VINA
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10809 OF 2012

Mrs. Ujwala Vasant Mane ...Petitioner

Versus

The Chairman / Secretary Harihar Shikshan Sanstha, and ors. ...Respondents

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Mr.Sharad S. Suryavanshi i/b. Pol Legal Juris for the Petitioner.
Ms. Ashwini A. Purav, AGP for the Respondent No.3– State.
None for Respondent Nos.1 and 2.

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CORAM : M.M. SATHAYE, J.
DATE : 18th AUGUST, 2026

P.C. :

1. Heard the learned counsel for the Parties. Perused the record.

2. The Petitioner has challenged the order dated 09.08.2012 passed by the Presiding Officer, School Tribunal, Mumbai ('the Tribunal' for short) in Appeal No.38 of 2010, partly allowing the appeal, setting aside the order of termination, however, refusing to reinstate the Petitioner and directing the Management to pay compensation of six months' salary along with costs. The Appeal was filed challenging termination order dated 03.04.2010.

3. The Petitioner had qualification of B.A. B.P.Ed at the relevant time in the year 2005 and claims to have improved her educational qualification to B.A. Degree with Marathi subject in the academic year 2010. The Petitioner belongs to open category. The appointment of Petitioner was not approved by the Education Department. The School was un-aided till 2010. These are undisputed facts.

4. The case of the Petitioner, in short is as under:-

4.1. That she was appointed in Respondent No.2 High School w.e.f. 01.12.2005 to teach physical education and Marathi subject in the secondary school and she continuously worked for three academic years.

4.2. That she was a trained graduate teacher who was teaching marathi subject to 5th and 7th standard, computer education to 8th standard along with physical education and drawing to 9th and 6th standard, respectively.

4.3. That since she improved her education qualification by passing B.A. with marathi, she ought to have been permitted to continue teaching the subjects of marathi and history.

4.4. That she was prohibited from signing on the school muster and was not permitted to work in the academic year 2009 – 2010 which amounts to termination, leading to filing of Appeal.

5. The Respondent Management filed written statement contending *inter alia* in the year 2005, there was a vacancy for S.S.C. D.Ed. candidate and accordingly, advertisement was given in the local newspaper. However, despite such efforts, the Management could not get any duly qualified candidate and therefore the Petitioner was appointed purely on temporary basis. According to the Management, the Petitioner never held the requisite qualification and the subject of Petitioner's qualification was sociology and political science which are not the subject of High School. According to the Management, the Petitioner was appointed on temporary basis with clear understanding that as soon as any D.Ed. Candidate becomes available, her temporary job would come to an end and the Petitioner was well aware of this fact. According to the Management, the termination letter was issued on 28.04.2009; however, the Petitioner refused to accept the same and made grievance with the Education Authorities and a complaint was

filed which resulted into the Education Inspector passing order on 05.05.2010 against the Petitioner. According to the Management, the Education Inspector by name Mr. Borse, on the last day of his service, reversed the earlier order and called upon the Respondent Management to allow the Petitioner to resume duties. However, since the direction was *ex-facie* against Rules, by communication dated 06.07.2010, the Management sent detail reply to the Education Inspector expressing legal impediment and underlining again that the Petitioner does not possess the required qualification. The Management also contended that the whole case of the Petitioner is based without any actual appointment order.

6. The Respondent – Education Inspector did not file written statement in the appeal, however, filed a say to the delay condonation Application, taking a stand that the appointment of the Petitioner is not approved.

7. In these circumstances, the Tribunal on appreciation of the evidence found that the Petitioner cannot be reinstated and the Management was directed to pay compensation of six months' salary and costs.

8. The Petitioner filed the present Writ Petition which was admitted on 29.01.2016 and the Respondent – Education Inspector was directed to verify the position as regards the staffing pattern and vacancies in the Respondent – School and file the same on record.

9. The Superintendent, Office of the Education Inspector, West Zone, Mumbai, in compliance of the said order, filed an Affidavit-in-Reply dated 29.02.2016 contending *interalia* that the Respondent School has started receiving grant-in-aid from the academic year 2010-2011 for standards 8th to 10th. After considering the staffing pattern, it is stated that there was no trained graduate teacher post vacant at the

relevant time. It is further stated that the Petitioner was appointed with her education qualification B.A. B.P.Ed., and she has passed B.A. in Sociology and Political Science, which are not the subject as per Secondary School Code, Rule 57.1 for secondary school. It is further stated that since the Petitioner has acquired B.A. Degree and the subjects are not of school level, the approval was not granted to the Petitioner's appointment.

10. Nobody has appeared for the Respondent-Management. However, the Affidavit-in-Reply is filed on 02.12.2015. The Head Master of the Respondent – School has stated therein that the Petitioner was possessing B.A. B.P.Ed qualification which was not requisite qualification and since the suitable candidate was not available as per the advertised post, the Petitioner was allowed to teach the subjects temporarily. It is stated that for the purpose of approval it was necessary for the Petitioner to have appropriate qualification. It is reiterated that the subject in which the Petitioner has completed B.A. Degree are not the subjects taught in the school.

11. Learned Advocate for the Petitioner submitted that since the Petitioner has completed B.A. with Marathi, she ought to have been continued in the service. He also contended that the appointment order is available with the Respondent Management but they have not produced it. He relied upon a clarification issued by the Directorate of Education to the Education Officer about granting an approval to the pay scale of B.Com. D.Ed. eligible teachers. In support of his submissions, he relied on the following Judgments :

I. *Laxman s/o Maroti Turukmane Vs. State of Maharashtra & ors.* (Writ Petition No.771 of 1991) Judgment dated 12.01.2010, Bombay High Court Bench at Aurangabad.

II *Namdeo Sukdeo Saptale Vs. The Chairman, Kai Ramchandra Patil*

Shikshan Sanstha & ors. (Writ Petition No.10070 of 2011) Judgment dated 05.04.2016, Bombay High Court.

III ***Namrata Ramchandra Zagade Vs. Gujrati Shikshan Pracharak Mandal, Pune & ors.*** (2026 SCC OnLine Bom 657).

12. Learned AGP has supported the impugned order by relying upon the Affidavits-in-Reply.

13. I have considered the rival submissions and perused the record.

14. At the outset, it is necessary to note that the Petitioner has not produced any appointment order issued in writing. The contention that the appointment order exists and is available with the Management is too omnibus and self suiting argument. It can not be entertained. The appointment orders are issued addressed to the persons appointed and therefore the Petitioner was expected to produce and prove the appointment order. The absence of appointment order in writing lends credence to the case of the Respondent Management that since the candidate with necessary qualification was not available at the relevant time, pursuant to the advertisement, the Petitioner was permitted to work on temporary basis.

15. It is not disputed that the Petitioner's original qualification was B.A. B.P.Ed and subsequently B.A. with marathi. It is also not in dispute that the Petitioner has completed B.A. with Sociology and Political Science, which subjects are not available for teaching in secondary school. The copy of the Petitioner's Decree showing completion of B.A. (three years integrated course) clearly shows subjects as Sociology and Political Science.

16. The Tribunal though came to the conclusion that one month's notice was necessary to be given and therefore held that technically the

termination order is illegal, the Tribunal has come to a positive finding that the appointment was on temporary basis. In the teeth of such finding, the Tribunal then proceeded to consider whether a case of reinstatement is made out.

17. On appreciation of evidence, the Tribunal held that the Petitioner was not qualified at the time of appointment to teach Marathi and History subjects. The Tribunal has also found that in the year 2005, the post of trained graduate teacher for teaching Marathi and History was not vacant. It is also found that though the vacancy to teach maths and science was available, the Petitioner was not qualified to be appointed to teach maths and science as the same were not Petitioner's subjects. Faced with such situation and finding that the Petitioner's appointment was on temporary basis, in absence of appointment order, the Tribunal has held that a case for reinstatement was not made out. No fault can be found with this conclusion.

18. Pursuant to this Court's order, the concerned Education Authority has filed Affidavit-in-Reply taking a clear stand that the subjects with which the Petitioner has improved her qualification in B.A. (Sociology and Political Science) are not the subjects taught in the secondary school and therefore, she cannot be permitted under the relevant provisions of law.

19. In **Laxman s/o Maroti Turukmane (supra)**, the teacher was appointed against clear and permanent vacancy and in case of **Namdeo Sukdeo Saptale (supra)** also the concerned teacher was appointed on probation for a period of two years against clear permanent vacancy. In **Namrata Ramchandra Zagade (supra)**, the school had vacancy for the teacher for subjects of science and mathematics and under appointment order, the party therein was appointed as the Assistant Teacher as he was duly qualified holding the

Degree of Bachelor of Science and Bachelor of Education with specialization in Science and mathematics. In such factual backdrops, the Court in the said Judgments, have considered the case of the appointment and reinstatement.

The present case being completely distinguishable on the facts in as much as the Petitioner neither had an appointment order nor was qualified to be appointed for teaching subjects of Marathi and History, the said judgments will not advance the case of the Petitioner.

20. In the aforesaid facts and circumstances and for reasons indicated above, the view taken by the Tribunal is the most probable view and cannot be faulted. No perversity is found. There is no reason to interfere.

21. Accordingly, **Writ Petition is dismissed.** Rule is discharged. No order as to costs.

(M.M. SATHAYE, J.)