

(2007) 10 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 1091 of 1996

Ashok Kumar Dwivedi

APPELLANT

Vs

Jai Vidarbha Education Society and Others

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5(2)

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
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Citation : (2008) 2 MhLj 491

Hon'ble Judges : R.C. Chavan, J;A.H. Joshi, J

Bench : Division Bench

Advocate : H.A. Deshpande, for the Appellant; A.D. Sonak, Asstt. Government
Pleader, for the Respondent

Judgement

A.H. Joshi, J.—The case proceeds on admitted facts namely:

(a) The petitioner herein initially joined the employment of respondent No. 1 from the academic year 1987-1988 as teacher in Junior College on clock hour basis, and continued with the same status on year to year basis till, a vacancy of full time post of a teacher in Hindi and English occurred in the academic session 1991-92. The petitioner was appointed as a full time teacher for one academic session.

(b) The petitioner was given similar appointment in each year preceding till the management declined to continue his appointment on year to year basis in the academic year commencing from June, 1998.

(c) The reason leading to petitioner's appointment on year to year basis was that the Education Department treated the post held by the petitioner to be filled in by reserved category of Scheduled Tribe.

(d) That there are only three posts of teachers in Junior College.

(e) One post is held by Shri R.Y. Dupte who is a member of Scheduled Caste Community.

(f) Second post is filled in by a open category candidate.

(g) According to the Dy. Director of Education by complying 100 point roster, 1st post has to go to Scheduled Caste Category, second to Scheduled Tribe and third to VJNT.

2. It is in this background, the petitioner's appointment on third post was objected, and approval was declined.

3. The petitioner has raised various contentions. Those need not be dealt with particularly when petition has been opposed on limited question. The reply of State in para 3 of return at pages 55 and 56 of Writ Petition paper book be better read by quotations as follows.

3. It is further submitted that at the relevant time 3 posts were sanctioned in the Junior College of the respondent Nos. 1 and 2. Out of these 2 posts, one post was filled by open category, second post was filled up by S.C. candidate and third post was to be filled by appointing S.T. Candidate as per the then existing Government Resolution dt. 4-8-1932 which prescribed point-wise reservation problem for direct recruitment. As per 100% point roster for the direct recruitment first point was reserved for S.C. candidate, second for S.T. candidate, third for V.J.N.T. candidate and so on. As per stated the above relevant time 3 posts of Lecturers were sanctioned which form a common cadre. It cannot be said that the posts occupied by the petitioner at the relevant time was an isolated post and there cannot be any reservation for the said post.

(Quoted from pages 55 and 56 of Writ Petition Paper Book)

4. The plea of the State Government is based on rules, in vague, as existed in a relevant period. The Government has relied upon the Government Resolution of 19th October, 1997 Annexure R-1 to the return, applying 100% roster.

5. If the version of the State is to be accepted, the post held by candidate from open category has to go for Scheduled Tribe candidate, and the petitioner's post would go for VJNT reservation, meaning thereby that all the three posts in teaching cadre in the Junior College of the respondent No. 1 has to be filled in by different reservations amounting to 100% reservation.

6. We have perused the Government Resolution dated 18-10-1997 Annexure R-1 to the return. It was issued in the background of reported Judgment of R.K. Sabharwal and others Vs. State of Punjab and others, . In any case, said Government Resolution cannot be made retrospectively applicable since the issue is subject-matter which pertains to the period 1991 to 1995.

7. This Court need not go into the details in view of the fact that admittedly, there are only three posts. One amongst them is filled in by the candidate belonging to Scheduled Tribe category and filling in any more post from reserved

category would result in exceeding the reservation more than 50%. The petitioner's further submission that the post held by him is of the subjects Hindi and English. The post held by Shri Dupte who belongs to Scheduled Caste Community is for teaching Accountancy and Secretarial Practice, while the post held by Mr. Sharma is for Economics and Organization of Commerce. In any case, the post held for teaching Hindi and English is not interchangeable with the post held by a teacher teaching subject which pertains to the discipline in Commerce faculty.

8. In this background, we hold that the post held by the petitioner was not liable to be treated as a reserved for any category whatsoever. Moreover, as per Rule 9 of N.E.P.S. Rules 1981, the reservation for all backward classes if taken together is 34% which is already complete on appointment of Shri Dupte a Scheduled Caste candidate.

Learned Advocate Mr. H.A. Deshpande for the petitioner relied on the following reported judgments in support of his arguments.

(1) R.K. Sabharwal and others Vs. State of Punjab and others, , (2) 7990 Mh. L.J. 1286 Suresh Chandra v. Nagpur University, (3) 1988 Mh. L.J. (FB) 1097 Dr. S.C. Verma v. Chancellor, Nag. Uni., (4) 1991 Mh. L.J. 1487 Pramod v. Chancellor Nagpur Uni.

The case being one based on settled law, any discussion on applicability of the Judgments is not necessary.

9. The management has filed an affidavit and stated that continuation of The petitioner in next academic year could not be done only because of the orders of the Dy. Director, and the management has shown willingness and readiness to continue the petitioner in the employment.

We find that Section 5(2) of MEPS (Condition of Service Regulations) Act confers on the employee the status of permanency if he has served continuously for a period for two years in a permanent vacancy. In fact, in the present case, the petitioner was in service continuously in academic Session 1991-95, but for objection for approval. The management is not willing to continue him further, therefore, there is no impediment in ordering reinstatement as a consequential relief.

10. In this situation, there are no reasons as to why the reliefs sought by the petitioner in prayer 1(a) and 1(b), 1(c) and 1(d) and 1(e) and (ii) should be declined. Since the petitioner was not in service, after 1995, he would not be entitled to salary and allowances from the academic year commencing from June, 1996 till he would be actually re-instated. As for the petitioner's grievance that he has not been paid salary for want of approval to his appointment for the year 1995-1996, we see no impediment for the Management to furnish the petitioner's salary bill for the year 1995-1996, which should receive favourable orders from the Dy. Director of Education. Though the petitioner has remained

out of employment, however, his being away from job is on account of the erroneous approach of the Dy. Director of Education, the petitioner would, therefore, be entitled to continuity of service.

11. Hence, the following order.

(a) Rule is made absolute in terms of prayer 1(b), 1(c), 1(d) and 1(e).

(b) The petitioner shall not be entitled for back wages for the period when the petitioner was out of service.

(c) The management shall furnish the salary bills of the petitioner for the period he actually worked in 1995-1996 and the Dy. Director of Education shall cause the salary for said period to be paid within six months from today.

(d) In the circumstances, the parties shall bear own costs.