

Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12680 OF 2016**

Taraka Chandrakant More

Age 35 Yrs, Occ : Nil,

R/o. Khamkheda, Tal, Deola

Dist. Nashik.

...Petitioner

VERSUS

1. The State of Maharashtra
Thr. Government Pleader's Office,
High Court, Appellate Side, Mumbai.
2. The Hon'ble Secretary of
the Department of School
Education and Sports, Mantralaya
Mumbai 400 032.
3. The Secretary,
Samaj Sudhar Samiti,
Mhasarul, Dist. Nashik.
4. Project Officer,
Ekatmik Adivasi, Vikas Prakalp
Officer, Tal. Kalwan, Dist. Nashik.
5. Head Master,
Prathamik Ashram Shala,

Navi Bej, Tal. Kalwan,
Dist Nashik.

6. Addl. Tribal Development Commissionerate,
Nashik, Adiwasi Vikas Bhavan,
Ground floor, Old Agra Road,
Nashik 422 002.

7. The Presiding Officer,
School Tribunal, Nashik.

8. The Education Officer,
Zilla Parishad, Nashik.

...Respondents.

Mr. Eknath Dhokale a/w. Ms. Darshana Kamble for the
petitioner.

Mr. Anilkumar Patil a/w. Mr. Digvijay Patil, Mr. Laxmikant Patil
for respondent nos. 3 and 5.

Mr. B. B. Dahiphale, AGP for the respondent-State.

CORAM : GAURI GODSE, J.

RESERVED ON: 30th APRIL 2026

PRONOUNCED ON: 6th AUGUST 2026

JUDGMENT:

BASIC FACTS:

1. The petitioner was appointed as Shikshan Sevak in the
Ashram School run by respondent no. 3. Respondent no. 5 is

the Headmaster of the Ashram School. By the order impugned in this writ petition, the petitioner's appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("MEPS Act") challenging the oral termination has been dismissed.

2. Respondent no.3 had published a notice in the newspaper for five posts of Shikshan Sevak to be appointed in the Ashram School run by respondent no.3. Pursuant to the notice, the petitioner had applied for the post, and she was appointed as Shikshan Sevak in the Primary Ashram School run by respondent no.3. The appointment order is dated 15th December 2004.

3. Respondent no.4 is the project officer who had approved the petitioner's appointment on 28th February 2006. The petitioner completed her three-year service as Shikshan Sevak on 16th July 2007. Hence, according to the petitioner, on completion of three years she became a permanent teacher with effect from 16th July 2007. Thereafter, the respondent management issued a termination letter dated 23rd July 2007 terminating the petitioner's service with effect from 16th July 2007. However, the petitioner continued her

service, and she was assured that an order of confirmation would be issued. According to the petitioner, while in continued service, she had undertaken the departmental training programs organised by the respondent no. 4, Project Officer. However, after 16th June 2008, the petitioner was not allowed to join her duties in the school. Hence, she filed the appeal under Section 9 of the MEPS Act to challenge her oral termination.

4. According to the management, the petitioner's appointment was only for one academic year. However, she had manipulated the date in the appointment order. According to the management, due to non-performance and dereliction in her duties, the petitioner was issued various memos, and therefore, the decision was taken to discontinue her service. Hence, it was contended by the management that there was no oral termination. Since the petitioner's services were terminated with effect from the date of expiry of the period of her appointment, the petitioner was not entitled to claim any permanency.

5. The learned tribunal held that the petitioner was not appointed as Shikshan Sevak on a vacant post after

following the process of law. Hence, the petitioner's case of oral illegal termination is disbelieved. The tribunal has therefore dismissed the appeal.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

6. Learned counsel for the petitioner submitted that though the appointment order referred to only one academic year, the petitioner was intimated that her appointment was for three years. The petitioner's appointment was accordingly approved by respondent no.3 for the period from 17th July 2004 to 16th July 2007. There is no dispute that the petitioner continued in service for the period of three years. It was only in June 2008 that she was not allowed to join her duties. The termination letter dated 23rd July 2007 issued by the management itself shows that the petitioner's appointment was not for the period of one year. Since after the termination letter dated 23rd July 2007, the petitioner was continued in the service, there was no reason for the petitioner to challenge the termination letter dated 23rd July 2007. Thus, only due to oral termination in June 2008, the petitioner was constrained to file the appeal before the school tribunal.

7. Learned counsel for the petitioner, therefore, submitted that when the petitioner was permitted to continue beyond the period of one year as stated in the original appointment order, it is clear that her appointment was for three years in terms of Government Circular for appointment of Shikshan Sevak for the period of three years. Since the petitioner continued beyond the period of three years, she would be entitled to deemed permanency. Learned counsel for the petitioner submits that the tribunal has completely ignored the substantial evidence produced on record to show that the petitioner had undertaken training programs during the period of three years, which supports the petitioner's contention that her appointment was for three years and she successfully completed the entire probation period of three years as required for deemed permanency under Section 5 of the MEPS Act.

8. To support his submissions, learned counsel for the petitioner relied upon the decision of this court in ***Assaram Raibhah Dhaga Vs. Executive Engineer and Ors¹, Ram Avadh Mahel Pal Vs. Shivdutta Educational Trust and Ors²***. Learned counsel for the petitioner, therefore, submits

1 1988 SCC OnLine Bom 336

2 2007 (6) Mh.L.J.

that the illegal termination letter issued with retrospective date would not disentitle the petitioner to claim permanency on due completion of the period of three years. He submits that it is a well-established legal principle that once the petitioner continued in service for the entire probation period of three years, the management would not be justified in terminating the service without following the due procedure under the MEPS Act.

9. He submits that the Full Bench of this Court in ***Ram Avadh Mahel Pal*** has decided the issue of completion of the probation period of three years by the teachers appointed as Shikshan Sevak. It is held that on completion of a three-year probation, the Shikshan Sevak shall be deemed to have been appointed and confirmed as a teacher. Hence, in view of the well-established legal principles, the management is not entitled to terminate the petitioner's services as she has attained permanency on satisfactory completion of the probation period of three years.

SUBMISSIONS ON BEHALF OF RESPONDENT NOS. 3 AND 5 (MANAGEMENT):

10. Learned counsel for the management has submitted a compilation of the documents containing the documentary evidence produced before the tribunal. He submitted that all the documentary evidence relied upon by the petitioner before this court to support her contention that she completed the period of three years was not produced before the tribunal. He submitted that the termination letter dated 23rd July 2007 was never challenged by the respondent. Hence, the appeal filed by the petitioner to challenge the oral termination was itself not maintainable. The petitioner was never continued in service after 16th July 2007. Hence, there was no question of any permanency on the ground of satisfactory completion of three years.

11. Learned counsel for the respondent submitted that the original appointment order was only for one academic year. However, the petitioner had scored out the period and had shown the appointment for three academic years. He, therefore, submits that in view of the appointment order dated 15th December 2004, the petitioner's appointment was for the period from 17th July 2004 to 30th April 2005. Though the petitioner continued in service, thereafter her service was

terminated on 23rd July 2007 with effect from 16th July 2007. Hence, before completion of the probation period, the petitioner was terminated on the ground of her unsatisfactory service. The termination letter refers to various memos issued to the petitioner, which she never challenged; hence, the tribunal has rightly accepted the contentions of the management that the petitioner did not satisfactorily complete the probation period and, therefore, her services were rightly terminated before completion of three years.

12. Learned counsel for the management submitted that the petitioner's services were already terminated on 23rd July 2007 and the petitioner never continued thereafter in her service. Therefore, there was no question of any oral termination that was challenged by the petitioner before the school tribunal. Hence, the impugned order is rightly passed based on the material before the tribunal. The documents relied upon in the present petition to show that she had continued in service and had undertaken training programs cannot be considered for the first time in this writ petition.

13. To support his submissions that once action has been taken against a probationer before the completion of the

probation period, no permanency can be claimed by the teacher, he relied upon the decision of this court in ***Gramin Yuvak Vikas Shikshan Mandal Kinhi Naik and Anr. Vs. Shivnarayan Datta Raut and Anr***³. Learned counsel for the management submitted that the well-reasoned order of the tribunal refusing to grant relief to the petitioner need not be interfered with in the writ jurisdiction under Article 227 of the Constitution of India.

ANALYSIS AND CONCLUSIONS:

14. On perusal of the termination letter dated 23rd July 2007, various memos were noticed by this Court which are referred to in the termination letter. The termination letter made serious allegations against the petitioner that during her tenure, a girl student in the Ashram School Hostel expired. Hence, she was issued a memo. Considering the serious allegation regarding blaming the petitioner for the death of a female student, this court called upon the learned AGP to make his submission on the guidelines for appointment of Shikshan Sevak in the resident schools. Learned AGP was called upon to file an affidavit to point out

³ AIR Online 2023 BOM 841

the guidelines, if any, governing the appointment of Shikshan Sevak in a resident school (Ashram School).

15. In the present case, the petitioner's appointment order does not refer to her appointment in a resident school. The duty list mentioned in the appointment order does not refer to any such duty for remaining/residing in the school premises as a resident teacher. Hence, the necessary affidavit was called for from respondent nos. 1 and 2. Accordingly, learned AGP tendered an affidavit on 29th April 2026. Learned AGP has placed on record a government circular dated 8th September 2005 by which necessary guidelines are issued for Shikshan Sevaks and the staff in Ashram Schools. It is stated in the affidavit that since the tribal schools are mostly in remote areas, residential facilities for students and teachers are provided. The copy of the government circular dated 24th August 2021 is also annexed to the affidavit. According to the learned AGP, as per the said circular, it has been made mandatory for the teaching and non-teaching staff to stay in the school premises in a residential school. Learned AGP, thus, submitted that in view of the government

circular, it is mandatory for teaching and non-teaching staff to reside within the premises of the Ashram School.

16. I have carefully perused the circulars produced on record by the learned AGP. None of the circulars refers to any mandatory requirement that all Shikshan Sevaks appointed in Ashram Schools would be resident teachers. So far as the petitioner is concerned, even her appointment letter does not refer to any such condition that she was appointed on any such condition. The Circular dated 24th August 2021 produced by the learned AGP provides that it will be mandatory for the Male and Female Superintendent to reside in the Ashram School at night and in their absence another teacher be given their duty. Even the Ashram Shala Code produced by the learned AGP does not provide for any mandatory requirement for each teacher to remain in the Ashram School for 24 hours.

17. Although there is a controversy on the period of service mentioned in the appointment letter, there is no dispute that the petitioner continued for three academic years. Admittedly, the petitioner joined her services as Shikshan Sevak with effect from 17th July 2004. As per the termination

letter dated 23rd July 2007, it is clear that the petitioner has completed the period of three years. The management had not issued any letter of termination before completion of the period of three years. The termination letter dated 23rd July 2007 records the termination of the petitioner's services with backdated effect from 16th July 2007. Thus, by issuing the termination letter, the petitioner's services are terminated with a backdated effect. The management has raised the dispute on the petitioner's contention that she continued for the period of one year despite the letter dated 23rd July 2007. The documents produced regarding the certificates issued to the petitioner indicate that she continued in service for the academic year 2007-08. Two of the certificates produced in this writ petition were admittedly not produced before the tribunal. However, from the record and the judgment, it is seen that the other documents were produced before the tribunal, from which it is seen that the petitioner continued in service despite the termination letter dated 23rd July 2007. Once the petitioner completed the probation period of three years, she would be entitled to deemed permanency in view of the well-established legal principles.

18. I have perused the copies of the memos produced on record on behalf of the management. Memo dated 16th July 2006, 24th July 2006 and 30th July 2006 are referred to in the termination letter dated 23rd July 2007. The termination letter records that the petitioner's services are terminated with effect from 16th July 2007. It is contended on behalf of the management that the petitioner was never continued in service after 16th July 2007. The termination letter dated 23rd July 2007, relied upon by the management records that memos dated 24th July 2006 and 30th July 2006 were issued to the petitioner. Thus, the copies of the memos relied upon by the management show that the petitioner was in continuous service till 16th July 2007. Thus, it is clear that the petitioner completed the three-year probation period. Hence, the reasons recorded by the tribunal that the petitioner would not be entitled to permanency would not be sustainable in view of the admitted facts as recorded in the above paragraphs.

19. The management receives 100% grant from the government. There appears to be no dispute that for the period of three years of probation, the petitioner received her

salary upto April 2007 through the 100% grant received by the school. The petitioner has claimed salary from May 2007. Thus, there is no manner of doubt that the petitioner completed the probation period of three years. Even if the management's contention is accepted that the petitioner was not continued after expiry of the period of three years, the termination letter dated 23rd July 2007 relied upon by the management with backdated effect itself shows that the petitioner was in service as on 23rd July 2007. Therefore, on 16th July 2007, the petitioner completed three year probation period. Hence, the petitioner would be entitled to deemed permanency. Therefore, there would be no question of terminating the petitioner's services without following the due procedure prescribed in the MEPS Act for termination of a permanent teacher.

20. In ***Assaram Raibhah Dhaga***, a petition was filed challenging termination of a project displaced person, appointed as a mustering assistant by issuing a termination letter with retrospective effect. The petition was allowed holding that the services of an employee, be he permanent or temporary, cannot be terminated with retrospective effect.

In ***Ram Avadh Mahel Pal***, the reference before the Full Bench of this Court was answered by holding that, in view of the amendments made by Maharashtra Act XIV of 2007 to the MEPS Act, it has been provided that every person appointed as Shikshan Sevak shall be on probation for a period of three years. It is further held that, subject to the provisions of sub-sections (3) and (4) of section 5 of the MEPS Act, a Shikshan Sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

21. In ***Gramin Yuvak Vikas Shikshan Mandal Kinhi Naik***, a reference to the larger bench was decided on the question pertaining to section 5(3) of the MEPS Act and Rule 15 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The Hon'ble Full Bench of this Court held that Rule 15 of the MEPS Rules does not indicate that Rules 15(1) to 15(5) apply to a probationer along with Rule 15(6) of the MEPS Rules.

22. In the present case, the challenge is to the oral termination of the petitioner. The petitioner completed her probation period of three years on 16th July 2007; hence, she

attained deemed permanency. The termination letter dated 23rd July 2007 for backdated termination was illegal. The petitioner was not required to challenge the said termination as she was continued in service thereafter. Once the petitioner is entitled to deemed permanency in view of completion of the probation period, the decision of the Full Bench in ***Gramin Yuvak Vikas Shikshan Mandal Kinhi Naik*** would not apply in the present case.

23. The decision of the Full Bench of this Court in ***Ram Avadh Mahel Pal*** relied upon by the learned counsel for the petitioner squarely applies to the facts of the present case. It is a well-established legal principle that on completion of the probation period of three years as Shikshan Sevak, the appointment is deemed to be that of a permanent teacher. In the impugned judgment, the tribunal has completely misdirected itself by not considering the admitted facts which show that the petitioner had completed the period of probation of three years. The tribunal, misinterpreted the termination letter dated 23rd July 2007, to hold that the petitioner illegally worked after the said termination. As held in ***Assaram Raibhah Dhaga***, the services of an employee,

be he permanent or temporary, cannot be terminated with retrospective effect. Thus, the Tribunal erroneously held that as the petitioner never challenged the said order, she was not entitled to claim permanency. Even otherwise, there is substantial material on record to show that the petitioner continued in service after 23rd July 2007.

24. The learned tribunal missed an important fact that even the termination letter dated 23rd July 2007 reveals that the petitioner had continued after the expiry of the probation period of three years. The termination letter dated 23rd July 2007 says that the petitioner's service is terminated with effect from 16th July 2007; hence, admittedly the petitioner was working as on 23rd July 2007. Therefore, the petitioner completed her probation period of three years from 17th July 2004 upto 16th July 2007. Thus, as held by the Full Bench of this Court in ***Ram Avadh Mahel Pal***, every person appointed as Shikshan Sevak shall be on probation for a period of three years and subject to the provisions of sub-sections (3) and (4) of Section 5 of the MEPS Act, a Shikshan Sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

25. The management contended before the Tribunal that the petitioner attended the school after 16th July 2007 and used to forcibly sign the muster roll. The allegations made by the management that the petitioner had threatened the management and the Headmaster of filing a criminal complaint falsely alleging atrocity are not substantiated by any evidence. The Tribunal has held that the management took no action against the petitioner regarding the allegation of illegally making corrections in the appointment order for changing the period of probation. The management had issued memos to the petitioner; however, no material is produced to show that any action permissible under the MEPS Act and the Rules was taken against the petitioner at any time during the three-year probation period. Therefore, vague allegations made by the management would not disentitle the petitioner from attaining deemed permanency on completion of the three-year probation period.

26. The Tribunal has unnecessarily relied upon the allegations that the petitioner was not residing at her headquarters and that she was simultaneously taking education in a college at Dhule. Admittedly, during the

probation period, the management has not taken any action against the petitioner as permissible under the MEPS Act read with the said Rules. Hence, based on vague allegations, it cannot be held that the petitioner did not complete her probation period. Even otherwise, the termination letter with backdated effect itself falsifies the allegations of the management, inasmuch as the letter dated 23rd July 2007 terminating services with backdated effect of 16th July 2007 shows that the petitioner had completed the probation period on 16th July 2007.

27. The Tribunal has held in paragraph 40 of the impugned judgment that the petitioner was not allowed to sign muster from 16th June 2008, and she was orally terminated. A certificate issued by the Education Training Centre, Nalegaon, dated 8th February 2008, a certificate dated 22nd October 2008 issued by the Education Officer and the Muster Roll are referred to and relied upon by the Tribunal to hold that the petitioner was orally terminated on 16th June 2008. However, the Tribunal has erroneously held that since the petitioner did not challenge the termination letter dated 23rd July 2007 terminating her service with effect from 16th July

2007, she continued in service illegally and was not entitled to challenge the oral termination.

28. The Tribunal has failed to correctly appreciate the facts. The Tribunal failed to appreciate that the backdated termination is illegal. Such a termination is not known to law. Hence, the Tribunal committed grave error in not granting relief to the petitioner, despite recording a finding that there was oral termination on 16th June 2008. The Tribunal further erroneously held that since there was no permanent post, the petitioner was not appointed on a permanent post by following due process. The Tribunal failed to consider that there is no dispute on the petitioner's appointment as Shikshan Sevak pursuant to the advertisement. The appointment order dated 15th December 2004 is also not disputed. The only objection raised by the management was that the petitioner had illegally changed the period of service in the appointment order from one year to three years. In one of the replies submitted by the petitioner in response to the notice/memo issued by the management, the petitioner has contended that on the instructions of the management, the period was changed from one year to 3

years in the appointment order. However, even as per the findings recorded by the Tribunal, the petitioner has worked upto the date of oral termination.

29. It is an important factor in favour of the petitioner that her appointment order as Shikshan Sevak was issued pursuant to the public advertisement for filling up five vacant posts of Shikshan Sevak. The material on record, including the illegal termination letter dated 23rd July 2007, supports the petitioner's contention that she has successfully completed the probation period of three years for claiming deemed permanency. As discussed in the above paragraphs, the termination letter itself is sufficient proof that the petitioner was in service up to 23rd July 2007, inasmuch as the termination letter records that her services were terminated with backdated effect from 16th July 2007. Therefore, on completion of the probation period of three years from 17th July 2004 to 16th July 2007, the petitioner has attained permanency in view of the well-established legal principles as discussed in the above paragraphs. Therefore, her services could not have been terminated without following the procedure for termination of a permanent

teacher as provided under the MEPS Act read with the said Rules framed thereunder. During the probation period, no action under sub-sections (3) and (4) of section 5 of the MEPS Act was taken against the petitioner. Hence, the petitioner's oral termination from 17th June 2008 is illegal and must be set aside.

30. The management went to the extent of making serious allegations by alleging negligence against the petitioner for the death of one female student in the hostel. The Tribunal has not accepted this allegation for want of any supporting proof. However, making such serious allegations in the absence of any iota of evidence reflects on the conduct of the management in making false allegations. There is no material produced to show that the petitioner was appointed as a resident teacher and that she was assigned any duty at the girls' students' hostel. The circular produced by the learned AGP does not show any provision that all the Shikshan Sevaks appointed in the schools having hostel facilities are required to work as resident teachers.

31. Admittedly, respondent no. 3 is a resident school (Ashram Shala), and one girl student died in the hostel. The

management has made vague allegations against the petitioner that she was responsible for the death of the girl student in the hostel. The Tribunal has rightly disbelieved the said allegations for want of any evidence. However, such an incident reflects on the negligence of the management.

32. Although the petitioner has pleaded in this petition that she was not gainfully employed after her termination, she has not raised any such plea in the Tribunal. It is a well-established legal principle that such a plea must be raised at the first instance. Therefore, full backwages cannot be granted. However, the petitioner has worked upto 16th June 2008. She has contended that she has not been paid salary from May 2007. The management has not produced any material to show that the petitioner was paid salary from May 2007 till the oral termination from 17th June 2008. Hence, the petitioner is entitled to full salary with all applicable service benefits from May 2007 till the oral termination from 17th June 2008. In view of the peculiar facts and circumstances of the case as discussed above, the petitioner shall also be entitled to the cost of the litigation from the management. The cost is quantified at Rs. 1,00,000/- (Rupees One Lakh Only).

33. For the reasons recorded above, the impugned judgment warrants interference in the exercise of writ jurisdiction under Article 227 of the Constitution of India.

34. Hence, the petition is allowed by passing the following order:

- i) The judgment and order dated 23rd June 2015 passed by the Presiding Officer, School Tribunal, Nashik Region, Nashik in Appeal No. 34 of 2012 is quashed and set aside.
- ii) The Appeal No. 34 of 2012 is allowed. The oral termination from 17th June 2008 is declared illegal and is set aside.
- iii) The petitioner is directed to be reinstated as a deemed permanent teacher with effect from 17th July 2007 with continuity in service, for all purposes including retirement benefits.
- iv) The respondents shall take all necessary steps within six weeks from today to reinstate the petitioner as directed by this order.
- v) If the respondents fail to reinstate the petitioner as directed by this order, the petitioner shall be entitled

to the payment of salary from the date of expiry of the period of six weeks from today.

- vi) The petitioner is entitled to full salary with applicable service benefits for the period from May 2007 to 16th June 2008. Respondent no. 3, i.e. the management and Respondent no. 5, i.e. the Head Master, shall take appropriate steps to pay the full salary as directed by this order within six weeks from today, failing which Respondent no. 3 shall pay interest at 6% along with the payable amount from the date of expiry of the period of six weeks till actual payment.
- vii) Respondent no.3, i.e. the management, shall pay the cost of the litigation to the petitioner within six weeks from today. The cost is quantified at Rs. 1,00,000/- (Rupees One Lakh Only).

[GAURI GODSE, J.]