

(2009) 12 BOM CK 0082

In the Bombay High Court

Case No : Writ Petition No. 2397 of 2002

Education Officer (Secondary)

APPELLANT

Vs

Pradeep Yadavrao Deshpande and Others

RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 11(3)

Citation : (2010) 2 BomCR 804

Hon'ble Judges : Naik Vasanti A., J

Bench : Single Bench

Advocate : Sharda Wandile, A.G.P, for the Appellant; A.A. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Naik Vasanti A., J.—By this petition the petitioner, Education Officer (Secondary) Zilla Parishad Yavatmal impugns the judgment passed by the Presiding Officer, School Tribunal, Amravati on 11.12.1996, so far as it holds that the salary of the respondent No. 1 for the duty period shall be held admissible from the Government grants.

2. The respondent No. 1 had filed an appeal before the Presiding Officer, School Tribunal, Amravati. It was the case of the respondent No. 1 that his services were illegally terminated by the management by the termination order dated 30.3.1993. The respondent No. 1 was appointed on 15.9.1991 for a period of one academic session till 30.4.1992. Subsequently he was again appointed in the year 1992 for the academic session 1992-93. According to the respondent No. 1 he ought to have been appointed on probation for a period of 2 years and the management was not justified in terminating his services by the order dated 30.3.1993. During the pendency of the appeal, by an interim order, the respondent No. 1 was continued in service. The Education Officer was directed to pay the salary of the respondent No. 1. The Education Officer, filed an application

for vacation of stay before the School Tribunal, but the same was not decided by the School Tribunal and the judgment dated 11.12.1996 was delivered. The Tribunal by the impugned judgment dated 11.12.1996 allowed the appeal filed by the respondent No. 1 and directed the management to reinstate respondent No. 1 in service with continuity of service and all consequential benefits. It was directed by the School Tribunal that the salary for the duty period shall be held admissible from Government grants. This part of the judgment dated 11.12.1996 is challenged by the Education Officer by this petition.

3. Mrs. Wandile, the learned AGP appearing on behalf of the petitioner submitted that the School Tribunal was not justified in directing the Education Officer to pay the salary of the respondent No. 1 as the appointment of the respondent No. 1 was not in accordance with law. The learned A.G.P. submitted that the post was earmarked for Scheduled Tribe candidate and since the respondent No. 1 belonged to the open category his appointment could not be approved by the Education Officer. It is submitted on behalf of the petitioner that as per provisions of Section 11(3) of M.E.P.S. Act 1977 the Tribunal can only make a recommendation to the State Government and the Tribunal cannot direct the State Government to pay the salary of the employee. The learned AGP submitted that the Tribunal did not have any authority to hold that the salary for the duty period shall be held admissible from the Government grants.

4. Mrs. A.A. Joshi, the learned Counsel for the respondent No. 1 supported the judgment passed by the School Tribunal on 11.12.1996 and submitted that the Tribunal was justified in the facts and circumstances of the case to issue necessary directions. It is submitted on behalf of the respondent No. 1 that the Tribunal has ample powers to issue such directions and the directions issued by the Tribunal are binding on the State Government. The learned Counsel for the respondent No. 1 relied on the judgment Vilas Shankarrao Deshmukh and Another Vs. S.A. Ghode, Principal, Navprabhat Vidya Mandir and Junior College and Others, to substantiate her submission. The learned Counsel for the respondent No. 1 then brought the approval letter to the notice of this Court. It is submitted on behalf of respondent No. 1 that by communication dated 4.12.1998 the appointment of the respondent No. 1 was approved and the Education Officer had further approved the payment of salary though the State ex-chequer in view of the fact that the backlog had been filled by the management. According to the learned Counsel for the respondent No. 1 the judgment was passed by the School tribunal on 11.12.1996 and the State Government was estopped from filing the writ petition in the year 2002 especially when the services of the respondent No. 1 were approved by the communication dated 4.12.1998 and the Education Officer had also approved the payment of salary to the respondent No. 1 from the State ex-chequer.

5. I have heard the submissions made on behalf of the parties and perused the impugned judgment dated 11.12.1996. It would not be necessary to enter into the merits of the controversy involved in the matter as to whether the Tribunal

was justified in issuing the directions to the Education Officer or not as the Education Officer has granted approval to the services of the respondent since year 1992-93 onwards by the approval letter dated 4.12.1998 and the Education Officer has also granted permission for payment of regular salary w.e.f. 13.4.1998 through the State ex-checker. This communication was issued in the year 1998 and probably the Education Officer being oblivious of the aforesaid fact has filed the writ petition in the year 2002. Even otherwise, from a perusal of the judgment reported in Vilas Shankarrao Deshmukh and Another Vs. S.A. Ghode, Principal, Navprabhat Vidya Mandir and Junior College and Others, , it appears that the Tribunal has jurisdiction to issue direction to the Education Department and the directions are binding on the State Government and the State Government expected to comply with the directions given u/s 11(3) of the M.E.P.S. Act 1977. In this case the management has not challenged the order of reinstatement and hence it is not necessary to consider the other aspects which are considered by the tribunal while allowing the appeal filed by the respondent No. 1.

6. In the result, the writ petition fails and is dismissed with no order as to costs.