
(2016) 06 BOM CK 0190
In the Bombay High Court
Case No : Writ Petition No. 2372 of 2016

Dadasaheb s/o. Govindrao Shinde

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 08-06-2016

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 28, 9

Citation : (2016) 6 BCR 725 : (2016) 5 MhLJ 480

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. R.D. Biradar, Advocate, for the Petitioner; Mr. S.B. Yawalkar, AGP, for the Respondent Nos. 1 and 2; Mr. D.S. Mali, Advocate, for the Respondent No. 3; Mr. N.B. Ghute, Advocate, for the Respondent Nos. 4 and

Final Decision : Allowed

Judgement

S.S. Shinde, J.(Oral)—Heard.

2. Rule. Rule made returnable forthwith. With consent of the learned Counsel appearing for the parties, the petition is taken up for final hearing.

3. This petition takes exception to the order dated 31.08.2015 issued by respondent no.3 by which the proposal for approval of the petitioner to the post of Assistant Teacher came to be rejected.

4. It is the case of the petitioner that he was select as Assistant Teacher in respondent no.5 School after following the due procedure. The respondent/ Management vide communication dated 28.02.2014 sent the proposal for approval of the petitioner to the post of Assistant Teacher to respondent no.3 Education Officer. However, respondent no.3 Education Officer rejected the said proposal on the ground that approval cannot be granted as all the surplus teachers were not absorbed.

5. The learned Counsel appearing for the petitioner submits that the petitioner was appointed as Assistant Teacher on 14.06.2011. The State Government issued a Government Resolution on 02.05.2012 i.e. after appointment of the petitioner, by which the concerned institutions were directed to absorb all the surplus teachers. The institutions were also directed that unless all the surplus teachers are absorbed, no fresh appointments should be made. The learned Counsel submits that as the petitioner was appointed prior to the issuance of the above referred Government Resolution, the proposal for approval of the petitioner to the post of Assistant Teacher ought to have been sanctioned.

6. The learned Counsel appearing for the petitioner further submits that since the appointment of the petitioner is from S.T. category, the ban to the recruitment imposed vide Government Resolution dated 02.05.2012, would not apply. He invited our attention to the unreported decisions of this Court in the cases of (i) Sushil s/o. Rangnath Waghmare v. The State of Maharashtra and ors., in Writ Petition No.8893 of 2015 decided on 27.04.2016 and (ii) Gajanan s/o. Valmik Chavan v. The State of Maharashtra and ors. in Writ Petition No.11868 of 2015 and companion matter decided on 03.03.2016. He also invited our attention to the Government Resolution dated 02.05.2012 issued by the General Administrative Department, Government of Maharashtra, by which the concerned institutions were directed to fill up the backlog of appointments from the S.C. and S.T. categories. He submits that as the appointment of the petitioner was made prior to the issuance of the said Government Resolution and as the petitioner belongs to S.T. category, the impugned communication deserves to be quashed and set aside.

7. On the other hand, the learned AGP for the State and the learned Counsel appearing for respondent no.3 vehemently oppose the prayer of the petitioner and submit that unless all the surplus teachers are absorbed, respondent no.5 should not have proceeded to advertise for filling up the fresh posts.

8. The learned Counsel appearing for respondent nos.4 and 5 submits that the appointment of the petitioner was proper and since his appointment is from reserved category, the reasons assigned by respondent no.3 in the impugned communication cannot sustain. Therefore, he submits that the impugned communication deserves to be quashed and set aside by giving directions to respondent no.3 to consider the proposal for approval to the appointment of the petitioner afresh.

9. We have given careful consideration to the submissions advanced by the learned Counsel appearing for the respective parties. Admittedly, the petitioner have been appointed for the said post from the S.T. category. Nothing is brought on record by respondent nos.1 to 3 to counter the claim of the petitioner, that the petitioner belongs to S.T. category. It is also not disputed that the petitioner was appointed on 14.06.2011.

10. This Court while considering somewhat similar controversy in the case of

Sushil s/o. Rangnath Waghmare (supra) in paragraphs 6 and 7, has discussed about the relevant Government Resolutions granting exemption to the institutions from filling up the backlog of the posts from the reserved category. After taking into consideration the relevant Government Resolutions, this Court, in the afore stated case, reached to the conclusion that if the appointments are made prior to the issuance of Government Resolution dated 02.05.2012, the said Government Resolution dated would not apply to such cases. Therefore, for the reasons assigned in paragraph 6 in the case of Sushil s/o. Rangnath Waghmare (supra) and paragraph 6 in the case of Gajanan s/o. Valmik Chavan (supra), we are of the opinion that the controversy involved in this petition is squarely covered. Therefore, in the light of the discussion herein above, the reasons assigned in the impugned communication cannot sustain.

11. Accordingly, the impugned communication dated 31.08.2015 issued by respondent no.3 - Education Officer is quashed and set aside. Respondent no.3 is directed to reconsider the proposal for approval of the petitioner to the post of Assistant Teacher afresh without raising the grounds/reasons assigned in the impugned communication, as expeditiously as possible, however, within four weeks from today and communicate the said decision to respondent nos.4 and 5.

12. The petition is allowed. Rule made absolute in the above terms. No costs.