



**IN THE JUDICATURE OF HIGH COURT AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1812 OF 2006

1] Belapur Education Society,
Tq. Shrirampur, Dist. Ahmednagar
Through It's President
Shri. Pralhad Dnyandev Kolsepatil,
Age 50 years, Occupation Agri.,
R/o Belapur, Tq. Shrirampur,
Dist. Ahmednagar.

2] Headmaster, New English School,
Bheradapur, Tq. Shrirampur,
Dist. Ahmednagar.

...Petitioners
(Orig. Respondents)

VERSUS

1] Shri. Girish Achutrao Paranjape,
Age 36 years, Occupation Service,
R/o Belapur, Tq. Shrirampur,
Dist. Ahmednagar.

...Respondent
(Orig. Appellant)

2] Education Officer (Secondary)
Zilla Parishad, Ahmednagar.

...Respondents
(Orig. Respondent No.3)

Advocate for Petitioners

: Senior Counsel Mr. V. D. Sapkal i/b Mr.
V. B. Jagtap

Advocate for Respondent No.1 : Mr. V. H. Dighe h/f Mr. S. S. Wagh

Advocate for Respondent No.2 -State : Mr. V. M. Lomte

CORAM : ARUN R. PEDNEKER, J.

Dated : April 09, 2026

JUDGMENT :

1. Rule was granted on 08/02/2008. Heard finally.

2. By the present Writ Petition, the petitioners - Education Society

challenge the order dated 07/01/2006 passed by the School Tribunal, Solapur in Appeal No.11 of 2004, whereby the Tribunal allowed the appeal filed by respondent No.1 - employee and directed the petitioners to reinstate respondent No.1 with back wages. The Tribunal further declared that the services of respondent No.1 shall be deemed to have been approved and that he shall be treated as confirmed upon completion of the probation period.

3. The brief facts leading to the filing of the present Writ Petition, as noticed by the Tribunal, are as follows:

Respondent No.1 - employee was initially appointed as a Clerk on 22/07/1996 after having obtained qualifications of B.A. and B.Com. During the course of his service, respondent No.1 improved his qualifications by passing the B.P.Ed. examination, thereby becoming eligible for appointment as an Assistant Teacher in terms of Rule 2(k) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981.

4. Accordingly, by order dated 11/06/2001, the petitioners appointed respondent No.1 as an Assistant Teacher with effect from 13/06/2001 to work in New English School, Berdapur, which is run by the petitioners. The said appointment was for the academic year 2001-2002. As the services of respondent No.1 were found satisfactory, he was again issued a fresh

appointment order dated 11/06/2002 for the academic year 2002–2003.

5. Thus, respondent No.1 continued in the service of the petitioners from 1996 to 2003. However, his services came to be terminated on 12/06/2003. According to respondent No.1, the said termination was illegal and effected without following the due procedure prescribed under law. Therefore, respondent No.1 challenged the said termination before the School Tribunal by filing an appeal.

6. The present petitioners/ original respondents resisted the appeal by filing their reply before the Tribunal. It was contended that respondent No.1 was initially engaged as a Clerk on an honorary basis, as there was no sanctioned post of Clerk in the institution. It was further contended that after acquiring the B.P.Ed. qualification, respondent No.1 was appointed as an Assistant Teacher purely on a temporary basis for the academic year 2001–2002, and thereafter again on a purely temporary basis for the academic year 2002–2003.

7. Respondent No.2 - Education Officer (Secondary) also opposed the appeal before the Tribunal. It was stated that respondent No.1 was initially appointed as a Clerk on 22/07/1996 and worked up to June 1999, during which period the school was non-aided. It was further stated that respondent No.1 acquired B.Ed. qualification in April 1999, and thereafter

the petitioners appointed him as an Assistant Teacher from 13/06/2001 in the non-aided division of their New English School, Bheradpur. Accordingly, respondent No.1 worked in the said school during the academic years 2001-2002 and 2002-2003.

8. Respondent No.2 further stated that during the academic year 2003-2004, due to reduction in the strength of students, certain divisions were abolished. Consequently, the appointment of respondent No.1, which was for a limited academic period, automatically came to an end upon expiry of the said period. Respondent No.2 also contended that the petitioners had appointed respondent No.1 on a D.Ed. post, whereas he was holding B.P.Ed. qualification, and therefore the appointment was not legal and proper. It was further stated that since respondent No.1 was appointed in a non-aided division, respondent No.2 - Education Officer was not responsible for payment of his salary.

9. After considering the submissions of the parties, the learned Tribunal held that respondent No.1 had been appointed in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules of 1981. The Tribunal further held that the termination order dated 12/06/2003 was illegal and accordingly directed the petitioners to reinstate respondent No.1 with back wages.

10. The learned Tribunal further observed that under Rule 8(2) of the M.E.P.S. Rules, 1981, it was the statutory obligation of the petitioners - Management to submit a proposal to respondent No.2 - Education Officer seeking approval of the appointment within a fortnight from the date of appointment. The Tribunal further held that the order of respondent No.2 granting or refusing approval was not relevant for determining the status of respondent No.1, since respondent No.1 was not a party to the proceedings before the Education Officer regarding grant of approval. According to the Tribunal, the matter concerning approval of appointment was essentially between the petitioners and respondent No.2 and was relevant only for the purpose of release of grant to the Management from the State Government.

11. The Tribunal further held that any failure on the part of the petitioners to seek approval could not be attributed to respondent No.1, and therefore it would be untenable to deny him the status of a duly appointed employee merely on the ground that approval had not been granted by respondent No.2.

12. The Tribunal also observed that even if the strength of students had reduced and certain divisions were closed after two years, respondent No.1 had already acquired the status of a permanent employee upon completion

of the probation period. Therefore, his services were protected under Rule 26 of the M.E.P.S. Rules, 1981, and without following the procedure prescribed therein, the petitioners could not have terminated his services.

13. The Tribunal further noted that the petitioners are running six secondary schools, one junior college and one primary school. Therefore, even if the division in which respondent No.1 was working had been closed, there was a statutory obligation on the part of the petitioners to absorb respondent No.1 either as a Clerk in his original post or as an Assistant Teacher in any of the other institutions run by them, in accordance with the provisions of Rule 26 of the M.E.P.S. Rules, 1981.

14. In view of these findings, the Tribunal held that the termination of respondent No.1 was effected in violation of the provisions of the Act and the Rules and was therefore illegal. Consequently, the Tribunal set aside the termination order and directed the reinstatement of respondent No.1 with back wages. The Tribunal further declared that the services of respondent No.1 shall be deemed to have been approved and that he shall be treated as confirmed upon completion of the probation period.

15. Challenging the aforesaid order passed by the School Tribunal, the learned Senior Counsel **Mr. V. D. Sapkal** instructed by **Mr. V. B. Jagtap** for the petitioners - Management submits that respondent No.1 - employee was initially working as an honorary Clerk, though there was no sanctioned

post of Clerk in the institution. According to the petitioners, respondent No.1 worked as a Clerk up to the end of the academic year 2000-2001 and was paid only a lump sum honorarium of Rs.500/-.

16. It is further submitted that disputes arose between the petitioners - Management and respondent No.1 around January 1999, which led to several litigation between the parties. The disputes between the parties resulted in proceedings before various Courts, including a Writ Petition before this Court. During the said period, there was serious conflict regarding the management of the school and no valid School Committee was functioning. Consequently, this Court intervened and appointed an ad-hoc committee to manage the affairs of the school and the trust. The said ad-hoc committee was vested with full powers to administer the institution. Subsequently, elections were conducted in June 2003, pursuant to which a new management body came to be constituted.

17. It is further submitted that the petitioners had permission to run the school from 5th Standard to 10th Standard during the academic year 2001-2002. However, the additional divisions of 5th and 6th Standards were permitted on a non-grant basis. In the subsequent academic year 2002-2003, the strength of students reduced considerably and, therefore, the additional divisions were not continued and came to be closed.

18. The learned Counsel for the petitioners further submits that

respondent No.1 was issued an appointment order dated 11/06/2001, whereby he was appointed as an Assistant Teacher. However, the said appointment was purely on a temporary basis for the academic year 2001-2002. Thereafter, another appointment order was issued for the academic year 2002-2003, again on a purely temporary basis.

19. It is submitted that both the appointment orders were issued only for one academic year each, and upon expiry of the said period the services of respondent No.1 automatically came to an end. According to the petitioners, since there was no further requirement of the services of respondent No.1 due to closure of divisions, the question of continuation of his services did not arise.

20. The learned Counsel for the petitioners further submits that respondent No.1 was never appointed on probation, nor did his appointment satisfy the requirements of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It is contended that respondent No.1 had no right to claim permanency as he was not appointed against a clear and permanent vacancy. It is also contended that the appointment was not in accordance with the Government policy regarding appointment of Shikshan Sevaks, and therefore the appointment itself was not valid in law.

21. Per contra, the learned Counsel **Mr. V. H. Dighe** holding for **Mr. S. S. Wagh** appearing for respondent No.1 - employee submits that respondent No.1 had initially worked as a Clerk from the year 1996 and thereafter, upon acquiring B.P.Ed. qualification, he was appointed as an Assistant Teacher in the year 2001. It is submitted that respondent No.1 rendered continuous service with the petitioners from 1996 to 2003, and his termination from the post of Assistant Teacher was illegal. According to respondent No.1, the Tribunal has rightly held the termination to be illegal and has correctly granted the relief of reinstatement with back wages.

22. In view of the aforesaid submissions, the following points arise for consideration:

(i) Whether the appointment of respondent No.1 as an Assistant Teacher was in accordance with the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the Rules of 1981, and whether he became entitled to the benefit of permanency upon completion of two years of service in terms of the said provisions.

(ii) Alternatively, whether respondent No.1, who was initially appointed as a Clerk in the year 1996 and thereafter appointed as an Assistant Teacher, having rendered service from 1996 to 2003, could have been terminated without following the due procedure prescribed under Rule 26 of the M.E.P.S. Rules, 1981, and whether he was entitled to protection of service and grant of permanency.

23. While considering the aforesaid questions, it is necessary to examine the legal position regarding the entitlement of respondent No.1 to claim permanency. It is to be noted that respondent No.1 was not appointed on a clear and sanctioned permanent post. However, even assuming that he was appointed on a clear and sanctioned post, a similar question had arisen before the Full Bench of this Court in **Ramkrishna Chauhan and Others vs. Seth D.M. High School and Others, reported in 2013 (2) Bom.C.R. 481**, wherein the following question was considered:

“Would it be open to the School Tribunal to hold that an employee would be deemed to be on probation within the meaning of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, on the ground that the appointment was made in a clear and permanent vacancy, notwithstanding the fact that the letter of appointment specifically stipulated that the appointment had been made in a temporary capacity?”

24. The Full Bench of this Court, while considering the aforesaid issue, referred to Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. The relevant portion of **Section 5** reads thus:

“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,

2 [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 3 [except 4 [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 6 [Assistant Teacher (Probationary)] shall be on probation for a period of three years.]

[(2A) Subject to the provisions of sub-sections (3) and (4), 8 [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) 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 1 [or salary 2 [or honorarium] 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 purposes of sub-section (2).

[(4A) Nothing in sub-section (2), (3) or (4) shall apply to a person appointed to fill a permanent vacancy by promotion or by

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 such 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.”

25. This Court in the case of **Ramkrishna Chauhan** (Supra) also analysed the form of appointment prescribed in Schedule ‘D’ in terms of Rule 9(5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, which is similar to the appointment orders issued in the present case. Upon such analysis, the Full Bench observed that neither Section 5(1) nor Section 5(2) of the Act can be construed as prohibiting the Management from making an appointment on a contractual or temporary basis for a limited duration, even against a permanent vacancy, until a suitable candidate is selected.

26. The Full Bench further observed that there is nothing in these provisions to indicate that every appointment made by the Management in relation to a permanent vacancy must necessarily be deemed to have been made on probation for a period of two years. The statute does not create any such legal fiction. On the contrary, **the legal fiction operates only in the case of a person who is expressly appointed on probation, in which case such person would be deemed to have been confirmed upon completion of the prescribed probationary period.**

27. In other words, the parties would be bound by the terms and conditions stipulated in the letter of appointment, and there can be no presumption that the appointment was made on probation unless the appointment order itself expressly states so.

28. The Full Bench further observed that the provisions of the Act cannot be construed as forbidding the Management from making a contractual or temporary appointment against a permanent vacancy, if the circumstances so warrant. Such power is implicit in the authority of the Management while making appointments against a permanent vacancy. However, the Full Bench sounded a note of caution that ordinarily, when an appointment is to be made against a permanent vacancy, the Management is obliged to follow the prescribed selection procedure. Only in situations where the selection process cannot be taken to its logical conclusion, or where suitable candidates are not available, the Management may be justified in appointing a duly qualified person on a temporary basis for a limited period.

29. The Full Bench also considered Rule 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, and observed that the substantive provision governing appointments is contained in Section 5 of the Act. The mere absence of a specific provision in Rule 9 regarding the manner of making temporary or year-to-year appointments against a

permanent vacancy does not affect the legal position. The Court held that the Management possesses an implicit power to make contractual or temporary appointments, even while making regular appointments against permanent vacancies, in the absence of any express statutory prohibition restraining it from doing so.

30. The Full Bench also considered Rule 10 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, and observed that the said rule does not in any manner curtail or whittle down the implicit power of the Management to make contractual or temporary appointments. The Court further examined the form of appointment prescribed in Schedule 'D' of the Rules and held that the same does not prohibit the Management from making an appointment on a temporary basis for a limited duration, pending the selection of a duly qualified and suitable candidate to fill a permanent vacancy.

31. Ultimately, the Full Bench answered the question referred to it in the negative and held as under:

“28. Accordingly, we are inclined to answer the issue in the negative. We hold that it is not open to the School Tribunal to assume as of fact that the appointment made against a clear and permanent vacancy is deemed to be on probation, within the meaning of section 5 (2) of the Act. The School Tribunal cannot disregard the terms and conditions of the letter of appointment, if it expressly provides that the appointment is on temporary basis, for a

limited term.”

32. Coming to the facts of the present case, it is evident that the appointment of respondent No.1 - employee as a Clerk was on an honorary basis and not against a sanctioned post. Thereafter, the appointment of respondent No.1 as an Assistant Teacher was made on a temporary basis. The appointment orders issued for the respective academic years clearly indicate that the appointment was purely temporary.

33. The appointment order for the academic year 2001-2002 specifically states as under:

“2) Your appointment is purely temporary for a period of One academic year months/year from 13-6-2001 in the leave/deputation vacancy. After expiry of the above period your services shall stand terminated without any notice.”

Similarly, an appointment order (page 25 of the record) was issued for the subsequent academic year 2002-2003, wherein Clause 2 specifically provides as under:

“2) Your appointment is purely temporary for a period of One academic yer months/ years from 13-6-2002 in the leave/deputation vacancy. After expiry of the above period your services shall stand terminated without any notice.”

34. A perusal of the aforesaid appointment orders clearly indicates that the appointment of respondent No.1 - employee was purely temporary for

one academic year at a time. Respondent No.1 was not appointed on probation against a clear and sanctioned permanent post. In view of the judgment of the Full Bench of this Court, which recognizes the right of the Management to appoint an employee even against a permanent vacancy on a temporary or contractual basis, no presumption of probation or deemed confirmation can arise merely because the employee has completed two years of service.

35. Therefore, the observation of the Tribunal that respondent No.1, having worked for two years on the post of Assistant Teacher, was entitled to be treated as confirmed and that his termination was illegal, cannot be accepted.

36. The alternate submission advanced on behalf of respondent No.1 that he was initially appointed as a Clerk and was later promoted to the post of Assistant Teacher also cannot be accepted. The record indicates that respondent No.1 was working as a Clerk on an honorary basis, and that too against a non-sanctioned post. Thereafter, he was appointed as an Assistant Teacher on a temporary basis. The appointment orders clearly show that the appointment as Assistant Teacher was for two separate academic years, each for a period of one year. In such circumstances, it cannot be said that respondent No.1 was promoted to the post of Assistant Teacher.

37. The reliance placed by respondent No.1 - employee on the decision in **Shri Suhas s/o Rangraoji More vs. State of Maharashtra and Others (Writ Petition No.7706 of 2022, decided on 21/12/2023)** is misplaced. The said case pertained to employees who were promoted from the post of Clerk to Assistant Teacher in terms of the Government Resolution dated 10/06/2005. The challenge in that case was limited to the legality of Clause 8 of the said Government Resolution, which provided for payment of honorarium to Shikshan Sevaks.

38. In the said case, the petitioner was initially appointed as a Peon on a clear and sanctioned permanent post. Upon acquiring the requisite qualification, he was promoted as a Physical Education Teacher in the OBC category. However, pursuant to Clause 8 of the Government Resolution dated 10/06/2005, he was paid only an honorarium of Rs.8,000/- per month, even though his last drawn salary as a Peon was approximately Rs.43,000/- per month. The petitioner therefore contended that the reduction of salary upon promotion was arbitrary and unjustified, particularly when other similarly situated employees promoted to the post of Assistant Teacher were receiving salary in the pay scale of Rs.38,600-1,22,800 as per the 7th Pay Commission, and their promotions had also been approved by the Education Officer.

39. In the aforesaid factual background, this Court held that the employee, upon promotion, was receiving a substantially lesser salary, which caused serious prejudice to him. The Court further observed that though the promotional post was termed as that of a Shikshan Sevak, it was in substance a promotional post to the cadre of Assistant Teacher, and therefore the employee was entitled to the regular pay scale and service benefits attached to the post of Assistant Teacher. Accordingly, appropriate directions were issued in the said matter.

40. However, the facts of the present case are clearly distinguishable. Respondent No.1 was not holding a clear and sanctioned permanent post as a Clerk, nor was he promoted to the post of Assistant Teacher. His appointment as Assistant Teacher was purely temporary and for a limited duration, as expressly stated in the appointment orders. Therefore, the ratio of the aforesaid decision has no application to the facts of the present case.

41. The above judgment does not come to the aid of respondent No.1 - employee, who was initially appointed as a Clerk on an honorarium basis and was thereafter specifically appointed as an Assistant Teacher for a period of one year, followed by another appointment for a further period of one year. In terms of the judgment of the Full Bench of this Court, as noted above, there cannot be any deemed probation, and permanency cannot be

granted when the appointment order clearly states that the appointment is on a temporary basis for a limited duration.

42. Reference may also be made to the judgment of this Court in **Akbar Peerbhoy College and Others vs. Pramila N. Kutty and Others, reported in 1998 (1) Bom.C.R.1**, wherein this Court held that once the appointment letter indicates that the appointment is purely temporary for a specified period, no further notice is required for termination and, upon completion of the period mentioned in the appointment order, the appointment automatically comes to an end.

43. In the said judgment, this Court examined Rule 28(1) of the Maharashtra Employees of Private Schools Rules, 1981, which provides that the services of a temporary employee, other than one on probation, may be terminated by the Management at any time without assigning any reason, after giving one calendar month's notice or by paying one month's salary (pay and allowances, if any) in lieu of notice.

44. The Court clarified that the said Rule cannot be interpreted to mean that even where the services of a temporary employee come to an end automatically by efflux of time, as stated in the appointment order, the Management is still obliged to give one calendar month's notice or to pay one month's salary in lieu thereof. Rule 28(1) would apply in a situation

where no period is specified in the appointment order of the temporary employee and the Management seeks to terminate his services, or where a period is specified but the Management intends to terminate the services earlier than the stipulated period.

45. Rule 28(1) neither contemplates nor envisages a situation requiring its compliance where the services of a temporary employee, other than on probation, come to an end on the date specified in the appointment order itself. Thus, in a case where the appointment of a temporary employee is for a fixed period, and the services of such employee come to an end upon the expiry of that fixed period, issuance of notice as contemplated under Rule 28(1) is not required, nor is any separate termination order necessary, because the appointment itself stands terminated automatically upon expiry of the stipulated period.

46. Considering the above discussion, this Court holds that the appointment of respondent No.1 - employee was purely temporary for a period of one year each, i.e. for the academic years 2001-2002 and 2002-2003, and the same was not on probation. As such, there can be no deemed probation or permanency merely on completion of two years of service.

47. This Court further holds that the appointment of respondent No.1

cannot be treated as a promotion from the post of Clerk, as the employee was earlier working on an honorarium basis and that too against a non-sanctioned post of Clerk.

48. In view of the aforesaid reasons, the Writ Petition deserves to be allowed.

49. Accordingly, the Rule is made absolute in the above terms. The impugned Judgment and Order dated 07/01/2006 passed by the learned Presiding Officer, School Tribunal, Solapur, in Appeal No.11 of 2004 is quashed and set aside. No order as to costs.

(ARUN R. PEDNEKER, J.)

vj gawade/-.