that mere factum of issuance of approval order would not *ipso-facto* prove that the initial appointment of the Petitioner was on regular basis.

5) In my view, it is not necessary to delve deeper into the aspect of regular or temporary nature of appointment of the Petitioner. What makes the case of the Petitioner unbelievable is the stand taken by her *qua* her termination. The Petitioner submits that she had given letter for implementation of pay-scale and other issues which resulted in her termination. In para-5 of her appeal memo, she pleaded as under :

5. The Appellant submits that she has given letter for the implementation of Pay scales & other issues. The Appellant submits that she was orally instructed not to report for duties & prevented from signing the muster roll on 10/08/2019 and thereby her services were illegally terminated. The muster roll on 10/08/2019 were marked absent even after reporting for duties. The Appellant requested the management to reinstate her but the management presurized her to apologies for asking implementation of pay scale as per rule, objection to seniority list, then only she will be reinstated in the post.

6) Thus, the pleaded case of the Petitioner is that because she submitted letter for implementation of pay-scales, she was prevented from signing the muster roll on 10 August 2019 and was accordingly orally terminated on 10 August 2019. It is her further case that she requested for her reinstatement but was asked to apologise as a pre-condition for reinstatement.

7) However, the contemporaneous records indicate complete falsity in the said pleaded case of the Petitioner. It appears that on 10 August 2019, Petitioner submitted following letter :

प्रति,
मा. मुख्याद्यापक,
आदर्श विद्या मंदीर,
शाखा क्र. ३, फुरसुंगी, पुणे.

अर्जदार शोभा मधुकर झांबरे,

रा.. केअर ऑफ अॅड. चंदन विनायक मेमाणे, स.नं.
१७६, आदर्श शाळेजवळ, भेकराईनगर, फुरसुंगी, पुणे.

विषय - सेवाजेष्ठता यादी मान्य नसून निवृत्ती मुळे रिक्त पदावर
बदलीनेनेमणुक होणेबाबत.

महोदया,

मी उपरोक्त ठिकाणची रहिवासी असून सानेगुरुजी शिक्षणसंस्थेच्या आदर्श विद्या मंदीर शाखा क्र.३ या शाळेत दि. १/१०/११ पासून विनाअनुदानित तत्वावर उपशिक्षक या पदावर कार्यरत आहे. दि.५/११/२०१५ रोजीचे जि.प. शिक्षण / प्राथ/खा.प्राशा/५३०/२०१५ या शासनआदेशान्वये माझी उपशिक्षक म्हणून विनाअनुदानित तत्वावर मान्यता आहे.

संस्थेची सेवा जेष्ठता यादी मला मान्य नाही. सदर यादी मध्ये निवृत्त असलेले शिक्षक यांची नावे कमी केलेली नाहीत. योग्य सेवा जेष्ठता यादीचे अधिन राहून माझी विनाअनुदानित वरून अनुदानित तत्वावर बदलीने नियुक्ती शासन परिपत्रक क्र. एस.एस.एन.२०१६/प्र.क्र.३२/१६/टी. एन.टी-२मधील तरतुदीप्रमाणे करण्यात यावी तसेच कायद्याने देय असलेले वेतन देण्यात यावे.

दि. १०/०८/२०१९
पुणे

शोभा मधुकर झांबरे

8) There is not a word about termination in the letter dated 10 August 2019. The theory of termination being effected on account of demands raised by her for pay-scale and seniority vide letter dated 10 August 2019 again appears to be totally fallacious. The letter dated 10 August 2019 was not submitted in person but was dispatched through Registered Post A.D. There is nothing on record to indicate that the said letter dated 10 August 2019 had reached the Management on 10 August 2019. If the letter was posted from Saswad on

10 August 2019 at 12.30 p.m., it is highly improbable that the same would reach the Management on 10 August 2019 itself. Therefore, the whole theory of oral termination on account of submission of letter dated 10 August 2019 appears to be totally fallacious. On the other hand, the Respondent-Management pleaded a case that the Petitioner had voluntarily left her temporary services much before 10 August 2019. It is the case of the Respondent-Management that the Petitioner was not attending the duties on her own volition. This pleaded case of the Respondent-Management appears to be probable from the conduct of the Petitioner dispatching letter dated 10 August 2019 by Registered Post A.D. from Saswad Post Office. The School is located at Fhursungi, Pune whereas the letter is dispatched from Post Office at Saswad. Curiously, the address of the Petitioner in the letter is shown as 'रा. केअर ऑफ अँड. चंदन विनायक मेमाणे, स. नं. १७६, आदर्श शाळेजवळ भेकराईनगर , फुरसुंगी, पुणे'. It appears that Advocate Chandan Vinayak Memane is the husband of the Petitioner. If Petitioner's husband was residing next to the School, it appears quite inconceivable as to why the Petitioner would travel to Saswad for the purpose of dispatching the letter dated 10 August 2019 by Registered Post A.D. During the course of his submissions, Mr. Kanetkar has submitted that the Petitioner is now a practising advocate in the Court at Saswad. This appears to be the reason why the letter dated 10 August 2019 was dispatched by her from Saswad Post Office.

9) Thus, the whole theory of the Petitioner submitting letter dated 10 August 2019 demanding pay-scale and seniority and submission of said letter becoming the reason for oral termination is totally fallacious. On the other hand, the pleaded case of the Respondent-Management that the Petitioner had stopped attending duties much prior to 10 August 2019 appears to be more probable. I am therefore in agreement with the findings recorded by the School

Tribunal that the Petitioner could not prove her oral termination on 10 August 2019. The defence of the Respondent-Management of the Petitioner voluntarily giving up her job much prior to 10 August 2019 appears to be more probable.

10) Resultantly, I do not find any valid reason to interfere in the impugned order passed by the School Tribunal. The petition is accordingly **rejected**.

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
SAWANT
Date: 2025.02.26
10:35:40 +0530

[SANDEEP V. MARNE, J.]