



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

WRIT PETITION NO.799/2022

PETITIONER : Kum. Vishakha D/o Maroti Karmankar,
aged about 48 years, Occu : Service,
R/o Nagsen Colony, Saoli, Tahsil Saoli,
District Chandrapur.

...VERSUS...

RESPONDENTS : 1. Avinash S/o Kashinath Shinde,
aged about 40 years, Occu : NIL,
R/o Ward No.6, Saoli, Tahsil Saoli,
District Chandrapur.

2. Dr. Ambedkar Smarak Samiti
Shikshan Prasarak Sanstha, Saoli,
Tahsil Saoli, District Chandrapur,
Through its President.

3. Ramabai Ambedkar Vidyalaya and
Junior College of Arts, Saoli, Tahsil
Saoli, District Chandrapur, Through its
Principal.

4. Deputy Director of Education,
Nagpur Division, Nagpur, Near Old
Morris College, Sitabuldi, Nagpur.

Mr. P.B. Patil, Advocate for petitioner
Mr. Gopal Mishra, Advocate for respondent No.1
Mr. D.M. Surjuse, Advocate for respondent Nos.2 and 3
Mr. B.M.Lonare, AGP for respondent No.4

WITH

WRIT PETITION NO.4627/2023

PETITIONERS : 1. Dr. Ambedkar Smarak Samiti
Shikshan Prasarak Sanstha, Saoli,
Tahsil Saoli, District Chandrapur Through
its President.

2. Ramabai Ambedkar Vidyalaya and Junior College of Arts, Saoli, Tahsil Saoli, District Chandrapur through its Principal.

...VERSUS...

- RESPONDENTS** :
1. Avinash S/o Kashinath Shinde, aged about 40 years, Occu : Business, R/o Ward No.4, Saoli, Tahsil Saoli, District Chandrapur.
 2. Kum. Vishakha D/o Maroti Karmankar, aged about 45 years, Occu. : Service R/o Nagsen Colony, Saoli, Tahsil Saoli, District Chandrapur.
 3. Deputy Director of Education, Nagpur Division, Nagpur, Near Old Morris College, Sitabuldi, Nagpur.

Mr. Gopal Mishra, Advocate for petitioners
Mr. A.H. Jamal, Advocate for respondent No.1
Mr. P.B. Patil, Advocate for respondent No.2
Mr. B.M.Lonare, AGP for respondent No.3

WITH

WRIT PETITION NO.3686/2024

- PETITIONER** :
- Avinash S/o Kashinath Shinde,
Aged 44 years, Occu : NIL (Terminated)
R/o Ward No.4, Saoli, Tah. Saoli,
District Chandrapur.

...VERSUS...

- RESPONDENTS** :
1. State of Maharashtra through Deputy Director of Education, Nagpur Division, Near Old Morris College, Sitabuldi, Nagpur.

2. Dr. Ambedkar Smarak Samiti
Shikshan Prasarak Sanstha, Saoli,
Tah. Saoli, District Chandrapur,
Through its President.
3. Dr. Ambedkar Smarak Samiti
Shikshan Prasarak Sanstha, Saoli,
Tah. Saoli, District Chandrapur,
Through its Secretary.
4. Ramabai Ambedkar Vidyalaya &
Junior College of Arts, Saoli, Tah. Saoli,
District Chandrapur, Through its
Principal.
5. Vishakha D/o Maruti Karmankar,
Aged 43 years, Occupation - Service,
R/o Nagsen Colony, Saoli, Tah. Saoli,
District Chandrapur.

Mr. A.H. Jamal, Advocate for petitioner
Mr. B.M. Lonare, AGP for respondent No.1
Mr. Y.R. Kinkhede, Advocate for respondent Nos.2 to 4
Mr. P.B. Patil, Advocate for respondent No.5

CORAM : SACHIN S. DESHMUKH, J.
DATE : 25/08/2025

ORAL JUDGMENT :

1. The challenge raised is to the order rendered by the School Tribunal in Appeal No.7/2021 presented by the employee-petitioner in Writ Petition No.3686/2024 since the identical challenge is raised, therefore, the petitions are taken up together.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel for the parties. Parties are referred as per status in Writ Petition No.799/2022.

3. The sequence of events, giving rise to the present petition is as under :-

4. The School run by the trust, appointed the petitioner by issuing advertisement in the year 2013 in relation to the three posts in a Junior College run by the said Society. Before issuance of advertisement, necessary permission was sought by the Society and was accorded by the office of Deputy Director of Education. In response to the said advertisement, the petitioner therein was interviewed by duly constituted selection committee. Candidate was appointed for the post of lecturer in Marathi, however, opted not to join for the said post of lecturer. So far as the post of subject economic in the advertisement is concerned, no candidate was found available and it was the petitioner, who was appointed as a lecturer in Political Science.

5. After the appointment of the petitioner, necessary proposal was forwarded, seeking approval to the services of the petitioner. Eventually, same was accorded by the Deputy Director of Education,

Nagpur Division, Nagpur for a probation period of two years as full-time teacher on no-grant basis. The petitioner further continued for subsequent academic year, as such, after completion of probation period, the petitioner acquired the status of permanent teacher. However, to the utter shock and surprise the Society issued termination order dated 24/06/2016 with an assertion that the appointment was made for probation period of two years, however, services are not satisfactory and the petitioner failed to improve performance in spite of repeated notices, therefore, the resolution was presumably passed on 28/03/2016 and on the basis of the same, the services are terminated w.e.f. 24/06/2016. The order of termination of the petitioner was subject matter of challenge in Appeal No.STC/15/2016, wherein the order of termination is quashed and set aside with further direction to reinstate the petitioner and pay the back wages to the extent of 70% with all pecuniary benefits from the date of termination till the date of reinstatement, as is admissible in accordance with the rules and along with costs.

6. The order of School Tribunal has attained the finality for want of further challenge. In the interregnum, in the process of appointment, the respondent No.1 executed an undertaking that the appointment order issued in favour of respondent No.1 dated

26/06/2016 for the post of Political Science and Sociology is against the post, which has fallen vacant on account of termination of the petitioner. Thus, it is abundantly clear that the respondent No.1 was appointed against a vacancy occurred due to termination of petitioner. While implementing the order of School Tribunal in Appeal No. STC/15/2016 since the respondent No.1 was appointed with due notice to that effect expressly indicating that it would be against the said vacancy occurred due to termination of petitioner. Resultantly, the order terminating the services of the respondent No.1 was issued on 19/10/2019, wherein specific reference is made to the order of Tribunal in Appeal No.STC/15/2016 presented by the petitioner.

7. In the aforesaid backdrop, Writ Petition Nos.799/2022, 3686/2024 and 4627/2023 are presented before this Court. So far as Writ Petition No.799/2022 is concerned, is presented at the instance of the employee, impacted by the order of the Tribunal in appeal presented by the petitioner in Writ Petition No.3686/2024. Similarly, Writ Petition No.4627/2023 is presented at the instance of Management i.e. respondent Nos.2 and 3, who is also aggrieved by the order in Appeal No.7/2021 whereas Writ Petition No.3686/2024 is concerned, is presented by the respondent No.1 in Writ Petition No.799/2022 seeking 100% back wages.

8. Mr. P.B. Patil, learned Counsel for the petitioner in Writ Petition No.799/2022 while questioning the sustainability of the order has submitted that the School Tribunal failed in ignoring the fact that the appeal presented by the present petitioner is allowed and same has attained finality. This aspect ought to have been taken into account by the Tribunal although it was specifically brought to the notice of the Tribunal. It is further submission of learned Counsel for the petitioner in Writ Petition No.799/2022 that the plea put forth by the respondent No.1 about ignorance that respondent No.1 was never informed nor indicated that the appointment was made subject to decision of appeal against the termination and in fact respondent No.1 has not filed any undertaking to the effect that appointment shall be subject to aforesaid condition nor furnished any such undertaking or affidavit to any of the respondents at any point of time is factually incorrect and is withholding the communication dated 01/07/2016, as such, the Tribunal has grossly erred in allowing the appeal presented by the employee, who has indulged into suppressing material fact.

9. Equally, learned Counsel for respondent Nos.2 and 3 has adopted the submissions advanced by learned Counsel for the petitioner in Writ Petition No.799/2022.

10. Per contra, Mr. Jamal, learned Counsel for the respondent No.1 in Writ Petition No.799/2022 has supported the order rendered by the Tribunal restating the facts stated in the appeal. The respondent No.1 was not informed about appointment being made against the vacancy occurred due to termination of petitioner in Writ Petition No.799/2022, as such, the entitlement of the respondent No.1 has been rightly upheld by the Tribunal and same needs no interference.

11. Having heard the respective learned Counsel for the litigating sides, it is a matter of record that the petitioner was appointed by following due procedure of law. Even the services were approved by the Deputy Director of Education. Having completed the probation period, petitioner's services were further continued for successive academic year and surreptitiously the termination order was issued, which was subject matter of Appeal No.STC/15/2016. The Tribunal allowed the appeal by setting aside the order of termination issued by the Society. The said order has attained finality for want of further challenge. So far as plea put forth by the petitioner in Writ Petition No.3686/2024 (respondent No.1 in Writ Petition No.799/2022) that an undertaking was never executed nor any stipulation was put that the appointment is against the vacancy which has occurred on account of

termination of the petitioner, therefore there is no reason to terminate the services of the respondent No.1 so as to implement the order of Tribunal in Appeal No.STC/15/2016 is factually incorrect.

12. Equally, the Tribunal has committed gross error while rendering the finding in relation to the appointment of the respondent No.1, who was admittedly appointed on account of termination of the petitioner on 24/06/2016. Surprisingly, the school management i.e. respondent Nos.2 and 3 has issued the appointment order in favour of respondent No.1 based on the advertisement which was issued on 19/03/2016 when the post was officiated by the petitioner i.e. of Political Science and Sociology was shown to be a vacant post and immediately within two days of termination, based on the antedated advertisement the appointment is shown to have been issued in favour of the respondent No.1 i.e. on 26/06/2016. Thus, these vital aspects of issuing the antedated advertisement and eventual appointment of the respondent No.1 issued after the termination order of the petitioner on 24/06/2016 immediately within a period of two days, as such, the same could not have been regarded as the appointment of the respondent No.1 within the meaning of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Thus, the finding rendered on Issue No.2 has to be regarded as perverse and

unsustainable. Nevertheless, the Tribunal has further committed serious error while accepting the contention of respondent No.1 that the process of appointment commenced much prior to the termination order of the petitioner herein, admittedly, when there was no post available. The finding in relation to permission to fill up the post and issuance of an advertisement was accorded by the Deputy Director of Education *per se* unsustainable since same is confined to the two posts those were vacant and not in relation to the post against which the present petitioner was appointed and pertinently officiating. Thus, the permission granted by the Deputy Director of Education is also completely misread by the Tribunal while rendering the finding that the appointment of the respondent No.1 is in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977.

13. Having rendered the perverse finding in relation to appointment the Tribunal further proceeded to render a finding that it was not open for the school management to terminate the services of the respondent No.1 in the wake of the judgment in Appeal No.STC/15/2016 presented by the petitioner. The unsustainability of this finding is rather apparent from the fact that the respondent no.1 was informed and conscious of the fact that the appointment is against

the vacancy occurred on account of termination of the petitioner herein. Resultantly, the Tribunal has erred in rendering these findings and eventually allowing the appeal. Therefore, the unsustainability of the order rendered by the Tribunal in Appeal No.STC/7/2021 is rather apparent and deserves to be quashed and set aside.

14. So far as the petition presented by the school management-respondent Nos.2 and 3 is concerned, it is apparent from the fact that the management has indulged in sheer abuse of power of appointment vested with it. At first place while terminating the services of the petitioner and appointing the respondent No.1 as against the said vacancy. In the process of appointing the respondent No.1 the school management has misdirected the authorities of Education Department while indicating the documents in the shape of grant of permission which was confined to two subjects and same was not for subjects of Political Science and Sociology against which the present petitioner was appointed and officiating. As such, the school management has abused the process of law, therefore, cost will have to be mulcted against the management who has indulged in sheer abuse of power of appointment and even misrepresenting the authorities. Accordingly, costs of Rs.50,000/- (Rupees Fifty Thousand Only) will have to be imposed upon the school management i.e. petitioners in Writ Petition

No.4627/2023. Costs of Rs.50,000/- to be paid to the High Court Bar Library, Nagpur within a period of two weeks.

15. Although the respondent No.1 was conscious of the fact that the appointment is against the post fallen vacant due to termination of the petitioner, However, when an appeal was presented, ignoring rather suppressing the undertaking executed nor there was a candid disclosure while presenting the appeal and a sweeping statement is made in the memo of appeal that the respondent No.1 came to know the said aspect only after receipt of termination order that appointment was made subject to decision of termination of the petitioner. Further statement was made that appellant did not file any undertaking to the effect that his appointment shall be subject to the aforesaid condition and did not furnish any such undertaking or affidavit to any of the respondents at any point of time. The fundamental fallacy in the said statement made on oath is rather surfacing from the communication dated 01/07/2016 (Page 62 of Writ Petition No.799/2022) executed by the respondent No.1. The appeal so presented was contested by the contesting respondents, however, the School Tribunal while allowing the appeal has ignored the fact that the order of the School Tribunal in Appeal No.STC/15/2016 has attained finality and same ought not to

have rendered redundant in a subsequent appeal presented at the instance of the respondent No.1 for want of candid disclosure.

16. So far as writ petition presented by the respondent No.1 claiming 100% back wages is concerned i.e. Writ Petition No.3686/2024, when the learned Counsel was confronted with page 62 undertaking dated 01/02/2016 of the petition, Mr. Jamal learned Counsel has fairly conceded that the communication is executed and is signed by the respondent No.1, as such, the respondent No.1 has indulged into suppression of material aspect before the Tribunal. The said suppression was rather deliberate, resulting into fraud upon the Tribunal as has been held by the Supreme Court in the case of ***K.D. Sharma Vs. Steel Authority of India Limited and others (2008) 12 SCC 481***, where the principles laid therein unequivocally obligate the parties to unfold the facts in its entirety and not to withhold any facts. Admittedly, the respondent No.1 has indulged into suppression, therefore, same disentitles the respondent No.1 to claim any relief, much less the relief of reinstatement vis-a-vis back wages. Accordingly, writ petition presented by the employee is dismissed, in the wake of finding rendered hereinabove.

17. In the light of the foregoing observations Writ Petition No.799/2022 vis-a-vis Writ Petition No.4627/2023 are allowed whereas Writ Petition No.3686/2024 stands dismissed. Rule is made absolute in terms of aforesaid observations.

(SACHIN S. DESHMUKH, J.)

Wadkar