

(1991) 04 BOM CK 0002
In the Bombay High Court
Case No : Writ Petition No. 398 of 1985

Dnyan Vikas Mandal

APPELLANT

Vs

Parashram Lokhande and others

RESPONDENT

Date of Decision : 01-04-1991

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 70
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9

Citation : (1991) MhLj 830

Hon'ble Judges : S.M. Daud, J;B.U. Wahane, J

Bench : Division Bench

Advocate : M.N. Ingle, for the Appellant; R.R. Pillai, For respondent No. 1, G.C. Choubey, Asst. Government Pleader, for the Respondent

Judgement

S.M. Daud, J.—This petition under Article 226 of the Constitution takes exception to the verdict of the second respondent upon an appeal u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - hereinafter referred to as the Act.

2. The petitioner is a society registered under the Societies Registration Act as also a public and educational trust registered under the Bombay Public Trusts Act. It runs a school known as Babasaheb Apotikar Vidyalaya, Apoti Khurd, Tahsil and District Akola. The school was being looked after by a Managing Committee and one of the members of that Committee was M. R. Apotikar also known as Raosaheb. One M. V. Lokhande was functioning as the Head Master of the School and there was litigation in connection with the said person. M. V. Lokhande lost and there came to be a vacancy in the post of the Head Master of the School. The vacancy was advertised in "Shiv Shakti", a Marathi daily, which has some sort of a circulation in the district of Akola. Raosaheb, on 9-8-1981, issued an order addressed to the first respondent informing him that he had been appointed as the Head Master of the School. In the appointment order, Raosaheb described himself as the "Manager" of the School. On 21-8-1981, the first

respondent addressed a letter to the Education Officer of the Akola Zilla Parishad, reciting that the School Committee had appointed him as the Head Master. The next month, to be precise on 16th September, 1981, the Education Officer; Zilla Parishad, wrote back to the first respondent in his capacity as the Head Master intimating that temporary approval to his appointment as the Head Master from 10-8-1981, had been accorded. In the meantime, relations between Raosaheb on the one hand and possibly of all the other members of the Managing Committee on the other, soured. The letter on 21-11-1983, written to the Education Officer intimating that they had never passed any resolution appointing or promoting respondent No. 1 to the post of the Head Master, that approval to the appointment of respondent No. 1 could not be accorded until there was a resolution of the Body, that respondent No. 1 had manipulated documents to give the impression of his having been appointed as the Head Master and that it was necessary to initiate action against the respondent No. 1. On 21-3-1984, the opponents of Raosaheb addressed another communication to the Education Officer pointing out certain other defects in the appointment of respondent No. 1. Eventually, the opponents of Raosaheb framed a charge-sheet against respondent No. 1 and appointed one Bopte as the Enquiry Officer. The main charge in the charge-sheet was that respondent No. 1 had manipulated documents to show himself as the duly appointed Head Master of the School. Respondent No. 1 gave a reply to the charge-sheet on 3-10-1984. The Secretary of the petitioner institution communicated to the respondent No. 1, a resolution passed by the Managing Committee directing his removal from the Post of Head Master. This order was impugned in an appeal u/s 9 by the first respondent. The second respondent - hereinafter referred to as the Tribunal, sustained the contentions raised in appeal by the first respondent. The removal order was quashed and respondent No. 1 was directed to be reinstated with consequential reliefs vis-a-vis salary, etc. This order of the Tribunal is the subject matter of the challenge before us.

3. Learned Counsel for the petitioner, Mr. Ingle, submits that the Tribunal has not taken into consideration a binding order of the Charity Commissioner holding against Raosaheb and the acts and omissions of that person. That apart, the other charges levelled against the respondent No. 1 had been duly established and the Tribunal should have dismissed the appeal. Counsel for respondent No. 1 justifies the impugned order saying that it is correct.

4. The submission based upon the order passed by the Joint Charity Commissioner u/s 70 of the Bombay Public Trusts Act. 1950, is not of much assistance to the petitioner's case. All that it shows is that Raosaheb was in error in describing himself as the Manager. This may be alright so far as other acts in relation to the institution are concerned. Learned Counsel for the petitioner, at our specific request, has made available a copy of the resolution admittedly passed by the opponents of Raosaheb on 18-9-1983. The very first line of this resolution indicates that for the better administration of the School's affairs, the Managing Committee had entrusted the management to the sole

discretion of Raosaheb. The resolution further goes on to say that Raosaheb had misused the trust reposed in him and for that reason, the earlier resolution was being rescinded. If Raosaheb had been conferred the powers of management and if in exercise of that power, he appointed respondent No. 1 as the Head Master, we do not see any vulnerability in the order appointing respondent No. 1 as the Head Master. Mr. Ingle submits that the power of appointing a Head Master is vested in the management under Rule 3(iii) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 - hereinafter referred to as the Rules. Rule 3(iii) itself speaks of the Management of a school having the right to fill up the post of a Head Master. But the expression "Management" has been defined as "a person or body of persons whether incorporated or not and by whatever name called, administering such school", vide section 2(12) of the Act.

5. It was then argued that even assuming that Raosaheb was the Manager and could appoint a Head Master, the same had to be in accordance with Rule 3 of the Rules. If an outsider was to be appointed, that could be done only after the publication of an advertisement in at least two newspapers having circulation in the region. In the instant case, an advertisement was given in only one newspaper. The requirement of publishing the advertisement in two newspapers is to ensure wide publicity so that the institution gets the best available talent. But, this does not mean that the publication of the advertisement in only one newspaper would invalidate the appointment made. Clause (B) of Sub rule (5) of Rule 3 of the Rules, in so far as it requires the publication of advertisement in two newspapers, has to be read as directory in intent and not mandatory.

6. Mr. Ingle submits that the appointment of respondent No. 1 by Raosaheb, cannot be factually assumed to be such an appointment inasmuch as respondent No. 1 in his letter on 21-8-1981 to the Education Officer, had himself given out that he had been appointed to the post of Head Master by the School Committee. The body known as a School Committee is different from Management. But, the fact that respondent No. 1 made a wrong or even a false representation about the body appointing him, will not efface the appointment order dated 9-8-1981. This document which is at annexure "C shows that the appointment was made by the Manager and a Manager being the management under sub-rule (3) of Rule 3, was entitled to make the appointment.

7. Mr. Ingle submits that the petitioner was already working as an Assistant Teacher and if his appointment as the Head Master was to be the result of a promotion, the same is invalid, because there were two other persons who were senior to him and there is no evidence to indicate that they had renounced their right to the top post of the School. This argument has some merit, but not when it is coming from the petitioner who had authorised Raosaheb to administer the School. The acts of Raosaheb being in exercise of the power delegated to him, are binding upon the petitioner though it is quite possible that the by-passed two senior teachers would have a right to impugn the appointment of respondent No. 1. They also would have to supervene the inaction for a period of more than 10

years. Having considered all aspects, we hold that no illegality, which at least petitioner can impugn, is there in the appointment of respondent No. 1 to the post of Head Master.

8. Mr. Ingle then referred to the other charges framed against the first respondent. None of these charges had been proved or attained that degree of perfection which justified the removal of respondent No. 1. That is the finding of the Tribunal and it is based upon an appreciation of evidence. Mr. Ingle submits that witnesses have been disbelieved by the Tribunal for nothing more than the facts of their belonging to the institution. In the matter of assessing the credibility of witnesses a Writ Court will not ordinarily differ from the views of the Court or Tribunal legally appointed to determine that question. Here the appraisal made by the Tribunal cannot be said to be based on no evidence or a perverse reading of the evidence. The result of the foregoing discussion is that the petition is without merit and hence order:

Rule discharged with parties being left to bear their own costs.