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**(2009) 06 BOM CK 0039**

**In the Bombay High Court**

**Case No : Writ Petition No. 1019 of 1991**

Rayat Shikshan Sanstha and Another

APPELLANT

Vs

Yeshwant Dattatraya Shinde

RESPONDENT

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**Date of Decision :** 25-06-2009

**Acts Referred:**

**Citation :** (2010) 3 BomCR 278 : (2009) 6 MhLj 476

**Hon'ble Judges :** V.M. Kanade, J

**Bench :** Single Bench

**Advocate :** Milind Deshmukh, for the Appellant; Vishwas Deokar, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

V.M. Kanade, J.—The Petitioner is challenging the judgment and order passed by the School Tribunal dated 24.9.1990. By the said order, the School Tribunal was pleased to allow the appeal filed by the Respondent herein and direct the Petitioner School to reinstate the Respondent No. 1 as a permanent assistant teacher and pay him the back wages from the date of termination to the date of his reinstatement. The Respondent was appointed on a temporary basis initially for a period of one year from 10th October, 1986 to 30th April, 1987. Thereafter, again a fresh order of appointment was issued on 24th June, 1987 for a period of one year. The said appointment was also made purely on a temporary basis. Approval was granted by the Education Department to the said appointment only for a period of one year and on a temporary basis and the said appointment was made against the reserved ST category. Thereafter, again on 30th July, 1989, a fresh order of appointment was issued, appointing him on a temporary basis for a period of one year till the end of the academic year. Thereafter, however, his services were terminated by letter dated 30th November, 1989.

2. The learned Counsel appearing on behalf of the Respondent has invited my attention to the letter of approval which was granted by the Education Officer, in which it is clearly stated that the said appointment was on a temporary basis and

for a period of one year against the reserved category post.

3. Admittedly there is no evidence on record that the appointment of the Respondent was made after following the procedure laid down in the M.E.P.S. Act and Rules. The Tribunal has come to a conclusion that the said appointment was made on a clear and permanent vacancy. Admittedly, no advertisement was issued, nor any interview was held and, as such, cannot be said that the appointment was made on a clear and permanent post. The Tribunal, however, came to the conclusion that the appointment was made on a clear and permanent vacancy because the management was not in a position to produce the relevant material on record. In my view, the burden of establishing that the appointment was made on a clear and permanent post that too were following the procedure laid down under the Act and Rules, is squarely on the Appellant and not on the management. The Tribunal, therefore, in my view, committed an error of law which is apparent on a face of record. The services of the Respondent were terminated, no interim relief was granted by the Tribunal. No interim order was granted by this Court also.

4. The learned Counsel for the Petitioner has relied on a judgment of the Division Bench of this Court in the case of Baburao Amrutrao Kharekar and State of Maharashtra and Ors. reported in 1997 (2) L.L.N. 1098. In my view, the ratio of this judgment is not applied to the facts of the present case. In the said case, approval was granted by the Education Department for the open category post. In the present case, it is an admitted position that the approval was granted to the Education Officer to the Respondent's appointment for a reserved category post for the period of one year only. In this view of the matter, the impugned judgment and order passed by the Tribunal is quashed and set aside. Petition is allowed. Rule is made absolute in terms of prayer Clause (a). Under these circumstances, there shall be no orders to costs.