



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.4043/2022

- PETITIONERS:** 1) Shri Samatdada Shikshan Sanstha,
Ori. Resp. No.1 Vasantwadi, Taluka Mangrulpur,
District Washim, through its Secretary
Shri Suresh Rathod, Aged about 49 years,
Occupation Business.
- 2) The Head-Master/Principal, Late
Sudhakar Rao Naik Art and Science
Junior College, Fulsaongi, Taluka
Mahagaon, District Yavatmal.

...VERSUS...

- RESPONDENTS :** 1) Shri Bansilal Madhukar Rathod,
(Org. Appellant) Aged about 41 years, Occupation
Service, R/o Kamthala, Tahsil
Kinwat, District Nanded.
- 2) The Deputy Director of Education,
Amravati Division, Amravati.
- 3) The Education Officer
(Secondary), Zilla Parishad,
Yavatmal, Tahsil & District Yavatmal.

Mr. A.Z. Jibhkate and Mr. PA. Jibhkate, Advocate for petitioners
Mr. S.M. Vaishnav, Advocate for respondent No.1
Mrs. D.I. Charlewar, AGP for respondent Nos.2 and 3

CORAM : ROHIT W. JOSHI, J.

Date of reserving the judgment : 10/10/2025
Date of pronouncing the judgment : 16/10/2025

J U D G M E N T :

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Advocates for the rival parties.

2. The present petition is filed challenging the judgment dated 20/12/2021 passed by the learned School Tribunal, Amravati in Appeal STA No.12/2018 whereby the learned Tribunal has set aside otherwise termination of services of the respondent No.1 and has directed the petitioners to reinstate him in service with continuity of back wages.

3. Respondent No.1 holds qualification of M.Sc. (Zoology) and B.Ed. The petitioner No.1 is a Trust registered under the Maharashtra Public Trusts Act. It runs a junior college named Late Sudhakar Rao Naik Arts and Science Junior College, Fulsaongi. Petitioner No.2 is Headmaster of the said college. On 07/07/2015 the Deputy Director of Education had granted permission to petitioner No.2 to issue advertisement for appointment of eight lecturers on full time basis. Pursuant to the said permission, the petitioners issued advertisement dated 24/08/2015. Respondent No.1 participated in the selection process and was appointed on the post of lecturer in Biology from open category. Perusal of appointment order will demonstrate that the appointment of respondent No.1 was from 14/09/2015 to 14/09/2017. Clause-5 of the appointment order reads as under :-

“Your appointment is temporary/against leave vacancy and therefore, on the expiration of aforesaid period your services shall stand terminated without any prior notice.”

(True English Translation)

4. Respondent No.1 filed appeal bearing Appeal STA No.12/2018 before the learned School Tribunal, Amravati inter alia contending that his services were terminated without issuing any order of termination w.e.f. 29/01/2018. Respondent No.1 contended that he was appointed in service after following the prescribed procedure against a clear vacant post. He stated that on two occasions approval to his appointment was refused by the Education Officer and therefore, the petitioners restrained him from continuing with duties resulting in otherwise termination. Respondent No.1 further stated that the Management had made attempt to fill up the post on which respondent No.1 was working by issuing advertisement. He states that he was given oral undertaking that his services will be protected and that the advertisement was issued only in order to satisfy official compliance of directions issued by the Education Officer.

5. The petitioners filed their written statement in the appeal inter alia contending that the appointment of respondent No.1 was not on probation but merely on temporary basis for a period of two years.

The petitioners also contended that respondent No.1 had misappropriated a sum of Rs.70,000/- and had also accepted his guilt by issuing apology letter dated 23/07/2017. It is contended that the approval to the appointment of respondent No.1 was refused on two occasions. The case of the petitioners is that in view of aforesaid two circumstances, respondent No.1 voluntarily abandoned his services w.e.f. 01/08/2017. The petitioners contend that thereafter fresh advertisement for recruitment was issued pursuant to which one Mr. B.V. Ade was appointed on the post of lecturer which was previously held by the respondent No.1.

6. After hearing the parties, learned Tribunal allowed the appeal vide judgment and order dated 20/12/2021. The learned Tribunal refused to accept the case of the petitioners as regards abandonment of services w.e.f. 01/08/2017 since muster roll placed on record indicated that respondent No.1 was working in the Junior College till 15/11/2017. The learned Tribunal has held that respondent No.1 was appointed on probation and that if his performance was found to be unsatisfactory the services could be terminated by issuing one month notice which was also not done by the petitioners. The learned Tribunal accordingly directed the petitioners to reinstate respondent No.1 in service with continuity and 100% back wages.

7. In the present petition a contention is raised by the petitioners that respondent No.1 was aware about the fact that the post occupied by him was to be filled up through fresh recruitment process. Attention of this Court is drawn to the memorandum of appeal in which statement with respect to fresh recruitment notice is made by respondent No.1. Mr. Jibhkate, learned Advocate for the petitioners has drawn attention to the alleged joining report dated 15/11/2017 submitted by Mr. Ade, who was appointed on the post of lecturer which was held by respondent No.1. He contends that the joining report is accepted by respondent No.1 as Incharge Principal and that respondent No.1 had left the institution after said Mr. Ade joined in service. Mr. Jibhkate, learned Advocate therefore contends that respondent No.1 left service voluntarily on 15/11/2017. His contention is that respondent No.1 has created illusory cause of action that his services were terminated on 29/01/2018.

8. The contention raised by the learned Advocate for the petitioners is contrary to the stand taken in the written statement. Perusal of written statement filed before the learned School Tribunal will demonstrate that a categorical stand that respondent No.1 had voluntarily left service w.e.f. 01/08/2017 is raised by the petitioners. The petitioners cannot be allowed to alter their stand for the first time in the present petition. It will be pertinent to mention that the alleged

joining report dated 15/11/2017 was never placed on record before the School Tribunal. The said document is also not filed along with petition which is filed on 22/03/2022. The document is placed on record along with Civil Application No.2323/2025 which is filed on 25/09/2025. The said contention that respondent No.1 had abandoned his service on 15/11/2017 in view of appointment of Mr. B.V. Ade is, therefore, liable to be rejected.

9. Another contention raised by the learned Advocate for the petitioners is that there is no material on record to indicate that respondent No.1 was continued in service after 15/11/2017. He contends that respondent No.1 has created an illusory cause of action by stating that his services were orally terminated on 29/01/2018. The contention will have to be dealt with in light of pleadings of the petitioners in the written statement where they have stated that respondent No.1 has worked only till 01/08/2017. Respondent No.1 has produced material to falsify the said contention. The petitioners did not contend that respondent No.1 did not work beyond 15/11/2017 or that he had abandoned services on 15/11/2017. The petitioners cannot be allowed to raise any contention which is based on enquiry of facts for the first time in the writ petition. The petitioners cannot be allowed to raise any contention contrary to their own written statement. It will be pertinent to mention that had this being raised before the learned

Tribunal, respondent No.1 could have raised appropriate counter to the same. The said contention is also liable to be rejected.

10. Mr. Jibhkate, learned Advocate drawing attention to the appointment order states that the appointment of respondent No.1 was not on probation but on temporary basis for a period of two years. In this regard, it will be appropriate to refer to letter dated 07/07/2015 issued by the respondent No.2 granting permission to petitioners to fill up eight posts of lecturers in the concerned College. Perusal of the communication will demonstrate that all eight posts were full time posts. The petitioners have stated in the written statement as well as in the present petition that proposal for approval to the appointment of respondent No.1 was sent to the Education Officer on two different occasions and that the same was rejected on the ground that backlog of reserved posts was not cleared. The petitioners have not stated that the proposal for approval was sent treating the appointment as temporary appointment. It will also be pertinent to state that according to the petitioners approval was rejected on account of failure to clear the backlog of reserved vacancies. It is thus apparent that the appointment was not made on temporary basis but on probation. It will be pertinent to state that according to the petitioners appointment of Mr. Ade is a regular appointment. However, perusal of his appointment order will also indicate that appointment order does not state that the same was

made on probation. It is the contention of the petitioners that appointment of Mr. Ade is a substantive appointment. The appointment orders of respondent No.1 and that of Mr. Ade are in same format. As stated above, appointment order was issued in favour of respondent No.1 after obtaining permission from the Deputy Director for filling up the post on permanent basis. It is, therefore, obvious that the appointment of respondent No.1 will also have to be treated as substantive appointment. The finding by the learned School Tribunal in this regard does not warrant any interference. It will be pertinent to mention here that Section 5 (2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short hereinafter referred to as “MEPS Act”) mandates that the Management shall fill up every vacant post on permanent basis. The provision further provides that appointment of an employee against a clear post will be made on probation for a period of two years.

11. Learned Advocate for the petitioners has placed reliance on the judgment of this Court in the matter of *Rayat Shikshan Sanstha and another Vs. Yeshwant Dattatraya Shinde*, reported in *2009 (6) Mh.L.J. 476* to contend that burden of establishing that appointment was made on substantive basis against a clear and permanent post is on the employee. In the case at hand respondent No.1 has discharged the said burden in view of communication dated 07/07/2015 issued by Deputy

Director granting permission to fill up the post, which indicates that the post in question was full-time post. The judgments in the matter of *Civil Station Education Society, through its Secretary, Sjit Sen Gupta, Nagpur and another Vs. Education Officer (Secondary), Nagpur and another (Writ Petition No.3681/2002- Nagpur Bench) decided on 06/05/2014* and *Bharatiya Gramin Punarrachana Sanstha Vs. Vijay Kumar and others*, reported in *2003 (1) Mh.L.J. 563* will also not assist the petitioners since the permission letter dated 07/07/2015 said document and subsequent advertisement are sufficient to demonstrate that the appointment of respondent No.1 was against the substantive post. The fact that proposals for seeking approval to the appointment of respondent No.1 were forwarded to the office of Education Officer is sufficient to fortify the contention of respondent No.1 that his appointment was on probation. It will be pertinent to state that it is not the case of petitioners that the proposals were sent seeking approval to the appointment of respondent No.1 against any leave vacancy/temporary post. It needs to be reiterated that the Management is under an obligation to fill up every permanent vacancy by making appointment of duly qualified candidate on probation.

12. Reliance on the judgment in the case of *Kalpataru Vidya Samasthe (R) and another Vs. S.B. Gupta and another*, reported in *(2005) 7 SCC 524* is for the contention that an employee is bound by

the terms and conditions mentioned in the appointment order. On the basis of the said judgment, it is contended that respondent No.1 was not appointed on probation but merely on temporary basis for a fixed period of two years. The said contention cannot be accepted in view of the letter dated 07/07/2015 issued by the Deputy Director granting permission to fill up the post, advertisement issued by the petitioners, proposals for approval forwarded to the Deputy Director and the fact that the appointment order of Mr. Ade, who, according to the petitioners is appointed on a substantive post is also in the same format.

13. The objection that Mr. Ade was a necessary party to the appeal is also liable to be rejected, in view of copy of appointment order of Mr. Ade, which is placed on record, which indicates that his appointment was made against a leave vacancy. In Clause-5 of the appointment order of Mr. Ade the word, 'temporary' is scored and the word, 'leave vacancy' is retained.

14. As regards the back wages, learned Advocate for the petitioners is right in contending that full back wages are awarded to respondent No.1 without recording any reason. To this extent the impugned order is liable to be quashed.

15. In view of the above, following order is passed.

(i) Writ Petition is partly allowed. The judgment and order dated 20/12/2021 passed by the learned Presiding Officer, School

Tribunal, Amravati Division, Amravati in Appeal STA No.12/2018 is maintained to the extent the termination of respondent No.1 is set aside by the learned Tribunal and directions for reinstatement in service with continuity are issued. The order is quashed with respect to award of back wages. The matter is remanded to the learned School Tribunal to decide the issue of back wages afresh in accordance with law.

(ii) The parties are directed to appear before the learned School Tribunal on 03/11/2025. Parties to note that separate notice for appearance will not be issued.

16. Rule is made absolute in the aforesaid terms. No order as to costs.

(ROHIT W. JOSHI, J.)