

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14979 OF 2022

Bharat Ramchandra Shirsat

.. Petitioner

Versus

Nimsakhar Society and Ors.

.. Respondents

.....

- Mr. Rahul Kadam, Advocate for Petitioner.
- Mr. Rushikesh Barge, Advocate for Respondent Nos.1 to 3.
- Mr. P.J. Gavhane, AGP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 08, 2026.

JUDGMENT:

1. Heard Mr. Kadam, learned Advocate for Petitioner, Mr. Barge, learned for Respondent Nos.1 to 3 and Mr. Gavhane, learned AGP for Respondent – State.

2. Writ Petition is filed on 05.11.2022 by Bharat Ramchandra Shirsat, employee of N.E.S High School and Junior College (for short “N.E.S. High School”) managed by Respondent No.1 – Trust. Respondent Nos. 2 and 3 are President and Secretary of Respondent No.1 – Trust and Respondent No.4 is Principal of the Institution. Respondent Nos.5 and 7 are Education Officer and Deputy Director of Education – State. Respondent No.6 is the Education Institution managed by Respondent No.1 – Trust wherein Petitioner was originally employed. Judgment dated 23.09.2022 passed by School Tribunal,

Pune is assailed in the present Writ Petition. Petition is not admitted till today and by consent of parties it is heard finally.

3. Briefly stated, in September 2009, Petitioner was appointed as Librarian in Respondent No.6 – College which was managed by Respondent No.1 – Trust and Respondent No.7 – State granted sanction for his appointment vide Order dated 13.07.2011. Petitioner worked as Librarian in Respondent No.6 – College until October 2014 when Respondent No.1 closed Respondent No.6 – College due to declining enrollment of students. On 30.11.2014, Respondent No.1 transferred Petitioner to another Educational Institution managed by Respondent No.1 being N.E.S. High School and permanently appointed him to the post of Junior Clerk.

3.1. On 22.07.2019, Respondent Nos.1 to 3 orally terminated services of Petitioner and appointed one Charansingh Laxman Ranaware who is arrayed as Respondent No.8 in the present Petition. On 09.10.2019, Petitioner filed statutory appeal under Section 9 of Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short “**MEPS Act**”) before School Tribunal, Pune.

3.2. During the course of hearing before School Tribunal, Petitioner filed application dated 14.12.2020 calling upon Respondents to produce certain documents in their possession pertinent to

adjudication of the dispute. On 10.01.2022, School Tribunal directed Respondents to produce the documents requested by Petitioner.

3.3. On 22.03.2022, Petitioner filed his Affidavit of No – Employment claiming full salary from 22.07.2019 till date of reinstatement from Respondent. On 31.03.2022, Respondent No.1 filed application for amendment of Written Statement and subsequently Petitioner filed Written Notes of Argument. Learned School Tribunal dismissed the Appeal by judgment dated 23.09.2022. Hence present Petition.

4. Mr. Kadam, learned Advocate for Petitioner would submit that impugned judgment dated 23.09.2023 is passed without due consideration of facts and material on record and therefore it is bad in law and deserves to be set aside. He would submit that Petitioner is duly qualified holding degrees of Bachelor of Arts (B.A.) and Bachelor of Library Science (B.Lib.Sc.) and was appointed as Librarian in Respondent No.6 – College in September 2009 which appointment was duly sanctioned by Respondent No.7 on 13.07.2011.

4.1. He would submit that from Academic Year 2009 – 2010 till Academic Year 2014 – 2015, Petitioner sincerely discharged his duties as Librarian in Respondent No.6 – College and received his salary. He would submit that in 2014, Respondent No.6 – College suffered from lack of student enrollment and permanently closed admissions. He

would submit that on 24.11.2014, Respondent No.1 transferred Petitioner to N.E.S. High School where he was absorbed as permanent employee to the vacant post of Junior Clerk with effect from 24.11.2014 under the provisions of Rule 41 read with Rules 25 and 27 of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short “**MEPS**” Rules).

4.2. He would submit that during the course of his employment with N.E.S. High School as Junior Clerk, Petitioner discharged his duties without any embellishment or infractions and no adverse remarks or written complaints were made against him. He would submit that Petitioner attended training program conducted by Respondent No. 5 – Education Officer and received Certificate dated 14.11.2018 for the same.

4.3. He would submit that on 22.07.2019, when Petitioner reported for duty, to his shock and surprise Respondent No.4 orally informed him not to sign the muster and instantly terminated Petitioner’s services. He would submit that when Petitioner requested Respondent No.4 to furnish reasons for his termination, Respondent No.4 informed him that Respondent Nos. 2 and 3 (President and Secretary of Respondent No.1 – Education Society respectively) directed Respondent No.4 to deny Petitioner entry into the School premises. He would submit that Respondent No.4 also informed

Petitioner that Respondent No.8 was appointed to the post of Junior Clerk in place of Petitioner. He would submit that Respondent No.4 terminated Petitioner's service without following the procedure laid down in MEPS Rules, 1981 and such oral termination is illegal and bad in law. He would submit that since Petitioner was a permanent employee his services ought to have been terminated in accordance with the provisions prescribed under MEPS Rules, 1981. He would submit that, Respondent No.8 was appointed to the post of Junior Clerk after Petitioner's termination at the behest of Respondent No.2 – President of the Trust since he is a relative of Respondent No.2.

4.4. He would submit that Petitioner remained employed with Respondent No.1 – Education Society for over 10 years and his appointment as Clerk at N.E.S. High School was approved by the Education Officer as permanent. He would further submit that Respondent No.7 granted approval for Petitioner's appointment as Junior Clerk at N.E.S. High School. He would submit that Respondent No.1 nor its functionaries served requisite termination notice to Petitioner and neither was any enquiry or hearing conducted, hence on this ground itself, Petitioner's termination is illegal.

4.5. He would submit that Petitioner filed Appeal No.9 of 2020 before School Tribunal, Pune during which Petitioner filed application dated 14.12.2020 seeking directions to Respondents to produce certain

documents which came to be allowed by order dated 10.01.2022. He would submit that Respondents produced illegible copies of those documents and as such Petitioner filed another application dated 25.02.2022 seeking production of original documents on record which came to be allowed on the same day with a specific observation that if Respondents fail to produce those documents, adverse inference may be drawn against them. He would submit that Appeal No.9 of 2020 was however dismissed by Judgment dated 23.09.2022 on the ground of Petitioner being a temporary employee and his appointment not having been approved by the Education Officer. Hence Petitioner filed present Writ Petition.

5. *PER CONTRA*, Mr. Barge, learned Advocate for Respondent Nos.1 to 3 draws my attention to Affidavit – in – reply dated 02.04.2026 and would submit that present Writ Petition is misconceived, untenable in law and deserves to be dismissed. He would submit that Petitioner has approached this Court with unclean hands and suppressed material facts. He would submit that Respondent No.6 – College shut down in 2011, and not in 2014 as alleged by Petitioner, due to lack of student enrollment and in those circumstances Petitioner was laid off, hence there was no question of termination of his services as alleged by him and in that regard it was impossible for Petitioner to receive any salary from Respondent No. 6 – College from 2011 onwards

5.1. He would submit that aforementioned Approval Order dated 13.07.2011 clearly stated that appointment to the post of Librarian was temporary in nature and Respondent No.7 – Education Officer never accorded sanctions / approval for Petitioner’s appointment. He would submit that Approval Letter dated 13.07.2011 clearly states that Petitioner’s appointment was from 01.01.2011 to 31.08.2011 and hence the same was temporary in nature. He would submit that School Tribunal has rightly held that Petitioner was never a permanent employee and he did not make out any case on merits to obtain relief of reinstatement along with backwages. He would submit that since Petitioner is not a permanent employee of Respondent No.1 – Trust, MEPS Rules, 1981 are not applicable to the facts of Petitioner’s case.

5.2. He would submit that Absorption Order to show Petitioner’s absorption from Respondent No. 6 – College to N.E.S. High School, relied upon by him is a false and fabricated document which was prepared in connivance with the erstwhile Principal of N.E.S. High School and hence the same is non est in law and cannot confer any legal right upon Petitioner. He would submit that after closure of Respondent No.6 – College, no Government Circular / Resolution sanctioned posts or new staffing pattern was prepared so as to absorb the Petitioner in alternate employment, hence Petitioner’s claim that new post of “Junior Clerk” was created in 2014 is false. He would submit that Petitioner was never legally appointed nor did his name

reflect on the muster roll of Respondent No.4 hence question of his termination cannot arise.

5.3. He would submit that Respondent No.1 – Trust never issued any instruction to Petitioner to attend training programme organized by Respondent No.5 – Education Officer and that alleged training Certificate and fee collection documents relied upon by Petitioners are false and fabricated to show continuity of his service with Respondent No.1 – Trust’s Educational Institutions.

5.4. He would submit that Respondent No.6 – Education Society possesses no power to create posts since this is strictly governed by Government policy making and law. He would submit that since no post of Junior Clerk was ever sanctioned in N.E.S. High School and Principal of NES High School and Junior College did not possess authority to create vacant posts in the Institution. He would submit that Petitioner and the erstwhile Principal of NES High School fabricated his absorption letter without the knowledge and approval of Respondent No.1 – Trust and illegally issued the same to Petitioner in order to regularize his transfer.

5.5. He would submit that power to effect absorption of an employee rests entirely with Respondent Nos. 5 and 7 – State and hence when any school is closed down, absorption falls within the jurisdiction of Respondent Nos.5 or 7 in accordance with law. He

would submit that valid absorption order would have to be issued by Respondent Nos. 5 or 7 and not by Respondent No.1 – Trust. He would submit that perusal of outward number on absorption letter dated 24.11.2014 corresponds to a different document in the record of N.E.S. High School, hence the same is a false and fabricated document and Petitioner cannot rely upon the same. He would submit that School Tribunal passed order dated 29.06.2021 directing Petitioner produce the original absorption order dated 24.11.2014, however he failed to produce the same. He would submit that in view of his above submissions, present Petition be dismissed and impugned order be upheld and confirmed.

6. I have heard the learned Advocates for the respective parties at the bar and perused the record of the case with their able assistance. Submissions made by the learned Advocates have received due consideration of the Court.

7. At the outset, it is seen that, both institutions where Petitioner was in employment i.e. Respondent No.6 – College and N.E.S High School are managed by the Respondent No.1 – Trust hence it is safe to conclude that Petitioner was employed by Respondent No.1 – Trust. Petitioner was initially employed in Respondent No.6 – College on the post of Librarian and his appointment was approved by Respondent No.7 – Deputy Director of Education on 13.07.2011 for

the period 01.01.2011 to 31.08.2011, however he continued in service of Respondent No.6 – College till it was closed down in 2014 due to lack of student enrollment. Thereafter, it is seen that Respondent No.4 – Principal of N.E.S. High School issued transfer order dated 24.11.2014 effectively absorbing the Petitioner permanent employee to the post of Junior Clerk in N.E.S High School where he worked until 22.07.2019 when Respondent No.4 at the behest of Respondent Nos.1 to 3, orally terminated Petitioner's service without issuing notice of termination neither were grounds of termination informed to Petitioner nor was any enquiry conducted in accordance with law. It is further seen that in absence of notice of termination, statutory one month salary was also not paid to the Petitioner in accordance with Rule 28(1) MEPS Rules, 1981.

8. The primary contention of Petitioner is that he was appointed as Librarian in September 2009 and rendered continuous and uninterrupted service till the date of his termination i.e. 22.07.2019 and therefore his services could not have been terminated without following the due process of law as contemplated under the provisions of the MEPS Act and Rules framed thereunder. Respondent Nos.1 to 4's case is that Petitioner was never appointed on permanent basis and his appointment was only until 31.08.2011. However it is seen that though his appointment was for eight months, services of Petitioner were continued uninterrupted from September 2009 till July

2019 without any break by Respondent No.1 – Trust in its twin Education Institutions. During this tenure, Petitioner discharged duties as Librarian from October 2009 to November 2014 and as Junior Clerk tasked with preparation of certificates and other clerical duties from 30.11.2014 to 22.07.2019. It is also seen and borne out from the record that during his tenure at Respondent No.1 – Trust, Petitioner participated in government – mandated training programmes for non teaching staff conducted by the Education Officer and received Certificate dated 14.11.2018 for the same. It is also borne out from the record that subsequent to his termination, Petitioner remained unemployed till passing of the impugned judgment dated 23.09.2022 until today, resulting in unemployment and has filed Affidavit to that effect appended to Petition at Exhibit ‘T’ page No.93.

9. It is seen that Petitioner was employed with Respondent No.1 – Trust between 2009 to 2019 i.e. for 10 long years without any blemish nor complaints about his service and further Petitioner possessed requisite qualifications for both posts against which he was appointed, therefore in such *prima facie* proven facts Petitioner attained deemed permanency under Section 5 of MEPS Act. It is seen that that if Petitioner, for the sake of argument, is to be treated as a temporary employee, Respondent No.1 was under statutory obligation to issue notice of one month for terminating his service as temporary employee as provided under Rule 28 of MEPS Rules and if Petitioner

was accepted as permanent employee, then Respondent Nos.1 – 4 are not entitled to terminate his service without following the mandated procedure enumerated under Rule 26 of MEPS Rules. It is seen that in both situations, Respondent Nos.1 – 4 failed to follow due process of law and fulfill its statutory obligations under MEPS Act and MEPS Rules, hence I am of the view that findings returned by the School Tribunal are unsustainable and deserve to be set aside.

10. It is seen that Petitioner's appointment was made as per Annexure 'D' notified and approved by Respondent No.7 and through the same, Petitioner was appointed to post of 'Librarian' in Respondent No.6 – College, hence his appointment was valid and in accordance with law. As held above, closure of Respondent No.6 by Respondent No.1 could not have been done without permission of Respondent No.7, hence absorption of Petitioner into N.E.S High School was correct in law. Therefore, Petitioner was legally appointed in service of Respondent No.1 – Trust from October 2009 till his illegal termination in July 2019. It is further borne out from the record that in pursuance of order dated 15.06.2021 passed by the School Tribunal, Respondent No.1 was directed to file register of documents i.e. TC Books and receipts before the Tribunal and the same were duly produced and signature of Petitioner was reflected in various documents i.e. TC Books and receipts prepared by him during the years of 2016, 2017, 2018 and 2019. If this is the case, then I am of the clear view that this

establishes continuity of service Petitioner with Respondent No.1 – Trust. In that view of the matter, I cannot agree with the submissions put forth and argued by Mr. Barge on behalf of Respondent Nos.1 to 4 that the finding returned by the School Tribunal that Petitioner was a temporary employee and he was legally terminated by oral termination order and hence not entitled for reinstatement.

11. It is seen that School Tribunal passed order dated 10.01.2022 wherein it directed Respondent Nos. 1 to 4 to produce staff list of N.E.S. High School for the year 2008 and List / Statement 'A' of all incumbent staff during that year along with appointment and admission order of Respondent No.8 in order to establish whether Respondent No.8 was working in N.E.S. High School before the Petitioner. Subsequently, it is seen that School Tribunal passed order dated 25.02.2022 wherein it observed that Respondent Nos. 1 to 4 did not produce the aforementioned documents and hence adverse inference was drawn against the Respondents. However perusal of the impugned order would show that School Tribunal did not draw adverse inference against non – production of these vital documents. This in my opinion is a travesty of justice where the School Tribunal has failed to consider the fact that since Respondent Nos. 1 to 4 did not produce the aforementioned documents, adjudication as to whether Respondent No.8 deserved to be appointed to the post of Junior Clerk in place and stead of Petitioner could not be done.

12. It is seen that Respondent Nos.1 – 4 have strongly resisted the case of Petitioner that he was absorbed into N.E.S High School on the post of Junior Clerk and contended that his alleged appointment letter was fabricated and orchestrated in connivance with Respondent No.4 – Principal due to which inquiry proceedings were initiated against Respondent No.4 – Principal. In this regard, attention is drawn to a decision of this Court in the case of *Bharat Education Society's Junior College of Commerce and Economics and others V/s. Balaraman Vembulu*¹. In paragraph No.6 this Court held that even if there is a fall in student enrollment in educational institutions due to which employees are retrenched, decision to retrench such employees cannot rest in unilateral discretion of the management and prior approval of Competent Authorities (i.e Respondent Nos. 5 and 7) as well as due adherence to procedure postulated in Rule 26 of the MEPS Act is mandatory. Paragraph No.6 is reproduced hereunder for ease of reference:-

“6. A consideration of Rule 26 thus, shows that even if there is a reduction in the establishment due to a fall in the number of pupils, classes or divisions, the decision to retrench an employee cannot rest in the unilateral discretion of the management of a school. In the case of all schools, the principles on the basis of which the retrenchment is to be effected, are specified. The prior approval of the competent authorities of the Education Department is a mandatory condition. In the case of aided schools the employee whose services are sought to be dispensed with is to be absorbed in an alternative establishment. In the exceptional case specified in sub-rule (9) where the facility of absorption is not admissible, the employee has to be given an opportunity of working on a

¹ 2000 SCC OnLine Bom 583

lower scale or post or on a part-time post.”

13. It is seen that Respondent No.1 terminated Petitioner after its establishment i.e. Respondent No.6 shut down however Respondent No.1 failed to produce any document or material on record to show approval for termination / retrenchment of employees was sought from Respondent No.7 – Deputy Director of Education. Therefore, Petitioner was rightly absorbed into another institution managed by Respondent No.1 – Trust. It is further seen that though Petitioner possessed adequate qualifications to be appointed as Librarian, yet he accepted a lower post of Junior Clerk in N.E.S High School. Hence submissions put forth by Respondent Nos.1 to 4 do not inspire any confidence of this Court at all and therefore cannot be accepted.

14. What is intriguing is the fact that no departmental enquiry was held for Petitioner’s termination, no show cause notice is issued containing reasons therein, no charge has been framed, no inquiry officer was appointed and no statement was recorded. It is further seen that Respondent No.1 – Trust was under obligation to issue statutory one month notice for terminating services of a temporary employee as provided under Rule 28 of the MEPS Rules, 1981 listing out reasons for termination as enumerated in Rule 28(5) of MEPS Rules, 1981. Thus *prima facie* from the record, it is an admitted position that termination of the Petitioner was clearly contrary to law.

15. Here in the present case, admittedly no show-cause-notice is issued, no dereliction is alleged on part of Petitioner, no charge is framed, no inquiry is conducted, no statements are recorded and abruptly on oral termination, Petitioner is relieved from his services. This is in complete defiance of the due process of law. With such overwhelming faults which are completely untenable on the face of record merely because Management does not want the Petitioner to continue in employment cannot be a reason for denying reinstatement to the Petitioner. There is no dispute regarding Petitioner's services rendered diligently from the date of his appointment i.e. September 2009 until 22.07.2019 when by oral termination without holding any departmental inquiry whatsoever his services are terminated w.e.f. 28.02.2019 in flagrant violation of the due process of law. The allegation of forgery and fabrication is also unbelievable as no steps are taken by Respondents to indict the Petitioner for his acts. Hence such a counter is untenable. It is taken before this Court for the first time.

16. Though the learned Tribunal has awarded six months salary as compensation to Petitioner in lieu of reinstatement, the same cannot wipe out the stigma cast upon the Petitioner by the Management, upon such wrongful termination. Compensation of six months salary is not adequate compensation to the Petitioner considering his unblemished service of ten years rendered to Respondent No.1 – Trust.

17. Hence in view of the aforesaid strong facts and circumstances in the present case, I am in complete disagreement with the finding returned in the impugned judgement dated 23.09.2022 of the Tribunal and the same therefore calls for immediate interference of this Court. This is a clear case of high handedness and arbitrariness exercised by Respondent No.1 - Trust and N.E.S High School. It clearly borders on illegality and exploitation without regard to the due process of law. Hence, the finding returned in the impugned judgment offering six months salary as compensation in lieu of reinstatement under Section 11(e) of the MEPS Act stands dismissed, so also the judgment dated 23.09.2022 is quashed and set aside and it is directed that Petitioner is entitled to reinstatement on the same post from which he was terminated in N.E.S High School of Respondent No.1 - Trust along with full backwages. The Appeal filed by the Petitioner stands allowed and his termination stands set aside and he is directed to be reinstated forthwith.

18. Insofar as the issue of backwages / compensation to be awarded to Petitioner is concerned, in the facts and circumstances of the present case, I am of the opinion that Petitioner is not at fault whatsoever. Respondent Nos.1 to 4 have not followed the due process of law in terminating the services of Petitioner and have taken the law into their own hands. Petitioner has remained in unemployment during the aforesaid period and has suffered the ignominy of being out of

service and without any earnings without his fault. There is no material placed by Respondent Nos.1 to 4 on record to show that Petitioner was employed elsewhere in the interregnum.

19. Attention is drawn to a recent decision of the Supreme Court in the case of *Constable Uma Shankaran Vs. Union Of India & Ors.*² delivered on 16.01.2026 wherein the Supreme Court in paragraph No. 8 has held that when termination is held to be illegal and no proof of alternate employment exists, denial of backwages is unjustified. The relevant paragraph No.8 is reproduced below for immediate reference:-

“8. We are conscious of the law that ordering back wages to be paid to a dismissed employee – upon his dismissal being set aside by a court of law – is not an automatic relief and, ordinarily, is dependent on the employee being not employed in the interregnum. However, the general rule is that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer’s action is held to be illegal and bad, such employer cannot escape from suffering the consequences.”

20. In that view of the matter, Petitioner shall therefore be entitled to full backwages for the entire period from the date of his termination until he is reinstated from the date of he having been terminated from N.E.S High School i.e. from 22.07.2019. It is directed

2 Special Leave Petition (C) Nos.6903-6904/2020 decided on 19th January 2026

that full backwages shall be paid to Petitioner along with interest at the rate of 9% per annum by Respondent No.1 – Trust. All amounts due and payable as directed hereinabove shall be paid by Respondent Nos.1 to 4 to the Petitioner within a period of 2 weeks from today positively. Respondent Nos.2 to 4 shall be personally liable to ensure that they will forthwith allow the Petitioner to join the Respondent No.1 – Institution on the basis of a server copy of this judgment downloaded from the website of the High Court. Further they shall immediately compute the backwages payable as per this judgment / order and ensure that the same is paid fully alongwith interest as directed in the Petitioner’s Bank account. If Respondent Nos.2 to 4 do not follow the above directions, they shall be liable for contempt.

21. All parties to act on a server copy of this judgment.
22. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

23. After the above judgement is pronounced, Mr. Barge, learned Advocate for Respondent Nos.1 to 3 persuades the Court to stay the effect and validity of this judgement in order to enable Respondents to challenge the same before Supreme Court. I have considered his request but in view of observations and findings which are extremely strong, I am not inclined to accept the request for stay made by Mr. Barge. Request made by Mr. Barge is declined.

[MILIND N. JADHAV, J.]

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