IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2576 OF 2006

Vidya d/o Hariharrao Deshpande
Age: 50 years, Occu: Service,
At present working Asstt. Teacher,
R/o : Flat No. 2, Adinath Nagar,
Garkheda Parisar, Aurangabad.

... **PETITIONER**

VERSUS

1. Saint Francies DeSales Education Society,
Jalna Road, Aurangabad,
Through its Secretary.

2. The Head Master,
Saint Francis DeSales High School,
Jalna Road, Aurangabad.

3. The Education Officer (Secondary),
Zilla Parishad, Aurangabad.

... **RESPONDENTS**

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Advocate for the Petitioner : Mr. Niranjan M. Deshpande
AGP for Respondents-State : Mr. P. P. Dawalkar
Advocate for Respondents No. 1 and 2 : Mr. N. L. Jadhav

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CORAM : SACHIN S. DESHMUKH, J.

Date : 27th October, 2026

JUDGMENT :-

1. The petitioner has assailed the judgment and order dated 03.02.2006 rendered by the Presiding Officer, School Tribunal, Aurangabad Division, Aurangabad, in Appeal No.

03/2001, dismissing the appeal presented by the petitioner, challenging the termination from the post of Assistant Teacher.

2. The petitioner possesses M.A. and B.Ed. qualifications, making eligible for appointment as a trained teacher under the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The petitioner was initially appointed as an Assistant Teacher in the academic year 1987-1988 against leave vacancy. Thereafter, the school management issued subsequent appointment orders in favour of petitioner for various academic years, including 1992-1993, 1993-1994, 1994-1995, and 1997-1998, which the respondents contend were temporary arrangements against leave. Subsequently, the school management issued a appointment order dated 22.10.1999, appointing the petitioner on probation for a period of two years against a clear, vacant and sanctioned post.

3. While the petitioner was serving as a probationary period, the management issued a termination notice dated 30.12.2000, seeking to bring an end the services with effect from 01.02.2001. The management asserted that the action was taken in compliance with an order dated 05.12.2000 issued by the

Education Officer (Secondary), Zilla Parishad, Aurangabad. The Education Officer had directed the reduction of divisions due to reduction in student numbers, which rendered four probationary teachers surplus and necessitated immediate removal under the rules. Therefore, the petitioner approached the School Tribunal.

4. Before the School Tribunal, the respondents presented the written statement justifying the termination on the ground of reduction in student strength. The petitioner presented an application to amend the appeal to challenge the legality of the Education Officer's letter dated 05.12.2000. During the pendency of the appeal, the Tribunal stayed the termination order, which allowed the petitioner to continue working till eventually reached the age of superannuation. Eventually, the Tribunal dismissed the appeal.

5. The School Tribunal dismissed the appeal on 03.02.2006. The Tribunal held that the school management acted under the directions of the Education Officer regarding the reduction of student resulting into reduction of divisions. It further held that since the petitioner had not completed the probationary period of two years, did not enjoy full statutory protection under

Section 5(3) of the MEPS Act. Aggrieved by the same, the petitioner has approached this Court.

6. Mr. Deshpande, the learned counsel for the petitioner, submitted that the School Tribunal committed a manifest error of law while ignoring the statutory protections available to the petitioner under the MEPS Act and Rules. The services could not have been terminated in the casual manner as permitted by the Tribunal, nor could the management shield itself behind the administrative communication issued by the Education Officer.

7. The learned counsel further submitted that the Tribunal erred in denying the petitioner the benefits and procedures mandated under Rule 26 of the MEPS Rules, 1981. A strict adherence to the seniority list was mandatory and the management bypassed the rule of seniority while retaining junior teachers who were appointed much later, as is evident from the seniority list.

8. The learned counsel submitted that under Rule 10 of the MEPS Rules, the categories of permanent and non-permanent employees inclusive of both full-time and part-time staff and the

definition of a temporary employee must be read constructively to protect tenure. Therefore, the management's plea that a probationer can be summarily retrenched without complying with the rules of seniority and workload absorption ought not to have accepted.

9. The learned counsel placed reliance upon the Government Circulation (Shasan Paripatra) dated 10.06.2001, which extends protection to part-time and temporary teachers. The counsel submitted that while compliance with reservation rosters remains mandatory in such situation, the existing teacher must be given primacy. In support of the contentions, the learned counsel for the petitioner relied upon following judgments :-

(a) **Gramin Yuvak Vikas Shikshan and Anr. Vs. Shivnarayan Datta Raut (Writ Petition No. 5998 of 2019) delivered by this Court (Nagpur Bench) on 30.05.2023**

(b) **Deepak T. Kaul Vs. Chairman, Sanjeevanividhyalaya Trust, Pune and Ors. [2020(2) Mh. L. J. 523]**

10. Per contra, Mr. Jadhav, the learned counsel on behalf of the respondent management supported the impugned order and submitted that the the petitioner had worked against temporary leave vacancies, however, first appointment against a clear,

permanent vacancy was issued only on 22.10.1999. Under the terms of the appointment letter and Section 5(2) of the MEPS Act, this appointment was on probation for a period of two years, which was scheduled to conclude on 22.10.2001.

11. The learned counsel further submitted that while the petitioner was serving on probation, the management received a administrative order dated 05.12.2000 from the Education Officer (Secondary), Zilla Parishad, Aurangabad, which was served upon the management on 30.12.2000, declaring that divisions had to be closed down due to a reduction in students strength. Consequently, the corresponding permanent posts of Assistant Teachers abolished, forcing the retrenchment of excess staff.

12. Mr. Jadhav further submitted that since the petitioner was a probationer and even not completed two-year term, as such, had no right to claim permanency. The management followed the due process of law by providing one month of notice before ending services. In support of the contentions, the learned counsel placed reliance upon the following judgments :-

(a) **Nagpur Shikshan Mandal, Nagpur, through its Secretary and Anr. Vs. Sau. Nanda Wakde Purshottam Wakde and Ors. [(2014) SCC OnLine Bom. 613]**

(b) **Head Master, Amar High School and Anr. Vs. Lata Gajanan Suryawanshi and Anr. [(2005)1 Mh. L. J. 1150]**

13. The learned AGP supported the order under challenge and prayed for dismissal of the petition.

14. Upon considering the submissions of learned counsel for respective sides and perusing the material on record, the issue falls for consideration before this Court is whether the termination of the petitioner's services during period of probation, on the ground of post abolition due to reduction in student divisions, is sustainable in view of continuous service since 1987-1988 and the statutory safeguards available under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (MEPS Act) and the Rules of 1981.

15. It is undisputed that the petitioner is qualified, possessing M.A. and B.Ed. Degrees within meaning of Rule 2(k) of Rules 1981. The petitioner was initially appointed into service by the respondent management in the academic year 1987-1988 and continuously rendered services in subsequent academic years through successive appointment orders to meet teaching

workloads. Proceeded by the same, on 22.10.1999, the respondent management issued an appointment order placing the petitioner on probation for a period of two years against a clear, vacant and sanctioned full-time post. However, before the completion of the two-year probationary term, the management issued a termination notice dated 30.12.2000 (effective 01.02.2001), citing communication from the Education Officer dated 05.12.2000 declaring seven divisions surplus. Pertinently, the details of this communication was never produced or proved to justify the sudden termination of the petitioner's services.

16. Section 5(1) of the MEPS Act mandates the filling of permanent vacancies with qualified individuals. It provides :

> "5(1) The Management of a private school shall, as soon as possible, fill in, in the manner prescribed, every permanent vacancy in a private school by the appointment of a person duly qualified to fill such vacancy..."

17. The statutory mandate does not provide any distinction between permanent, full-time, or part-time vacancies while considering the initial existence of a clear, approved position. The petitioner's appointment on 22.10.1999 was against a clear, sanctioned vacancy that had been approved by the authorities. Once an appointment is issued against a sanctioned post, the

management cannot take away the employee's statutory protections treating the probation period as an absolute, right to terminate without cause.

18. The respondent management submits that since the petitioner's probation period under Section 5(2) was incomplete, was a temporary with no protection. Rule 10 of the MEPS Rules, 1981 categorically divides employees :

> "10. Categories of Employees: (1) Employees shall be earmarked as— (a) Permanent employee; and (b) Non-permanent employee. (2) A non-permanent employee may be either a temporary employee or an employee on probation..."

19. In view of the above, Rule 10 does not establish distinction between full-time permanent employees and non-permanent employees for the purpose of retrenchment. A "temporary employee" is defined as appointed for a fixed, period to fill a specific short-term gap. The petitioner, having served the institution regularly and periodically since 1987-1988, cannot be regarded as a temporary employee. Restricting the procedural protections of the Act solely to employees who has completed two years of probation would render redundant to the intent of the legislature to protect services.

20. In the event of reduction in student strength, the management is bound to follow the Rule of Seniority during retrenchment. The records indicate that while the petitioner services were terminated under the garb of abolition of post, several teachers who were considerably junior to the petitioner were retained and services were later regularised by the management through compromises before the Tribunal.

21. The management failed to demonstrate that they adhered to the mandatory rule of "last come, first go" across the combined seniority list of the schools. A reduction in divisions cannot be used as a tool to terminate a probationary teacher while protecting preferred juniors. The School Tribunal overlooked this discriminatory application of retrenchment in case of petitioner.

22. I have considered the decisions cited by the learned counsel for respondents and finds that these citations do not lend any support to the contentions raised by the respondent management in the facts of the present case. In **Head Master, Amar High School Vs. Lata Gajanan Suryawanshi (supra)**, the Court dealt with a probationer's summary discharge under standard conditions where the underlying factual matrix did not

involve long-standing continuous service dating back over a decade. Furthermore, the decision in **Nagpur Shikshan Mandal vs. Sau. Nanda Wakde (supra),** far from aiding the management, actively reinforces that even non-permanent or part-time teachers who satisfactorily serve an institution cannot bypass seniority principles and the mandate of Rule 26 of the MEPS Rules, 1981. Consequently, the management's reliance on these decisions to validate the termination is misplaced.

23. The petitioner has continuously served the institution for 19 long years, the qualification is also undisputed and formal appointment was made against a clear, approved, and sanctioned post which is preceded by appointment orders from academic year 1988-89. Therefore, the management's termination notice dated 30.12.2000 is unsustainable in law.

24. Accordingly, the Writ Petition is **allowed**.

25. The impugned judgment and order dated 03.02.2006 rendered by the School Tribunal, Aurangabad, in Appeal No. 03/2001 is quashed and set aside.

26. The oral termination and the consequential termination

notice are declared illegal.

27. Since the petitioner continued in service under interim protection and has subsequently attained the age of superannuation during the litigation for almost 19 long years, the respondent management shall treat the petitioner as having been in continuous service till the date of superannuation, and shall calculate and confer all consequential service benefits, back wages as admissible and post-retireal pensionary benefits in accordance with the law within three months from today.

28. Rule is made **absolute** in the above terms. No order as to costs.

29. Pending civil applications, if any, also stand disposed of.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi