
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15319 OF 2024

Manoj Gajanan Anaspure

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Rahul Kadam *a/w. Vedant Babar, for Petitioner.*

Mr. Manish Kelkar, *for Respondent Nos.3 and 4.*

Dr. Dhruti Kapadia, *AGP for State.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: APRIL 16, 2026

JUDGEMENT:

1. The challenge in this Writ Petition is to an Order dated November 29, 2022 (***“Impugned Order”***) passed by Respondent No.2, Education Officer (Secondary) (***“Education Officer”***), Pune Zilla Parishad, dismissing an appeal preferred by the Petitioner, Manoj Gajanan Anaspure (***“Anaspure”***) under Rule 12 of the Maharashtra Employees of Private Schools (Conditions and Services) Regulation Act, 1977 and Rules 1981 (***“the Act”***).

2. The dispute centers around a very specific narrow issue, namely, whether Anaspure ought to be given credit for the period during which he had

been appointed against a temporary vacancy until one Mr. P.B. Kamthe (***"Kamthe"***) rejoined his duties in the Maharashtra Education Society Boys High School (***"School"***) i.e. during the lien period of Kamthe. Mr. Anaspure was appointed as an Assistant Teacher on January 18, 1996, on temporary position during the absence of the incumbent employee Kamthe, who had a lien on that post.

3. Respondent No.1 is the State of Maharashtra. Respondent No.2 is the Education Officer, who passed the Impugned Order. Respondent No. 3 is the President of the Maharashtra Education Society (***"Society"***), while Respondent No. 4 is the Headmaster of the School.

4. The short question that falls for consideration is whether the Society, the School and the Education Officer are correct in their approach of disregarding Anaspure's time as an Assistant Teacher in the temporary vacancy that he filled in the job over which Kamthe had a lien.

5. Having heard the Learned Advocates for the parties at some length, it is apparent that there is no quarrel that Anaspure had been appointed as an Assistant Teacher on January 18, 1996, to fill in a temporary vacancy. The approval by the then Education Officer too, was for an appointment in the temporary vacancy in the place on which Kamthe had a lien. On December 23, 1997, Anaspure was intimated that on January 22,

1998, his period of service would end. Meanwhile, Kamthe did not come back to the position over which he had a lien, and Anaspure was appointed as a probationer with effect from February 2, 1998 for a period of two years – there was a gap of 11 days.

6. This appointment was made on January 24, 1998, two days after the temporary role came to an end. This appointment, too, was granted approval by the State, and eventually this led to the question of determining the seniority of Anaspure.

7. In the seniority list for the years 2021-22 and 2022-23, Anaspure was shown at Sr. No. 42, while he claims that he ought to have been shown at Sr. No. 30. The grievance about the purported error in the seniority led to Anaspure filing an appeal before the Education Officer, who rejected the same by the order dated November 29, 2022, which led to the captioned Petition being filed.

8. In a nutshell, Anaspure would contend that he has an M.Com degree and is a trained graduate from the very first day of his appointment in the temporary lien position of Kamthe. He would submit that he has served without any break from January 20, 1996, apart from the short technical break of 11 days. From January 18, 1996 to January 22, 1998, Anaspure claims to have worked for a total of two years and two days continuously, and thereby,

he would also invoke the provisions of Section 5(2) of the Act to attract the statutory deeming fiction of confirmation, thereby becoming a permanent employee.

9. In contrast, Learned Advocate for the Society would submit that Anaspure's position in January 18, 1996, was evidently a temporary appointment and that too, in a position on which Kamthe had a lien. They would submit that there could never have been two parallel permanent employees in the same position, and therefore, for all practical purposes, when he was appointed on probation with effect from February 2, 1998, the seniority would count from that date.

10. Learned Advocate for the Society would rely upon the decision of the Supreme Court in ***Sandhya Tomar***¹ to contend that the term "lien" connotes a right of a servant to hold on to a post to which he has been substantively appointed. Such appointment has to be in accordance with law, and the person can be said to have acquired a lien as regards a particular post only when his appointment has been confirmed and when he holds the post permanently. It is contended on behalf of the Society that even the service book of the Society pressed into service by Anaspure would indicate that his original appointment had been purely on a temporary basis and not to a

¹ *State of Madhya Pradesh & Ors. Vs. Ku. Sandhya Tomar & Anr. - Civil Appeal No.9028 of 2012, Judgement dated December 13, 2012.*

permanent vacancy, as would be necessary to attract the provisions of Section 5(2) of the Act.

Analysis and Findings:

11. Against this backdrop, having heard the parties and examined the records with their assistance, at the threshold, Anaspure's contention about having been deemed to have been confirmed because his first role was for two years and two days may be examined. This contention is untenable on a plain reading of Section 5 of the Act, the relevant provisions of which are extracted below:

5. Certain obligations of Management of private schools.—

(1) **The Management 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:**

*Provided that, **unless such vacancy is to be filled in by promotion, the Management shall, before proceeding to fill such vacancy, ascertain from the Educational Inspector, Greater Bombay, the Education Officer, Zilla Parishad or, as the case may be, the Director or the officer designated by the Director in respect of schools imparting technical, vocational, art or special education, whether there is any suitable person available on the list of surplus persons maintained by him, for absorption in other schools and in the event of such person being available, the Management shall appoint that person in such vacancy.***

(2) **Every person appointed to fill a permanent vacancy except Assistant Teacher (Probationary) shall be on probation for a period of two years. Subject**

to the provisions of sub-sections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

Provided that, every person appointed as Assistant Teacher (Probationary) shall be on probation for a period of three years.

(2A) Subject to the provisions of sub-sections (3) and (4), Assistant Teacher (Probationary) shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

*(3) ******

(4) If the services of any probationer are terminated under sub-section (3) and he is reappointed by the Management in the same school or any other school belonging to it within a period of one year from the date on which his services were terminated, then the period of probation undergone by him previously shall be taken into consideration in calculating the required period of probation for the purposes of sub-section (2).

*(4A) ******

*(5) ******

[Emphasis Supplied]

12. It will be seen from Section 5(2) of the Act that to qualify for the deemed permanent role at the end of two years, the appointment ought to have been to fill a permanent vacancy. Admittedly, Anaspure was not appointed to a permanent vacancy in 1996. He was appointed to a temporary vacancy in a position on which Kamthe had a lien. Even the Education Officer's approval was for such a role. If Kamthe had returned in exercise of his lien, there would have been no vacancy left. Anaspure's appointment was clearly outside the ambit of Section 5(2) inasmuch as the appointment was not

to a permanent vacancy at all. Even for purposes of the proviso to Section 5(2) read with Section 5(2A), the appointment of Anaspure, was with effect from February 2, 1998. It is upon completion of three years from that date that Anaspure would have become entitled to the deeming fiction of being absorbed as a permanent employee.

13. Therefore, the contention of a deemed permanency at the expiry of two years, on the basis that Anaspure had completed two years and two days, and to compute seniority accordingly, is therefore not tenable.

14. The next issue is whether, for purposes of seniority, Anaspure should be entitled to the entire service that he has put in – right from 1996, since, for all practical purposes, he has worked since then with full qualifications, although he may have come in to fill a temporary vacancy. Had Kamthe returned, there would have been no question of Anaspure continuing, since there would have occurred a termination of even his temporary service. However, as things transpired, Kamthe did not return, and Anaspure filled the permanent vacancy with effect from February 2, 1998, in a probationary role.

15. The judgement of a Learned Division Bench of this Court in ***Urmila Malaviya***² cited by the Society appears to be squarely on point. In that

² *Urmila Pravinchandra Malaviya Vs. State of Maharashtra & Ors.*, – Judgement dated October 23, 2008 in WPL/2051/2008.

judgement, the Learned Division Bench of this Court examined a near-identical case where a teacher had been appointed purely on a temporary basis in a leave vacancy when another teacher had gone on leave and did not resume service. The appointment had been given approval by the Education Officer, and eventually, she went on to be appointed permanently and was also paid all the benefits as per the rules. The Learned Division Bench held thus:

An employee appointed on temporary basis and who renders temporary services on the post cannot claim absorption or other benefit for that period. As long as the post was occupied by the permanent employee, the Petitioner could not have been appointed, as the two persons, one temporary and the other permanent, cannot be appointed to the same post and take same pay scale.

[Emphasis Supplied]

16. The Learned Advocate for the Society would also rely on the judgement of the Supreme Court in *L.R. Patil*³ to submit that the term “lien” has undergone extensive analysis and that the same would squarely apply to the facts of this case to show that the seniority ought not to be counted for the period during which there was a temporary appointment against the lien. The following extracts are noteworthy:

16. On the said issue, the law has been well-settled by this Court in the case of "Ramlal Khurana (dead) by Lrs. Vs. State of Punjab & Others, (1989) 4 SCC 99",

³ *L.R. Patil Vs. Gulabarga University, Gulbarga, Judgement dated September 4, 2023 in Civil Appeal No.3254 of 2013.*

wherein this Court observed that 'lien' is not a word of art and it connotes the right of a civil servant to hold the post substantively to which he is appointed, meaning thereby, the appointment of government servant on the said post must be substantive as he/she cannot hold two posts simultaneously in two different cadres and maintain lien on both of them at the same time. Further, in the case of "Triveni Shankar Saxena Vs. State of U.P. and Others, 1992 Supp (1) SCC 524", while primarily dealing the question of acquisition of lien, this Court has observed that a person can be said to acquire a lien on a post only when he has been confirmed and made permanent on that post and not earlier.

17. In a 3-Judge Bench judgement in the case of "**State of Rajasthan and Another Vs. S.N. Tiwari and Others, (2009) 4 SCC 700**", while interpreting the word 'lien' against the post appointed substantively with respect to another post, this Court held as thus:

"17. It is very well settled that when a person with a lien against the post is appointed substantively to another post, only then he acquires a lien against the latter post. Then and then alone the lien against the previous post disappears. Lien connotes the right of a civil servant to hold the post substantively to which he is appointed. The lien of a government employee over the previous s post ends if he is appointed to another permanent post on permanent basis. In such a case the lien of the employee shifts to the new permanent post. It may not require a formal termination of lien over the previous permanent post."

Similarly in the case of "**State of Madhya Pradesh and Others Vs. Sandhya Tomar and Another, (2013) 11 SCC 357**", this Court held that the lien is a civil right of a civil servant to hold the post to which he is appointed substantively. The relevant part of the order is reproduced below as thus-

"10. 'Lien' connotes the civil right of a government servant to hold the post 'to which he is appointed substantively'. The necessary corollary

to the aforesaid right is that such appointment must be in accordance with law. A person can be said to have acquired lien as regards a particular post only when his appointment has been confirmed, and when he has been made permanent to the said post. "The word 'lien' is a generic term and, standing alone, it includes lien acquired by way of contract, or by operation of law." Whether a person has lien, depends upon whether he has been appointed in accordance with law, in substantive capacity and whether he has been made permanent or has been confirmed to the said post."

*All the aforesaid judgements have been duly considered again by this Court in another 3-Judge Bench judgement in the case of **Sitikanatha Mishra (supra)**. Thus, as per settled legal position, we observe that 'lien' of a government servant only ceases to exist when he/she is appointed on another post 'substantively'/confirmed or absorbed permanently. Otherwise, his/her lien would continue on the previous post.*

[Emphasis Supplied]

17. To my mind, **Urmila Malaviya** comes very close to the instant case. In that case, the Learned Division Bench disallowed the entitlements of the candidate who was appointed to the temporary position for purposes of seniority. Being a judgement of the Division Bench, I would not be able to differ from it, and the issue seems to be squarely covered.

18. On the other hand, **L.R. Patil** is actually about whether two persons could have a stake in the same role and the interpretation of the term "lien" in that context. As declared in that judgement, the term "lien" is not a

term of art. The Society would extrapolate from it to contend that the position of Kamthe enured to the benefit of Kamthe's seniority and it could not have, in parallel, enured to the benefit of Anaspure as well at the same time. Put differently, the contention is that all that Anaspure contracted for at that stage was to fill in the position of Kamthe on a temporary basis, and such filling of position was not a firm and formal position for it to lead to an accrual of Anaspure's seniority.

19. Learned Advocate for Anaspure further relied on a decision of the Supreme Court in ***Direct Recruit Association***⁴. That judgement essentially sets out that it is not from the date of confirmation but from the date of appointment that one must reckon seniority. Anaspure was indeed appointed as a probationer in a permanent vacancy in 1998, and his seniority must count from that date. The expectation tabled by him is that his seniority must be reckoned from the date on which he was appointed to a temporary vacancy to a post over which Kamthe had a lien.

20. The following conclusions of ***Direct Recruit Association*** are noteworthy. :-

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to

⁴ *Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Ors.*
- (1990) 2 Supreme Court Cases 715.

the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

[Emphasis Supplied]

21. ***Direct Recruit Association*** must also be understood in the context of the factual matrix in which it was decided. The issue there was competition for seniority between conventional recruits who rose through the ranks and direct recruits as lateral hires. In that context, the Supreme Court not only held that seniority must count from the date of appointment but also clarified that if the appointment is only *ad hoc*, such appointment would not count towards seniority. In the instant case, indeed, the first appointment in 1996 was *ad hoc* in a temporary role, to fill the post held by Kamthe temporarily. Therefore, going by the very extract of ***Direct Recruit Association***, in my view, seniority would not count from 1996 for Anaspure.

22. An old unreported decision by another Learned Division Bench of this Court in 1987, namely, ***Subhasini Kulkarni***⁵, is also pressed into service, to

⁵ Sou. Subhasini Vijay Kulkarni Vs. State of Maharashtra & Ors. - Judgement dated February 28, 1989 in Writ Petition No.4014 of 1987.

contend that while determining seniority, the date of continuous officiation has to be taken into account and it is wholly irrelevant whether the appointment was in a leave vacancy or otherwise. In that case, although initially the teacher in question had joined in a leave vacancy caused by another teacher going on maternity leave, since the other teacher never returned to the school, the Learned Division Bench held that it is difficult to appreciate why the advantage of seniority should be denied when she has continuously officiated without any break.

23. In the facts of the matter in hand, there has been, however fortuitously, a break of 11 days. Indeed, Anaspure would have proven his credentials and therefore made a mark and successfully got selected in 1998. While it is quite arguable that the same principle could be applied to give Anaspure the benefit of seniority despite the break of 11 days, multiple factors weigh against the exercise of extraordinary writ jurisdiction. To begin with, ***Direct Recruit Association*** is a decision of the Supreme Court that came after the decision of the Learned Division Bench in ***Subhasini Kulkarni***, and in that sense can be said to have been overtaken.

24. Moreover, Anaspure too has raised the seniority issue only in 2021-22, two decades after consciously having worked with the understanding that seniority would count from his first probationary appointment to a permanent

vacancy. Indeed, a question of law and an entitlement can be pursued at any stage, but when considering the position obtaining from the law declared in the judgements referred to above, in my opinion, this is not a case warranting the exercise of the extraordinary writ jurisdiction to interfere with the decision, which is an eminently reasonable and logical view.

25. In these circumstances, Rule is discharged without any interference with the Impugned Order.

26. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]