IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16771 OF 2024

Shri Gavit Gulabsing Suka ....Petitioner

Versus

1. Shri Swami Vivekanand Shikshan Sanstha (Kolhapur)

2. New English School & Junior College, Mhasala

3. The Deputy Director of Education ....Respondents

Mr. Sugandh Deshmukh *a/w. Aniket Kanawade, Bhushan G. Deshmukh, Vaibhav Thorave, Aryan Deshmukh, Irvin D'Souza & Karishma Shinde, for Petitioner.*

Mr. Narendra V. Bandiwadekar, Senior Advocate *a/w. Vinayak R. Kumbhar, Rajendra Khaire & Aniket Phapale i/b. Ashwini Bandiwade, for Respondent No.2.*

Smt. M. S. Srivastava, *AGP for State.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : JANUARY 20, 2026

ORAL JUDGEMENT:

1. Rule. Rule made returnable forthwith. By consent of parties, taken up for final hearing.

Context and Factual Background:

2. This Petition impugns a Judgement passed by the Learned School Tribunal, Mumbai in Appeal No. 59 of 2023 dated August 20, 2024 (***"Impugned Judgement"***) dismissing the Appeal filed by the Petitioner against the termination of the Petitioner from the services of Respondent No.1 (for convenience, "***Management***") and Respondent No. 2 (for convenience, "***School***").

3. The Petitioner was engaged as a probationary Assistant Teacher (*shikshan sevak*) on February 29, 2020 in the School, for a period of three years. The probation period was meant to end on February 28, 2023.

4. On December 23, 2022, complaints were received by the School from parents of a certain girl student alleging that the Petitioner was in instant messaging contact with the student, and that the exchange of messages constituted harassment. The Petitioner issued a written apology to the Principal of the School on the same day, confirming his electronic contact with the student. It appears that the School Committee also issued a communication to the School on the same day drawing the attention of the School management to the seriousness of the complaints made about the Petitioner.

5. The Principal filed a report of the said complaints to the Management on December 28, 2022. Local unrest is said to have occurred with a mob having gathered over the matter, necessitating the Principal having to intercede and save the Petitioner. Eventually, on January 31, 2023, the probationary engagement of the Petitioner was terminated with effect from February 1, 2023, and the Petitioner was given payment in *lieu* of one month's notice.

6. Against this backdrop, the challenge in this Petition is mounted on the following grounds:-

A] The Petitioner contends that no enquiry entailing a proper issuance of show-cause notice and the provision of material to give him a chance to explain himself, was ever provided before his termination, and this constitutes a violation of natural justice;

B] The Petitioner, by operation of law, became a permanent employee before the notice period would potentially expire, and therefore, the law governing a probationary employee would not apply to termination of his services; and instead, the process applicable to a permanent teacher should have been applied to him.

Analysis and Findings:

7. I have heard Mr. Sugandh Deshmukh, Learned Advocate on behalf of the Petitioner and Mr. Narendra Bandiwadekar, Learned Advocate on behalf of the Respondent School and Management and the Learned AGP on behalf of the State. With their assistance, I have examined the record.

Legal Provisions:

8. The following extracts from the provisions of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (***"MEPS Act"***) are noteworthy:

> *5. (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 ******
>
> *(2) Every person appointed to fill a permanent vacancy* ***except shikshan sevak*** *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* ***shikshan sevak shall be probation for a period of three years****;*
>
> *(2A)* ***Subject to the provisions of sub-sections (3) and (4)****, shikshan sevak 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 terminate his services at any time during the said period after giving him one month's notice or salary or honorarium of one month in lieu of notice.

(4) *****

(4A) *****

(5) *****

[Emphasis Supplied]

9. A plain reading of the proviso to Section 5(2) of the Act would indicate that the statutory probation period for a probationary Assistant Teacher is three years. Under Section 5(2)(a) of the Act, the Assistant Teacher (Probationary) is deemed to have been appointed and confirmed as a Teacher upon the expiry of three years. Under Section 5(3) of the Act, if, in the opinion of the Management, the work or behaviour of a probationer *during the period of probation* is not satisfactory, the Management may terminate the services at any time during such probationary period, with one month's notice or salary in *lieu* of such notice.

10. It would go without saying that the opinion to be formed by the Management has to be a reasonable opinion. It has to be objective, informed by reason, and cannot be arbitrary. To ensure that teaching staff are not engaged on probation and kept temporary, by efflux of time, the probationers are deemed to become permanent employees – a

shikshan sevak would become permanent, when he completes three years.

11. Mr. Deshmukh, on behalf of the Petitioner invokes Rule 15(6) of the MEPS (Conditions of Service) Rules, 1981 ("***the Rules***"), which deals with performance appraisal of an employee, to indicate the procedure that ought to apply to the Petitioner. The same is extracted below :-

> *(6) **Performance of an employee appointed on probation** shall be **objectively assessed** by the Head **during the period of his probation** and a **record of such assessment shall be maintained**.*
>
> ***[Emphasis Supplied]***

12. A plain reading of Rule 15(6) of the Rules would indicate that the provision deals with the performance of the probationary employee, which would form the basis of the track record of the employee's performance and its assessment. In the facts of this case, this would relate to his performance in the classroom and his performance as a teacher. This would not cover facets outside the classroom such as being in contact with student through electronic means outside the work space in the classroom.

13. As stated earlier, it would go without saying that the formation of an opinion that probationer's work or behaviour is not satisfactory has

to be one informed by reason. It cannot be arbitrary. Objective factors would need to guide the formation of the opinion.

Reasonable Case for Termination of Probationer:

14. It should be remembered that the Act codifies this position in Section 5. Rule 15(6) would relate to a record of performance in the classroom and there is no quarrel about the performance of the Petitioner in the classroom. The opinion that his probation must not be continued is not at all based on the work and performance. Therefore, in my opinion, in the facts of this case, Rule 15(6) is not relevant and in any case, it is nobody's case that assessment of work in the classroom informed the decision to terminate the probation.

15. On the contrary, what is apparent is that the termination is based on discomfort with behaviour outside the classroom. The issue involved is serious, inasmuch as it appears that there were complaints from parents of students and the local community about a teacher in his 30s being in touch with students with romantic messages between them on WhatsApp.

16. I am acutely conscious that no WhatsApp messages are on record. Therefore, it must be clarified that nothing in this judgement is a finding of any stigma about the content of the messaging. To my mind, the fact that a teacher had been texting a student, with a serious

age gap, poses adequate grounds for the Management being dissatisfied with the probationer-Petitioner. The Petitioner has issued a written apology on the same day when the messaging was discovered. Right since then until the proceedings before the Learned School Tribunal got underway, the Petitioner has not retracted his written confirmation and apology on the ground of coercion.

17. In the rejoinder before the Learned School Tribunal, after the School brought the aforesaid position on record, the Petitioner has made a wide contention that the apology was tainted by fraud, coercion and undue influence. This broad and sweeping contention does not inspire confidence and to me, appears a weak explanation of the written apology. The Petitioner contends that his access too, was cut off; all the more, a contemporaneous assertion that he was forced to sign a written admission would have inspired greater confidence in this version.

18. It is made clear that this Court is not sitting in judgement on the context, if any, that the Petitioner may have to explain for his contact with students outside work – only because that is not part of the record and it is unnecessary to express judgement on something not at the heart of the adjudication of this Petition. Instead, it is quite clear that at the relevant time, the Petitioner indeed wrote a written apology and did not retract his admission until well into the proceedings before the

Learned School Tribunal. There is also no other allegation from the Petitioner about being discriminated against on any other considerations, such as caste or tribe.

19. In that background, in my opinion, the Management is entitled to adopt a zero-tolerance policy in the specific factual matrix of the case and avoid future crisis, taking into account that the Petitioner was on probation and statutorily, the Management was entitled to terminate the probation with one month's notice or payment *in lieu* of the notice.

20. In my view, the Management had sufficient material to form a reasonable opinion, that conduct unbecoming of a school teacher is not satisfactory behaviour. If the Management is desirous of adopting a zero-tolerance policy for inappropriate communications, it would be entitled to take note of the admission in the written apology to take the action of a non-stigmatic termination of the probation without the entire exercise that would have been applicable to a permanent employee.

21. This is not a case where a permanent employee is being accused of misconduct necessitating a detailed enquiry, but a case where allegations of inappropriate communications have been made with an *ex-facie* admission that was not retracted for a reasonably long period of time. The appeal before the Learned School Tribunal was filed on

March 6, 2023, and the apology by the Petitioner in his own handwriting had been made on December 23, 2022. The Petitioner, therefore, had nearly two and a half months to retract the apology if it had been extracted from him for extraneous considerations or under duress.

22. For the aforesaid reasons, in my opinion, these facts and circumstances enabled the formation of a reasonable opinion that the probationer need not be confirmed, thereby avoiding the situation festering into a larger controversy.

23. Needless to say, considering that the provision of Section 5(3) of the Act were invoked to terminate the services, and no actual inquiry with fact-finding and evidence was brought to bear, this termination would technically constitute a non-stigmatic termination.

Case Law Cited:

24. The judgement in ***Progressive Education Society***[1] cited by Mr. Deshmukh articulate the law on probationers in some detail. However, the judgement does not deal with a situation where the law is codified in the manner it has been done in Section 5 of the Act, and nor does it lay down as a matter of absolute proposition that a probationer should be treated on par with a permanent employee in every respect. Indeed,

1 Progressive Education Society & Anr. v. Rajendra & Anr – (2008) 3 SCC 310

if the termination was on the ground of alleged poor performance, the standards applicable to terminating a permanent employee on such grounds would apply. The records of performance maintained under Rule 15 would have to be reviewed and analysed. For a situation like the one at hand in these proceedings, the performance in the classroom is not of relevance.

25. Mr. Deshmukh also seeks to rely upon the decision of the Supreme Court in ***M. Noushad***[2] and the decision of the Learned Division Bench of this Court in ***Smt. Taramati Santosh Taji***[3] to submit that a probationary officer should also be dealt with in compliance with the principles of natural justice, and that departmental proceedings would be necessary before termination. In itself, the proposition is unexceptionable and there can be no quarrel with it. Whether it is applicable to the facts of the instant case is the question to ask.

26. Paragraph 15 of ***Progressive Education Society*** clearly indicates that unless stigma is inflicted by the termination, or the probationer is called upon to show cause for any shortcoming which may subsequently become the cause for termination of the probationer's service, the Management or the Appointment Authority is not required

2 The Manager, S.M.U.P. School & Ors. Vs. M. Noushad & Ors.-Civil Appeal No.3788/2017, Order dated February 27, 2025
3 The State of Maharashtra & Ors. V/s. Smt. Taramati Santosh Taji – WP/904/2024, Judgement dated 10th May, 2024

to give any explanation or reason for terminating the services, except informing him that his services have been found to be unsatisfactory.

27. The Management has evidently adopted this approach with the Petitioner. Therefore, it is made clear that no stigma was attached by the Management and indeed the Management has not delved into the merits of the contents of the electronic contact between a teacher and student. In this case, one may consider the root cause to be stigmatic, but the stigma is not one arising out of allegations levelled by the Management but by the un-retracted handwritten admission and apology of the Petitioner made contemporaneously with the complaints of parents against him.

28. In my opinion, in the peculiar facts and circumstances of this case, without stigma being attached to the Petitioner, the Petitioner has been given a soft landing within the ambit of Section 5(3). The very fact that a teacher was admittedly in contact with students outside the classroom and outside work hours as the teacher, would be adequate to hold that such contact is inappropriate, and such behaviour is not satisfactory.

29. The case of ***M. Noushad*** involves a junior Hindi teacher in a district School in Kerala, who was on probation and underwent an enquiry conducted by the Assistant Education Officer, who issued a

report stating that the teacher was mentally unstable and unfit to teach children. The complaint against him was that he had remained absent for long periods and there had been complaints about him from students, parents and other teachers about his behaviour including poor conduct toward the Headmistress. The teacher filed an appeal, and the Appellate Authority held that his allegedly unstable mental state had not been proven and that he should be appointed upon the next vacancy arising, provided he produced a medical certificate to the effect that he was mentally fit. In revision, the Education Department of Kerala held that since he was on probation, his probation had come to an end, resulting in the termination of his services. The teacher challenged this before a Learned Single Judge of the Kerala High Court, who set it aside on the ground that the medical condition had not been proved at all and that there was a violation of natural justice and fair play.

30. Considering that the charge of mental disability was grave and stigmatic, it was held that he ought to have been subjected to departmental proceedings to prove the charges and, in the absence of the same, he must be reinstated with all consequential benefits. A Division Bench of the Kerala High Court upheld the order of the Learned Single Judge, holding that the matter involved the dignity of an individual and, since the charge of mental disability was being

levelled against him, this basis of termination of service must be validly proved with a proper hearing. It is in this backdrop that the Supreme Court dealt with the law governing termination of services of a probationer in the following terms :-

> *"The law regarding the termination of services of a probationer is well-settled now.* ***The Courts can interfere with the decision to terminate services of employee during probation if the same is based on allegations of misconduct etc. without a proper inquiry having been conducted****, and the opportunity of hearing being given to the probationer.*
>
> *A Division Bench of this Court in* ***V.P. Ahuja v. State of Punjab, (2000) 3 SCC 239*** *held that a probationer also has certain rights, and cannot be subjected to punitive termination without compliance with principles of natural justice. It was held as follows:*
>
> > *"7. A probationer, like a temporary servant, is also entitled to certain protection and* ***his services cannot be terminated arbitrarily****, nor can those services be terminated in a punitive manner without complying with the principles of natural justice."*
>
> *Another Division Bench of this Court in* ***SBI v. Palak Modi (2013) 3 SCC 607****, after taking note of a long line of judgments of this Court on this point, summarized the legal position as follows. In that judgment, the Court noted as follows:*
>
> > *"25. The ratio of the abovenoted judgments is that a probationer has no right to hold the post and his service can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post held by him. If the competent authority holds an inquiry for judging the suitability*

of the probationer or for his further continuance in service or for confirmation and such inquiry is the basis for taking decision to terminate his service, then the action of the competent authority cannot be castigated as punitive. ***However, if the allegation of misconduct constitutes the foundation of the action taken, the ultimate decision taken by the competent authority can be nullified on the ground of violation of the rules of natural justice****."*

The sequence of events narrated above proves without doubt that the foundation of the action taken by the Management and then by the State is the alleged misconduct of the teacher / Respondent No. 1, who was on probation. This has never been proved. A Departmental proceeding was absolutely essential. Not holding a departmental proceeding clearly violates the principles of natural justice and fair play.

[Emphasis Supplied]

31. The facts of the matter in ***M. Noushad***, in my opinion, are distinguishable. The allegation of a teacher being mentally unstable is not only stigmatic but also ambiguous and vague, which certainly is not capable of being discerned without appropriate evidence being led. In contrast, the matter in hand is based on proven and admitted contact by a teacher with students outside the classroom using instant messaging.

32. That apart, the decision in ***M. Noushad*** does not point to an interpretation of any provision of legislation that codifies the rights and entitlements of the probationary teacher and the school management in

the manner legislated in Section 5(3) of the Act. As stated above, in my opinion, when it comes to Section 5(3) of the Act, one must carefully see whether the opinion formed by the school is a reasonable opinion and whether the material on record identifies any arbitrariness that vitiates the exercise of the school's right to terminate a probationary teacher purportedly for good cause. Having examined the facts through that prism, I am not inclined to exercise the extraordinary writ jurisdiction to interfere with the Impugned Order.

33. I have already explained above why, in my opinion, objective and evident facts are available in this case to enable a zero-tolerance policy leading to the termination. Unlike a vague and stigmatic allegation of mental disability, in the facts of this case, it is apparent that the situation at hand had turned serious, with the need for the Principal to intervene with a crowd to save the Petitioner, and the Petitioner himself has written an apology and an un-retracted admission.

34. As regards ***Taramati Santosh Taji***, the facts involved a challenge to the decision of the Maharashtra Administrative Tribunal, which set aside the order of termination issued by the Government of Maharashtra against an Assistant Secretary (Technical) in the State Board of Technical Education. Indeed, the employee in question was on probation, and the Learned Division Bench has articulated the principles governing how the State ought to have dealt with the

probationer when serious instances of misconduct are alleged. The Learned Division Bench noted that although the State had the power to terminate the services of the probation, if such power were exercised on the grounds of misconduct, then the misconduct alleged was required to be proved after giving an opportunity to the probationer, which had not been done.

35. The due process for dealing with such a situation had been codified in a Government Resolution dated February 29, 2016. Clause 6 provided for the conduct of an enquiry when the termination is owing to misconduct, while Clause 7 provided for dispensing with the services of the probationer if the discharge of duties was found to be unsatisfactory. Since the termination in question had been on the ground of misconduct, it was held by the Maharashtra Administrative Tribunal that the termination was vitiated and untenable. Learned Division Bench agreed with the Tribunal's view and dismissed the Writ Petition. For the very same reasons as analysed with ***M. Noushad*** and ***Progressive Education Society*** above, this case too is distinguishable.

36. The allegations in that case had been vague and subjective, inasmuch as the probationer had been accused of bad behaviour with colleagues and seniors and rude conduct in the course of work. While these appear to be serious, they are also ambiguous and not objective. This can be contradistinguished from the facts of the instant case,

where, far from being ambushed with a subjective allegation to justify termination, the Petitioner has admitted to having been in electronic communication and instant messaging contact with a student outside the classroom.

37. It is well settled that it is not necessary to exercise the discretionary and extraordinary jurisdiction of the Writ Court to correct every wrong complained of. Since the facts and circumstances make out a reasonable basis for an objective assessment by the Management, in my opinion, it was not necessary for the Respondents to have conducted a full-blown departmental enquiry, choosing instead to let go the probationer.

Deemed Permanent Employee:

38. I am unable to accept the contention that no termination could have been effected without treating the Petitioner as a permanent employee because at the end of the statutory notice period, the Petitioner would have become a permanent employee by the deeming fiction of Section 5 of the Act.

39. The statutory right to terminate can be exercised during the probation period. The probation period would have ended at the end of February 2023. Until the last day of the probation period, such right would exist, indeed to be exercised in accordance with law. For the

view canvassed by Mr. Deshmukh to be valid, the provision ought to have provided for the right to terminate expiring 30 days before the end of the probation period. On the contrary, even if the termination is on the last day of the probation period, payment in *lieu* of notice would have to be of one month.

Conclusion:

40. For the aforesaid reasons, the Petition is ***dismissed*** without any interference with the Impugned Order.

41. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]