

Bombay High Court Anna Manikrao Pethe vs Presiding Officer, School ... on 18 September, 1997 Equivalent citations: (1998) IILLJ 39 Bom Author: B Marlapalle Bench: B Marlapalle, M Ghodeswar JUDGMENT B.H. Marlapalle, J. 1. Teacher on purely temporary basis for a period from July 1, 1986 to April 30, 1987 vide appointment order dated June 30, 1986, issued by Respondent No. 3, who is the Head Master of Daduji Pethe Vidyalaya, run by Respondent No. 2, Education Society. At the end of academic year 1986-87, he was discontinued and a fresh appointment order dated June 30, 1987 was issued to him again on purely temporary basis for the period from July 1, 1987 to April 30, 1988, i.e. for the academic year 1987-88. The services of the petitioner was again discontinued from May 1, 1988 at the end of the academic year and for the next academic year 1988-89, he was issued a fresh appointment order dated June 30, 1988 on a purely temporary basis for the period from July 1, 1988 to April 30, 1989. The petitioner was not a trained teacher and he was appointed purely on temporary basis against a permanent vacancy. His temporary appointments, as mentioned hereinabove, were duly approved by the Education Officer and he was not appointed for the academic year 1989-90 and he did not raise any grievance in that respect against Respondent Nos. 2 & 3. 2. It appears that the petitioner passed his Bachelor of Physical Education Degree (One Year Degree Course) in the Summer of 1990 and Statement of marks issued by the Amravati University declaring the petitioner having passed the said Bachelor of Physical Education Examination in Second class has been brought on record. The petitioner contends that he was relieved by the authorities of the Physical Education College on April 18, 1990 and he went to report for duty on allowed to report for duty, the petition alleged oral termination No. 42/90A under Section 9 of the Maharashtra Employees of Private Schools (Conditions Regulations Act, 1977, before the School Tribunal at Aurangabad along with an application for stay. The learned Presiding Officer of the School Tribunal by his order dated April 23, 1990 granted ex parte stay to the alleged oral termination and the stay order was confirmed subsequently on September 3, 1991. It is further contended that as Respondents No. 2 & 3 did not implement the ex-parte interim bare order dated April 23, 1990 passed by the School Tribunal, the petitioner filed Contempt Petition No. 139 of 1990 before this Court and the said Contempt Petition came to be disposed of by order dated September 24, 1991 in view of the fact that the petitioner was allowed to join duty by Respondents No. 2 and 3 on September 21, 1991. Thereafter, it appears that on hearing both the parties, i.e., the petitioner and the School Management the learned Presiding Officer of the School Tribunal, Amravati and Aurangabad Division, Amravati was pleased to dismiss the Appeal No. 42 of 1990A filed by the present petitioner and the interim orders dated April 23, 1990 and September 3, 1991 were vacated by order and judgment dated August 25, 1992. The petitioner has assailed the said judgment and order, dated August 25, 1992, rejecting his appeal. 3. Few additional facts which are not disputed between the parties and which are gathered from the record and proceedings called, from the School Tribunal also need to be mentioned. For the academic year 1989-1990, the Respondents No. 2 & 3, Management and Head Master respectively were called upon by

the Education Officer to fill in the post of Assistant Teacher by appointing a trained graduate teacher by following due procedure. The management accordingly released an advertisement in daily Hindustan Newspaper in May 1989 and in response to the said advertisement, 29 candidates had applied including the present Respondent No. 4. Interviews were conducted on June 8, 1989 and the present Respondent No. 4, who is a trained graduate, came to be appointed as Assistant Teacher, Physical Training Instructor (P.T.I) against the said permanent vacancy on probation for a period of two years by appointment order dated June 21, 1989. Respondent No. 4 joined on July 20, 1989 and he was to complete the probation period on July 19, 1991. The said appointment on probation was duly approved by Respondent No. 5 Education Officer and accordingly Respondent No. 4 was continued in service by Respondent Nos. 2 & 3 and he was allowed to complete the probation period also. However, all of a sudden, by order dated September 19, 1991, issued by Respondent No. 3, the service of Respondent No. 4 came to be terminated with effect from September 20, 1991 solely on the ground that the School Tribunal, Aurangabad granted stay in favour of the present petitioner. Respondent No. 4, aggrieved by the said termination order dated September 19, 1991, approached the School Tribunal and filed Appeal No. 215//91A under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred to as M.E.P.S. Act for short). 4. The present petitioner was impleaded as Respondent No. 5 in the said Appeal No. 215 of 1991A and he had filed his written statement opposing the present appeal filed by Respondent No. 4 contending, inter alia, that Respondent No. 4 was appointed as a stop-gap-appointment while the petitioner was sent on deputation to complete his B.P. Ed. degree and that in view of Section 10 of the Civil Procedure Code, Appeal No. 215 of 1991A was required to be stayed. 5. The present Respondents No. 2 and 3 also have filed their written statement in Appeal No. 215/1991A and while accepting the factual position as brought out in the said appeal by the appellant, the appointment of the present Respondent No. 4 in pursuance of the directions given by Respondent No. 5 and procedure followed for such appointment, was contended to be legal and proper and that Respondent No. 4 has acquired a permanent status as an Assistant Teacher when the termination order dated September 19, 1991 was served on him and the said termination was issued solely for the reasons that the School Tribunal had confirmed the ex parts stay order on September 3, 1991 and the present petitioner had initiated contempt proceedings before this Court that is Contempt Petition No. 139 of 1990 against the management. Respondents No. 2 & 3 have further submitted before the School Tribunal that the present Respondent No. 4 could not have been removed but for the orders passed by the School Tribunal and the filing of Contempt Petition and that both the appeals, namely, Appeal No. 42/1990A and Appeal No. 215/1991A were required to be disposed of together. The learned Presiding Officer of the College Tribunal by a judgment and order dated August 25, 1992 has allowed the Appeal No. 215/1991A and has directed Respondents No. 2 & 3 to reinstate Respondent No. 4 in the post of Physical Education Teacher (P.T.I) with continuity of service and backwages within 40 days. This

order has been implemented by Respondent Nos. 2 & 3 and in pursuance of the judgment and order passed by the School Tribunal in Appeal No. 42/1990A, the present Petitioner came to be discontinued from service and the Respondent No. 4 has been reinstated. The petitioner has challenged both the orders, namely, order in Appeal No. 42/1990A and order in Appeal No. 215/91A passed by the School Tribunal on August 25, 1992. 6. The orders passed by the School Tribunal have been challenged mainly on two grounds, Viz., that the Management had made a commitment by issuing the certificate dated February 21, 1989 that on completion of his B. P. Ed. degree, the petitioner would be reinstated and hence the management was estopped from appointing any other teacher in the vacancy available when the petitioner was studying for his Bachelor of Education course; and that the findings of the College Tribunal that the petitioner was not qualified for appointment as Assistant Teacher as he possessed B.A., B.P. Ed. qualifications and he could not be called as a trained teacher. 7. The appointments of permanent teachers in the private schools are governed by Section 5 of the Maharashtra Employees of Private School (Conditions of Service) Regulation Act, 1977, which reads as under : “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 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 in such vacancy, may be, the Education Officer, Zilla Parishad, 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 such person being available, the Management shall appoint that person in such vacancy. (2) Every person appointed to fill a permanent vacancy 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. (3) If in the opinion of the Management, the work or behaviour of any probationer, during the period of his probation, is not satisfactory, the Management may terminate his services at any time during the said period after giving him one month’s notice, or salary of one month in lieu of notice. (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 purpose of sub-section (2). (4-A) Nothing in sub-sections (2), (3) or (4) shall apply to a person appointed to fill such a permanent vacancy by promotion or absorption as provided under the proviso to sub-section (1). (5) The Management may fill in every temporary vacancy by appointing a person duly qualified to fill sub vacancy. The order of appointment shall be drawn up in the form prescribed in that behalf, and shall state the period of appointment of such person.” 8. Coming to the challenge to the impugned orders on the two grounds as mentioned hereinabove, (in support of second challenge regarding the petitioner being a trained teacher), the petitioner has relied upon

the Government Resolution dated June 6, 1983 issued by the Government of Maharashtra wherein it has been stipulated that the one year course of Physical Education conducted by the H.V.P. Mandal's Degree College of Physical Education at Amravati affiliated to the Nagpur University has been approved to be a qualification for trained graduate teachers. In addition, the petitioner has relied upon clause 2(1)(ii) of Schedule B to the Maharashtra Employees of Private School (Conditions of Service) Rules, 1981 (hereinafter referred to as M.E.P.S. Rules, for short). As per the said provisions, it is noticed that even a graduate with degree in Physical Education from Amravati University is eligible to be treated as a trained graduate for appointment as Assistant Teacher in Secondary Schools and Junior Colleges of Education. It is, therefore, held that the petitioner was qualified for being considered as a trained graduate for appointment as teacher for the first time in April/May 1990, that is, on his acquiring the Bachelor of Education Degree. However, this alone does not come to the help of the petitioner for allowing the present petition. 9. The second ground of challenge is based on the certificate dated February 21, 1989 allegedly issued by Respondent No. 3 to the petitioner. The said certificate states that "the petitioner has been working for the last five years, he was being sent through the college for admission in your college. On acquiring the higher qualifications, the school will have no restrictions on the petitioner and on completion of the said qualifications, he would be reappointed." The School Tribunal has held that the said assurance of the Management cannot be held to be legal even if it is accepted that Respondents No. 2 & 3 had issued the said certificate and that Respondents No. 2 & 3 did not have a statutory obligation to continue the said employee after filling up the vacancy by following due procedure and after obtaining approval to such appointment by the Education Officer, that is, Respondent No. 5. We are of the view, on perusal of the said certificate dated February 21, 1989, that the certificate is not reliable and it cannot be held to be creating any vested right in favour of the petitioner to continue in service or seek fresh service with Respondents No. 2 and 3 and that the said certificate in any way did not bind Respondents No. 2 and 3 to continue the petitioner in service. First of all, the certificate is not addressed to anyone and hence its content that "he is being deputed for admission in your college", is meaningless. Secondly, the certificate says that the petitioner has been working for the last five years whereas for the first time, the petitioner came to be appointed by order dated June 30, 1986 on a temporary basis and by the time the said certificate was issued, the petitioner had worked purely on temporary basis during three academic years with Respondents No. 2 and 3. In addition, the certificate states that Respondents No. 2 & 3 will have no restrictions or binding on the petitioner and immediately the next sentence states that petitioner will be reappointed in service. 10. There is one more very vital factor which also requires to be considered to hold that the certificate dated February 21, 1989 is totally unreliable and that the petitioner inspite of having been deputed for acquiring the B. Ed. qualification by Respondent No. 2, he failed to do so till the summer of 1989, that is, till his last tenure which expired on April 30, 1989. The petitioner has brought on record at Annexure No. V, an application form

addressed to the Government College of Education, Yavatmal, which is affiliated to the Amravati University for admission of the petitioner to the B. Ed. Course during the academic year 1987-89 and the said application form has been duly recommended by Respondent No. 3 on March 10, 1987. The said application has been filled in by petitioner and it is clearly stated that the petitioner has joined for the first time on July 1, 1986. Respondent No. 2 has given a declaration that the petitioner was being sponsored for the admission to the B.Ed. Course and he will be given leave as required during the said period and further that during the course of studies for B. Ed. as well as for two years thereafter, he will be continued in the post of Assistant Teacher. It is an admitted position that the petitioner did not acquire the B. Ed. qualification inspite of his case being recommended and or sponsored by Respondents No. 2 & 3. The reliance of the petitioner to claim relief of reinstatement/reappointment with Respondents No. 2 and 3 is, therefore, without any merits. 11. It is also material to note that the petitioner for the first time seems to have sought admission in the B.P.Ed., Course (One Year Degree Course) only in the academic year 1989-90 and he was not in the employment of Respondents No. 2 and 3 from May 1, 1989 onwards. Respondents No. 2 and 3 published an advertisement to fill in the post on permanent basis which the petitioner occupied on temporary basis and admittedly, the petitioner has not taken any objection when the said advertisement was issued. If the petitioner was convinced that Respondents No. 2 and 3 have given him a written assurance to continue him in service or reappoint him in service on completion of his B.P.Ed. course, nothing prevented the petitioner from submitting a representation to Respondents No. 2 and 3 and register his protest or claim on the said post which was being filled-in by Respondents No. 2 & 3 at the directions of Respondent No. 5, by issuing a public advertisement. This behaviour of the petitioner also goes to prove that there was no such assurance or commitment given by Respondents No. 2 and 3 as contended by the petitioner on the basis of the certificate dated February 21, 1989. 12. In the case of U. P. Shiksha & Education Board v. Rajender Prasad Gupta, similar situation had arisen wherein an untrained teacher was appointed and he was given an opportunity to undergo training which he did not avail and ultimately his service was terminated without any notice. The Supreme Court held that the order of termination without notice cannot be said to be illegal specially when the petitioner was an untrained teacher and he did not undergo required training as prescribed by the Government for appointment as a trained teacher inspite of the fact that he was provided with an opportunity by the Management. In the instant case also, the petitioner was admittedly provided with an opportunity to join the B.Ed. Course for the academic session 1987-89 and he did not acquire the B.Ed. degree till April 1989, that is, till his discontinuation on April 30, 1989. 13. In another case, viz., Hindustan Education Society v. SK. Kaleem SK. Gulam Nabi (1997-I-LLJ-1071) Respondent No. 1 was appointed against a clear vacancy on June 10, 1992 with the stipulation : "Your appointment is purely temporary for a period of 11 months from June 11, 1992 to May 10, 1993 in clear vacancy. After expiry of the above period your service shall stand terminated without any notice." The High Court had

held that the said teacher was regularly appointed and had directed his regularisation in service. The Supreme Court allowed the appeal and set aside the directions of the High Court by relying upon Section 5 of the M.E.P.S. Act and observed as under : “In view of the above and the order of appointment, the appointment of the Respondent was purely temporary for a limited period. Obviously, the approval given by the competent authority was for that temporary appointment. As regards permanent appointments, they are regulated by sub-sections (1) and (2) of Section 5 of the Act according to which the Management shall, as soon as possible, fill up, in the manner prescribed, every permanent vacancy in a private school by appointment of a person duly qualified to fill in such vacancy. Every person so appointed shall be put on probation for a period of two years subject to the provisions of sub-sections (4) and (5). He shall, on completion of the probation period of two years, be confirmed. Under these circumstances, the appointment of the Respondent cannot be considered to be a permanent appointment ...” 14. It is thus clear that the Supreme Court has held that the temporary appointees are not entitled to claim permanent status and unless such permanent vacancies are filled in as per Section 5 of the M.E.P.S. Act, the temporary appointees cannot have any grievance. The fact in the case of Hindustan Education Society (supra) are similar to the present case inasmuch as the petitioner was an untrained teacher and during the relevant three years, he was appointed on purely temporary basis during each academic year. His case is, therefore, governed by the law laid down by the Supreme Court in Hindustan Education Society (supra). In addition, it is also clear from the records that there was no termination order issued against the petitioner at any time by Respondents No. 2 & 3 and his grievance of oral termination with effect from April 19, 1990 is without any basis. The Tribunal has rightly relied upon the first proviso to Rule 6(2) of the MEPS Rules and the impugned judgment does not suffer from any errors apparent on the face of the record. 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 School (Conditions of Service) Regulation Act, 1977, are filed before the School Tribunal 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 recognised school as defined under the M.E.P.S. Act; whether the appointment of the concerned teacher was made as per Section 5 of the M.E.P.S. 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 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. 16. In the result, the writ Petition is rejected and the rule

is discharged. There shall be no order as to costs.