AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2014 OF 2008

1. **The President**, Adarsh Vidya Prasarak Sanstha, C/o. Adarsh Vidya Mandir, At Post Kulgaon, Taluka Ambernath District Thane
2. **The Head Master**, Adarsh Vidya Mandir, At Post Kulgaon, Taluka Ambernath District Thane

... **Petitioners**

Vs.

1. **Savita Gajanan Fatake**, Swapnadip Apartment, Swapnanagari, Belawali, Badlapur (West), District Thane
2. **Education Officer (Secondary)**, Zilla Parishad, Thane

... **Respondents**

WITH

WRIT PETITION NO.2020 OF 2008

1. **Adarsha Vidya Prasarak Sanstha**, through it's Secretary, Kulgaon (East), Taluka Ambernath, District Thane
2. **The President**, Adarsh Vidya Prasarak Sanstha, C/o. Adarsh Vidya Mandir, At Post Kulgaon, Taluka Ambernath District Thane
3. **The Head Master**, Adarsh Vidya Mandir, At Post Kulgaon, Taluka Ambernath District Thane

... **Petitioners**

Vs.

1. **Bhavna Karbhari Chavan**,
   Age Adult, R/at: Mayuresh Niwas,
   Behind Zilla Parishad School,
   Manjarli, Ganesh Chowk,
   Badlapur (West), Taluka Ambernath,
   District Thane
2. **Education Officer (Secondary)**,
   Zilla Parishad, Thane

... **Respondents**

WITH
WRIT PETITION NO.2021 OF 2008

1. **The President**, Adarsh Vidya Prasarak
   Sanstha, C/o. Adarsh Vidya Mandir,
   At Post Kulgaon, Taluka Ambernath
   District Thane
2. **The Head Master**, Adarsh Vidya Mandir,
   At Post Kulgaon, Taluka Ambernath
   District Thane

... **Petitioners**

Vs.

1. **Balu Bhaskar Patil**,
   A-204, Angan Apartment, New D.P.
   Road, Katrap, Badlapur (East),
   District Thane
2. **Education Officer (Secondary)**,
   Zilla Parishad, Thane

... **Respondents**

Mr. Devendranath Joshi for the petitioner.

Mr. Mihir Desai, Senior Advocate with Ms. Sanskriti Yagnik for respondent No.1.

Dr. Dhruti Kapadia, AGP for respondent No.2-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 10, 2026.

PRONOUNCED ON : APRIL 16, 2026

JUDGMENT:

1. Since the question of law arising for consideration in all the present writ petitions is common and interconnected, the same are being disposed of by this common judgment. For the sake of convenience and in order to avoid repetition of facts, the factual matrix in Writ Petition No.2014 of 2008 is taken as the lead matter for adjudication.

2. By way of the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioners have assailed the legality, correctness, and propriety of the Judgment and Order dated 14 December 2007 passed by the learned School Tribunal, Navi Mumbai in Appeal Nos. 24 of 2007, 26 of 2007, and 40 of 2007.

3. The facts giving rise to the filing of the present writ petition, as set out by the petitioners, are that Respondent No. 1 in each of the writ petitions came to be appointed as an Assistant Teacher in Adarsha Vidyalaya Mandir, a school managed and conducted by Petitioner No. 1, during the year 2005. It is the case of the petitioners that though Respondent No. 1 repeatedly requested issuance of a formal order of appointment, no separate appointment order was issued in her favour. It is further the case that by communication dated 27 March 2007, Respondent No. 1 was informed that her services stood discontinued upon conclusion

of the academic year. Thereafter, Respondent No. 1 was not reappointed for the subsequent academic session of 2007 to 2008. Treating the action of the petitioners in not reappointing her for the said academic year as amounting to an order of termination, respondent No. 1 instituted an appeal in the year 2007 before the School Tribunal, Navi Mumbai, challenging the alleged termination dated 27 March 2007. In the said proceedings, the petitioners entered appearance and filed their reply resisting the appeal, inter alia contending that the appointment of respondent No. 1 in Adarsha Vidya Mandir was purely temporary in nature and made only for a limited duration. It was further contended that on the basis of such temporary appointment, respondent No. 1 had acquired no legal right either to claim continuation in service or to seek continuation in the school establishment.

4. The learned School Tribunal, upon hearing the parties, by its Judgment and Order dated 14 December 2007, recorded a finding that the appointment of Respondent No. 1 was in the nature of an appointment on probation and, therefore, her services could not have been dispensed with without adherence to the prescribed statutory procedure. On the basis of the aforesaid findings and observations, the learned Tribunal allowed the appeals preferred by Respondent No. 1. Being aggrieved thereby, the petitioners have approached this Court by way of the present writ petitions.

5. Mr. Joshi, learned counsel appearing for the petitioners, submits that the learned School Tribunal failed to properly appreciate the nature of appointment of Respondent No. 1 and erroneously treated the same as an appointment on probation,

despite the clear position that the appointment was purely temporary in character. It is his submission that a temporary employee does not acquire any vested right either to hold the post or to seek continuation in service beyond the period of appointment. He contends that Respondent No. 1, being admittedly appointed on temporary basis, could not have claimed continuation or permanency in service and the Tribunal committed serious error in holding otherwise. In support of the aforesaid submissions, Mr. Joshi has placed reliance upon the Full Bench judgment of this Court in the case of *Ramkrishna Chauhan vs. Seth D.M. High School & Others, reported in* 2013 (2) Mh.L.J. 713.

6. Per contra, Mr. Desai, learned Senior Advocate appearing on behalf of Respondent No. 1, submits that it is the specific case of Respondent No. 1 that she, being duly qualified with B.A. and B.Ed. degrees, was appointed against a clear vacant post on probation. He submits that her work and conduct during service remained satisfactory and, in recognition thereof, a certificate dated 20 April 2007 was issued by the Head Master certifying that her performance and behaviour were satisfactory. He further submits that the appointment of Respondent No. 1 had also received due approval from the Education Department. According to him, in absence of any adverse material, there existed no justification whatsoever for discontinuing her services, and yet her services came to be terminated by communication dated 27 March 2007 issued under the signature of the Secretary. It is further submitted that where termination is sought on the ground of unsatisfactory performance during probation, credible and

substantive material reflecting such unsatisfactory performance must exist on record and such material ought to be placed before the Managing Body before taking any adverse decision. In support of his submissions, Mr. Desai, learned Senior Advocate has relied upon the decisions in *Abdul Rafique Abdul Hamid vs. Yavatmal Islamia Anglo Urdu Education Society & Others, reported in* 2014 SCC OnLine Bom 1616*, Dhansing Dalsing Rajput vs. State of Maharashtra through the Secretary & Others, reported in* 2018 SCC OnLine Bom 1965, *and* the judgment of the Supreme Court in *Maharashtra Shikshan Sanstha & Another vs. Dilip Ganpatrao Lanjewar & Another, reported in* (2017) 14 SCC 298.

REASONS AND ANALYSIS:

7. I have given thoughtful consideration to the rival submissions canvassed on behalf of the petitioners as well as Respondent No. 1, and have also examined the pleadings, documents, and material which have been brought on record by the parties. Upon such examination, what becomes noticeable is that the dispute centers around the nature of the appointment granted to Respondent No. 1 and the consequences that must flow therefrom.

8. In matters pertaining to service jurisprudence, the form of appointment and the character of appointment cannot be disregarded unless compelling circumstances exist. Where an appointment order stipulates that the engagement is temporary or restricted to a fixed tenure, such recital contained in the order cannot be brushed aside merely because the post on which

appointment was made may be a permanent vacancy or because the employee contends that she had discharged duties of regular nature. The settled principle of law remains that parties entering into service relationship are ordinarily bound by the terms and conditions governing such appointment and such terms regulate their rights and obligations unless the person challenging the nature of appointment is able to establish that the nomenclature employed by the Management was merely a camouflage and did not reflect the real nature of the engagement. Merely because an employee was permitted to work or was assigned duties similar to regular staff, that by itself does not change the nature of appointment. The burden lies upon the employee who disputes the temporary appointment to demonstrate that the label of temporary appointment was not genuine but was a farce employed by the Management for ulterior purpose. Unless such burden is discharged, the Court would not be justified in discarding the language used in the appointment order. To hold otherwise would result in rewriting of service conditions, which is impermissible except in cases where fraud, camouflage, or statutory violation.

9. It is on this foundation that the petitioners have based their entire case. Their principal submission is that Respondent No. 1 was never appointed on probation and therefore the School Tribunal committed error in drawing inference of probationary appointment in the absence of supporting material.

10. Neither the contention of the petitioners nor that of the respondent can be accepted in absolute terms. The fact that approval was granted by the Education Department cannot

determine the status of the appointment as being on probation. Departmental approval is generally granted for grant in aid. Such approval does not transform every appointment into probationary appointment irrespective of contractual stipulations. Similarly, the certificate recording satisfactory work and conduct of Respondent No. 1 is a relevant factor and lends support to the assertion that the respondent had discharged duties satisfactorily during her tenure. However, such certificate cannot be treated as conclusive regarding the character of the appointment. A certificate acknowledging satisfactory performance merely indicates that the employee performed duties properly during the period of engagement. It does not change the terms and conditions governing the appointment. Even a temporary employee may render satisfactory service; yet such discharge of duty does not confer upon such employee probationary or permanent status.

11. The Full Bench of this Court in *Ramkrishna Chauhan*, while interpreting the scope of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, has held that the provisions contained therein do not extinguish the authority of the Management to make appointment on temporary basis even against a permanent vacancy, provided such arrangement is for a limited duration and made in circumstances warranting such temporary arrangement. The Full Bench has observed that though Section 5(1) obliges the Management to fill a permanent vacancy as expeditiously as possible and within a reasonable period, ordinarily before commencement of the academic year, the said provision does not prohibit the

Management from making temporary appointment as an interim arrangement until a suitable candidate is selected in accordance with the prescribed procedure. It has been further held that while the Management is under obligation to fill permanent vacancies through duly qualified persons by following the prescribed procedure, Section 5(2) cannot be construed as creating a fiction that every appointment made against a permanent vacancy must be deemed to be on probation, irrespective of the terms contained in the appointment order. The Full Bench has clarified that the deeming fiction under Section 5(2) applies where an employee is appointed on probation and completes the probationary period and such deeming fiction cannot be extended to a person appointed on temporary basis for a limited term. It has been further held that where the Management appoints a duly qualified person temporarily against a permanent vacancy due to inability to complete the selection process, or due to non-availability of a suitable candidate, such temporary appointment is permissible, subject to the Management recording reasons and taking steps to fill the permanent vacancy in accordance with law. The Full Bench has held that neither the School Tribunal nor any Court can presume that an appointment made against a permanent vacancy is on probation merely because the vacancy is permanent, when the appointment order stipulates that the appointment is temporary. The parties remain bound by the terms and conditions of the appointment order and unless the appointment letter itself specifies that the appointment is on probation, no such presumption can be drawn. It has been held that the School

Tribunal cannot ignore the stipulations in the appointment order and treat a temporary appointment as probation on the basis that the appointment was against a clear or permanent vacancy. The Full Bench accordingly concluded that the issue must be answered in the negative and that it is impermissible for the School Tribunal to assume that every appointment against a clear and permanent vacancy is deemed to be on probation within the meaning of Section 5(2) of the Act, when the letter of appointment provides otherwise.

12. However, as held in paragraph 17 of the judgment, the discretion available with the Management in matters of appointment cannot be understood to mean that such authority is absolute. The Management cannot be permitted to take shelter behind the plea of unsuitability of candidates appearing in the selection process and repeatedly reject candidates only with a view to continue making temporary or contractual appointments against a vacancy which is permanent. If such course is permitted, the same would defeat the statutory scheme contemplated under Section 5 of the Act, which obligates the Management to fill permanent vacancies in regular manner and within reasonable time. A permanent vacancy cannot be allowed to remain perpetually occupied by temporary appointees merely because the Management chooses to state that candidates are not suitable. Such conduct would create a mechanism whereby the Management may avoid making regular appointments and thereby frustrate the statutory protection available to employees appointed against permanent posts. It therefore follows that where the

Management, despite existence of a permanent vacancy, decides not to appoint a selected candidate on probation and instead chooses to appoint a qualified person on temporary basis for a limited duration, such decision must not remain unsupported by record. The Management is under obligation to contemporaneously record its reasons and its subjective satisfaction for adopting such course. Such recording of reasons demonstrates that the decision was taken bona fide, after due consideration of relevant circumstances. The requirement of maintaining such contemporaneous record acts as safeguard against misuse of power. In absence of such recorded reasons, it may give rise to inference that the temporary appointment was not made for administrative need but as device to circumvent statutory obligations.

13. The necessity of recording reasons assumes significance because whenever an order of temporary or contractual appointment is challenged before the before a Court of law, the legality of the action of the Management would become open to judicial scrutiny. In such proceedings, the Court or Tribunal would be entitled to examine whether the decision of the Management to avoid regular appointment and instead resort to temporary appointment was founded upon bona fide considerations or whether the same was actuated by oblique motives. The exercise of discretion by the Management is amenable to judicial review to the limited extent recognised by law. Once the action of the Management enters the realm of judicial scrutiny, the Court is not powerless to examine whether the discretion has been exercised

within legal bounds. If upon such examination it is found that the Management has acted in colourable exercise of power the Court would be justified in issuing appropriate directions against the Management. Such directions may vary depending upon the facts and circumstances of each matter. The consequences flowing therefrom cannot be placed in any straightjacket formula and necessarily would depend upon the peculiar factual background of every individual case. It is therefore clear that though the Management possesses power to make temporary appointment against a permanent vacancy, such power is circumscribed by obligation of bona fides and every exercise thereof must withstand judicial scrutiny.

14. Under Section 9 of the MEPS Act, an employee aggrieved by dismissal, removal, termination, supersession, reduction in rank, or otherwise by any order affecting service rights, is entitled to approach the School Tribunal challenging the action of the Management. Proceedings before the School Tribunal partake character of quasi judicial adjudication wherein the Tribunal is required to examine legality, propriety, and justification of the impugned action on the basis of pleadings and evidence led by parties. In such proceedings, the employee who challenges the appointment order or termination order is required to plead the facts constituting challenge. Mere allegation that the appointment though shown temporary was in substance regular would not suffice. The appellant must plead with particulars that the temporary nature of appointment was a camouflage, that the vacancy was permanent, that the Management avoided regular

selection or probationary appointment, that repeated temporary appointments were being resorted to with ulterior motive and that the power was exercised colourably to defeat statutory rights. Unless such factual foundation is pleaded, no enquiry into such disputed question ordinarily arises. Correspondingly, once such pleading is raised, the burden shifts upon the Management to place before the Tribunal the contemporaneous record and material justifying its action. The Management must produce the appointment order, records relating to selection process, proceedings of selection committee if any, documents showing reasons for rejecting candidates and the record showing subjective satisfaction for making temporary appointment. The School Tribunal while exercising jurisdiction under Section 9 has to undertake a enquiry into whether the decision of the Management was bona fide, lawful, and within the permissible limits recognized by law. The enquiry before the Tribunal is directed not only to the form of the order but to the legality of decision making process behind such order.

15. At the same time, the jurisdiction of the School Tribunal is not appellate in the sense of substituting its own satisfaction for that of the Management on matters of suitability. The Tribunal cannot sit as selection authority and decide whether candidate rejected by the Management ought to have been considered suitable. However, what the Tribunal is empowered to examine is whether the discretion claimed to have been exercised by the Management was exercised bona fide and upon relevant considerations, or whether the same was pretence to mask

arbitrary conduct. In other words, the Tribunal may examine whether the reasons disclosed are genuine or are sham, whether the decision is supported by record, whether the action suffers from mala fides, perversity, arbitrariness, or colourable exercise of power and whether the statutory object has been defeated through temporary appointments. If upon such enquiry the Tribunal arrives at finding that the Management has acted in bona fide exercise of discretion and that temporary appointment was necessitated by circumstances recognized, then no interference may be warranted, and the appeal may deserve dismissal. However, if the Tribunal finds that the Management has resorted to repeated temporary appointments without cause, has failed to maintain contemporaneous record, has arbitrarily rejected suitable candidates only to avoid regular appointment, or has used temporary appointment as device to deny legal protection to employees, then the Tribunal would be justified in holding that the action constitutes colourable exercise of power. Once such finding is returned, the Tribunal may grant reliefs including setting aside the termination, directing reinstatement, continuity of service, restoration of service benefits or such consequential relief as facts of case may warrant. Thus, the determination in every such matter depends upon peculiar facts and circumstances of each individual case. No straight jacket formula can be applied. The School Tribunal while exercising powers under Section 9 has to appreciate pleadings, scrutinize documentary record, assess whether proper factual foundation has been laid by the employee, evaluate the justification tendered by the Management, and thereafter

determine whether the impugned action reflects lawful exercise of discretion. It is only after such complete enquiry, founded upon pleadings and supported by evidence, that appropriate relief can be moulded. Therefore, while the Management may in law resort to temporary appointment in exceptional cases, such power remains circumscribed by obligation of bona fides, and whenever challenged before the School Tribunal, the same becomes subject to judicial scrutiny within the well settled limits of Section 9 jurisdiction.

16. In the facts of the present matter, I find that the learned School Tribunal has placed emphasis upon the circumstance that the respondent was working against a vacant post and that her services were found to be satisfactory, while at the same time failing to consider effect flowing from the terms and conditions of the appointment order and the burden of proof governing such dispute. The approach adopted by the Tribunal appears to proceed upon an assumption that merely because the vacancy in question was of permanent nature, the appointment made against such vacancy must be presumed to be probationary. Such approach is not sustainable and cannot be approved in view of the law declared by the Full Bench, which has held that there exists no such presumption in law. The Tribunal, before arriving at any conclusion regarding the status of the respondent, ought to have examined whether there existed any material on record demonstrating that the Management had in fact intended to appoint the respondent on probation. Unless such material was established, it was not permissible for the Tribunal to travel

beyond the record and rewrite the nature of appointment by conferring upon the respondent probationary status.

17. The present case does not disclose material from which it can be inferred that Respondent No. 1 had crossed the threshold from temporary engagement into probationary status. The documents relied upon by the respondent, namely departmental approval and certificate recording satisfactory work, even if accepted are insufficient to alter the nature of the appointment. Such documents may establish that the respondent rendered satisfactory service, but they do not establish that the appointment itself stood transformed into probation. It is not in dispute before this Court that the respondent may have discharged her duties satisfactorily; however, satisfactory discharge of work does not create an entitlement to continued employment unless the foundation showing appointment on probation or regular basis is established.

18. For all the aforesaid reasons, I am constrained to hold that the respondents have failed to establish that their appointment was on probation merely because they were appointed against a vacant post and because their work during the period of service was found satisfactory. Neither of these circumstances is sufficient to displace the character of the appointment when the appointment order itself reflects the engagement to be temporary in nature. In the absence of material demonstrating that the temporary description of appointment was illusory or contrary to the true intention of parties, the Court cannot ignore the terms governing such appointment. Consequently, the learned School

Tribunal committed an error of law in treating the appointment as probationary and in setting aside the discontinuance of service on that erroneous premise. The impugned judgment and order passed by the School Tribunal therefore cannot be sustained in the eyes of law. Resultantly, the writ petition deserves to be allowed.

19. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The present writ petitions are allowed;

(ii) The common Judgment and Order dated 14 December 2007 passed by the learned School Tribunal, Navi Mumbai in Appeal Nos. 24 of 2007, 26 of 2007 and 40 of 2007 is hereby quashed and set aside;

(iii) The appeals preferred by Respondent No. 1 before the School Tribunal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act stand dismissed;

(iv) Rule is made absolute in the aforesaid terms.

(v) In the facts and circumstances of the case, there shall be no order as to costs.

(AMIT BORKAR, J.)