



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

WRIT PETITION No.2633 OF 2024

Jitendra s/o. Wamanrao Telange,
Aged about 50 years,
Occupation : Service,
R/o. C/o. Chandrabhanji Pote Ashram School,
At. Dongarkharda,
Tq. Kalamb, Distt. Yavatmal. : PETITIONER

...VERSUS...

1. Dinesh s/o. Shantaramji Kolhe,
Aged about 50 years,
Occupation : Nil,
R/o. Dongarkharda,
Tq. Kalamb, Distt. Yavatmal.
2. Chandrabhan Pote V.J.N.T. Ashram
School, Dongarkharda, Dongarkharda,
Tq. Kalamb, Distt. Yavatmal
(Vignahartha Gramin Vikas Sanstha
Regd. No.Mah/F-8004/Ytl),
Through its Secretary/President.
3. Chandrabhanji Pote Ashram School,
Dongarkharda,
Tq. Kalamb, Distt. Yavatmal.
Through its Head Master.
4. District Social Welfare Officer,
Zilla Parishad, Yavatmal,
Tq. And Distt. Yavatmal. : RESPONDENTS

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Mr. J.B. Kasat, Advocate for Petitioner.
Mr. M.P. Kariya, Advocate for Respondent No.1.
Mr. P.N. Shende, Advocate for respondent Nos.2 and 3.

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WRIT PETITION No.2635 OF 2024

1. Chandrabhan Pote V.J.N.T. Ashram
School, Dongarkharda, Dongarkharda,
Tq. Kalamb, Distt. Yavatmal
(Vignahartha Gramin Vikas Sanstha
Regd. No.Mah/F-8004/Ytl),
Through its Secretary/President.
2. Chandrabhanji Pote Ashram School,
Dongarkharda,
Tq. Kalamb, Distt. Yavatmal
Through its Head Master.

: PETITIONERS**...VERSUS...**

1. Dinesh s/o. Shantaramji Kolhe,
Aged about 50 years,
Occupation : Nil,
R/o. Dongarkharda,
Tq. Kalamb, Distt. Yavatmal.
2. Jitendra s/o. Wamanrao Telange,
Aged about 50 years,
Occupation : Service,
R/o. C/o. Chandrabhanji Pote Ashram School,
At. Dongarkharda,
Tq. Kalamb, Distt. Yavatmal.
3. District Social Welfare Officer,
Zilla Parishad, Yavatmal,
Tq. And Distt. Yavatmal.

: RESPONDENTS

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Mr. P.N. Shende, Advocate for Petitioners.

Mr. M.P. Kariya, Advocate for Respondent No.1.

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CORAM : R.M. JOSHI, J.

RESERVED FOR JUDGMENT : 15th JULY, 2025

PRONOUNCEMENT OF JUDGMENT : 18th JULY, 2025.

JUDGMENT :

1. By consent of learned counsel of both sides petitions are heard finally at the stage of admission.

2. Both these petitions filed by the Management of the Ashram School as well as employee appointed in the post which became vacant on termination of respondent No.1, take exception to the order dated 14th March, 2024 passed by the School Tribunal in Appeal bearing No.33/2020, whereby reinstatement of respondent No.1 is directed.

3. The facts which they appear from the record and are relevant for the decision of the petition are narrated in brief as under :

It is the case of the petitioner in Writ Petition No.2635/2024 that the petitioner No.1 runs petitioner No.2 Ashram School. On 12.4.2005 an advertisement was issued by the Management in daily newspaper 'Lokdutt' inviting applications for the appointment for the post of Superintendent in petitioner No.2 School. The respondent No.1 was interviewed amongst other applicants and came to be selected. He was issued order of appointment No.28/2005. It is the case of the Management that the respondent No.1 was appointed for a fixed period and that he accepted the said appointment. On the other hand, it is the case of the respondent No.1 that the said appointment was on probation as mentioned in the letter

of appointment. There is no dispute about the fact that the said appointment was granted approval by District Social Welfare Officer by order dated 31.3.2006. The respondent No.1 claims that his appointment was against vacant permanent post and, therefore, he could not have been appointed for a fixed period and in fact his appointment was on probation. He claims that he was not allowed to sign the muster roll and thereby his services otherwise came to be terminated.

4. The Management resisted the said claim before the School Tribunal by contending that the appointment of respondent No.1 was for a fixed period and on lapse of the said period his services stood automatically terminated and, therefore, this is not case of otherwise termination of his service. It is further claimed that though the post against which the respondent No.1 was appointed was vacant, there was no permission obtained before issuance of advertisement from competent authority and, hence appointment is not in accordance with the procedure laid down under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (in short, 'MEPS Act'). It is further claimed that after the automatic termination of the respondent No.1 on expiry of fixed period of appointment, due procedure was followed and petitioner in Writ Petition No.2635/2024 came to be appointed. It is claimed that he working from 11.5.2007

till date. Similar is the case of the petitioner in Writ Petition No.2635/2024 that the respondent No.1 was not appointed by following due procedure and his appointment for a fixed period. He claims to have been appointed after following due procedure of law with approval of the competent authority.

5. The Tribunal after considering pleading and evidence on record, by impugned order allowed the appeal by holding that the appointment of the respondent No.1 was by following due procedure of law and since made against vacant permanent post, unless tangible reasons were recorded, it would not have been allows to be done for a specific/fixed period. It is, therefore, held that it is otherwise termination and reinstatement is directed. Hence, this petition.

6. Learned counsel for the petitioner in both the petitions submitted that the facts as they appeared from the record clearly indicate that the appointment of the respondent No.1 was made for a specific period i.e. from 1.9.2005 to 30.4.2007 and approval was also granted by the competent authority for the said appointment. It is their submission that once an employee accepts appointment for a fixed period without any demur, it is not open for him subsequently to claim that the appointment has been made on probation. It is their contention that the judgment of the Tribunal is contrary to the law laid down by the Division Bench of this Court in the case of **Ku.**

Kalpana Dadaji Rahate Vs. Magaswargiya Shikshan Sanstha, Nagpur and others, in Letters Patent Appeal No.445/2012 in Writ Petition No.5279/2009. Thus, it is their contention that by following said judgment, the order impugned deserves to be set aside. It is also sought to be argued that since the appointment of petitioner in Writ Petition No.2635/2024 is done in accordance with the Rules, said appointment cannot be set aside even indirectly by allowing the claim of the respondent No.1.

7. Learned counsel for the respondent No.1 drew attention of the Court to the fact that there is no dispute about the advertisement being published by the Management of the School for appointment of candidate on the post of Hostel Superintendent. It is his submission that after due procedure, interviews were conducted of the candidates and respondent No.1 came to be selected. It is his submission by drawing attention of the Court to the order of appointment that reference has been made therein about the said appointment being done on probation, and once the competent authority has granted approval to the said appointment it be deemed to have been made after following due procedure. It is his submission by referring to the judgment in the case of *Ku. Kalpana Rahate* (supra) that the facts of the said case were totally different as in that case it was held that the appointment was temporary in leave/deputation vacancy. According

to him, no such plea has been raised by the Management before the School Tribunal and hence the said judgment has no application to the case in hand. He drew attention of the Court to the judgment of the Full Bench of this Court in the case of **Ramkrishna Chauhan Vs. Seth D.M. High School and others, 2013(2) Mh.L.J. 713**. He referred to para 13 of the said Judgment to submit that if the appointment is made by following due procedure and against permanent vacant post, it is not open for the Management to appoint the employee for temporary period and if it is so to be done, tangible reason therefor must be recorded. In absence of any reason so recorded by the Management herein, the Judgment of Full Bench has application to the present case.

8. At the outset, it would be relevant to take note of the Judgments of Division Bench of this Court in the cases of **Anna Manikrao Pethe Vs. School Tribunal, Amravati and Aurangabad Division, Amravati and others** and **Priyadarshini Education Trust and others Vs. Ratis (Rafia) Bano d/o.Abdul Rasheed and others, 2007(6) Mh.L.J. 667**. In the case of *Anna Pethe* (supra), it is held as under :

“15. While disposing of this petition, we deem it appropriate to observe that when such applications under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 are filed before the School Tribunals by the teachers challenging any act of termination on the part of the management, it will be necessary for the Tribunal to frame and decide three preliminary

issues, viz., whether the school was a recognized school as defined under the MEPS Act; whether the appointment of the concerned teacher was made as per Section 5 of the MEPS Act and the Rules thereunder; and whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the Act as well as the rules framed thereunder including the Government resolutions issued from time to time regarding reservations, etc. These preliminary points are required to be framed and decided before the appeal proceeds on merits and even if such points are not raised by any of the parties to the appeal, it would be proper on the part of the Tribunal to frame such issues suo motu before examining the merits of the case. In case the findings to any of the preliminary issues are in the negative, the appeal must fail then and there itself, so far as the relief of reinstatement/continuation in service is concerned.”

9. No doubt Full Bench of this Court in case of **St. Ulai High School and another Vs. Devendraprasad jagannath Singh and another**, (2007)1 Mah.L.J.597 (FB) has not confirmed the requirement of approval of Education Officer as pre-condition. However, in view of specific finding of Divisional Bench on first two aspects that in case the findings to any preliminary issues are in negative, appeal must fail, so far as relief of reinstatement is concerned.

10 In view of above position of law, before granting any relief of reinstatement, it must be shown that School is recognized and that appointment of the teacher has been made in accordance with Rules. The teacher, therefore, needs to show at first instance that the

appointment has been made by following due procedure laid down therein. Needless to say that initial burden would be on the teacher to prove the said case.

11. In the instant case admittedly before appointing respondent No.1 advertisement was issued in daily newspaper 'Lokdut' and in response thereto candidates applied for the post. The advertisement indicates that the vacant post of Hostel Superintendent was to be filled in. Resolution passed by the petitioner indicates that the respondent No.1 was interviewed and was appointed pursuant thereto. Thereafter, order of appointment came to be issued. In the said order of appointment there is no reason mentioned for appointing respondent No.1 for a fixed period. Admittedly this appointment order came to be granted approval by the Special District Social Welfare Officer, Yavatmal. The employee, therefore, has discharged his initial burden to prove that appointment has been made as per the Act and Rules. The onus thus got shifted upon Management to prove otherwise.

12. In this backdrop, it is the stand of the Management that before advertising the post, permission of the competent authority was not obtained. Except for this defence, no other defence has been taken in respect of procedure followed for the purpose of appointment of respondent No.1. In this regard, it is pertinent to note that the

competent authority i.e. Special District Social Welfare Officer has granted approval to the said appointment and said grant of approval itself clearly indicates that the appointment was done by following due procedure under the Act and the Rules, which otherwise would have been refused. Thus, now it is not open for the Management to take a plea that the procedure was not followed before appointing respondent No.1.

10. The Management further claims that the appointment of respondent No.1 was for a specific/fixed period and since the said order of appointment is accepted by the employee, it is not open for him to make a grievance about the same. To support the said submission reliance is placed in the case of *Ku. Kalpana Rahate* (supra). On the other hand, respondent No.1 claims that since the appointment on the permanent vacant post, it could not have been made for a temporary period in view of the judgment of the Full Bench in the case of *Ramkrishna Chauhan* (supra).

11. The facts of the present case as recorded herein above clearly demonstrate that the advertisement was for permanent vacant post of Hostel Superintendent. The said advertisement was not for appointing any person for a temporary period or by way of stop gap arrangement. Now question arises as to whether it would be open for the Management to appoint an employee who has undergone the due

procedure of recruitment as laid down by the Act and the Rules to engaging for a temporary period against a permanent vacant post. This issue has been dealt with by the Full Bench of this Court in the case of *Ramkrishna Chauhan* (supra). It would be relevant to take note of paragraph 13 of the said judgment which reads thus :

“Indeed, this provision obliges the Management to fill in the permanent vacancy "as soon as possible". The term "as soon as possible" would mean that it has to be done within a reasonable time. That is a relative term. Nevertheless, by virtue of mandate of Section 5(1), there is implicit obligation on the Management to fulfill that requirement at the earliest, to wit, before commencement of the new academic year. That is so because, a permanent vacancy is one, which is in respect of a sanctioned post and in the case of an aided school, entitles the Management to receive commensurate grants in aid from the Government. Further, the sanctioned post for a school is prescribed by the State Authority keeping in mind the benchmark to be maintained for imparting high quality education and maintaining discipline in the school - commensurate with the strength of the students in the school. Thus, keeping the permanent vacancy unfilled for a long time, may entail in dilution of imparting of quality education. A fortiori, though the Management has implicit power to appoint a duly qualified person on contractual employment even against a permanent vacancy but, that must be only an interim arrangement till a suitable candidate is found in the selection process. It cannot be continued on year to year basis in succession. If the Management holds the selection process in the prescribed manner but wants to appoint the selected candidate on temporary basis must contemporaneously record tangible reasons as to why the selected candidate is not suitable to be

appointed on probation against the permanent vacancy. In that event, the Appropriate Authority can consider the challenge to the appointment on temporary basis instead of probation, against a permanent vacancy. Further, the Management, receiving grants in aid, from the Government, should not and cannot be permitted to appoint a duly qualified person on temporary basis against a permanent vacancy, without holding of selection process as soon as possible in the prescribed manner. Besides, inspite of availability of a suitable candidate identified in the selection process held to fill in the permanent vacancy, the Management cannot appoint him on temporary basis against a permanent vacancy. Any other view would be antithesis to the mandate of Section 5(1) of the Act and against the principle underlying the exposition of the Apex Court in the case of Ratan Lal and others Vs. State of Haryana and others, as it would be hit by Article 14 and 16 of the Constitution of India.”

12. The law on the subject as laid down by the Full Bench, therefore, clearly shows that in spite of availability of suitable candidate identified in the selection process held for filling up the permanent vacancy, the Management cannot appoint him on temporary basis against a permanent vacancy. If he is found not to be suitable for appointment on permanent basis, tangible reasons are required to be recorded for the same. In the instant case, admittedly, the appointment is against permanent vacant post. The resolution passed by the Management indicates that respondent No.1 was found suitable candidate and hence was selected. There is no reason recorded by the Management for his appointment for temporary

period. In absence of any such reason being recorded, it was not open for the Management to make such appointment on temporary basis.

13. As against this in the judgment cited supra in the case of *Ku. Kalpana Rahate* (supra), the facts of the said case completely differed from the one in hand. As observed categorically in paragraphs Nos. 8 and 12 of the said judgment, the said appointment was purely on the basis in leave/deputation vacancy. In the present case it is not even case of the Management that the said appointment was on leave/deputation vacancy. Thus, the said judgment has no application to the present case for complete variance in the facts involved in both cases. This Court, therefore, finds no merit in the contention of the counsel for the petitioner that the impugned judgment deserves any interference on the basis of judgment of the Division Bench.

14. The learned Tribunal has rightly taken into consideration pleadings of the parties and evidence led before it and rendered finding of facts. In exercise of writ jurisdiction for want of any perversity therein, no interference is called in the impugned order. Hence, both petitions stand dismissed.

(R.M. JOSHI, J.)