

(2017) 09 BOM CK 0180

In the Bombay High Court

Case No : 471 of 2009 IN WRIT PETITION NO 4192 of 2008 (D)

Girdhar Anandrao Thaori

APPELLANT

Vs

Dr. B.R. Ambedkar Shikshan Sanstha Hinganghat through its
President Hinganghat, & Ors.

RESPONDENT

Date of Decision : 12-09-2017

Acts Referred:

[Maharashtra Employees of Private Schools \(Conditions of Service\) Regulation Act, 1977](#), [Section 9](#), [Section 5](#) - Right of appeal to Tribunal to employees of private schools. - Certain obligations of

Citation : (2017) 09 BOM CK 0180

Hon'ble Judges : B.P. Dharmadhikari, Arun D. Upadhye

Bench : DIVISON BENCH

Advocate : R.V. Shiralkar, K.L. Dharmadhikari

Judgement

1. Arguments of Advocate Shri Shiralkar for appellant - employee and learned Assistant Government Pleader for respondent no.4 were heard on 7/9/2017. As there was nobody for other respondents, we adjourned the matter to 8/9/2017 as partheard. Accordingly, the matter is being shown as partheart on daily Board.

2. Today, again there is no appearance for other respondents.

3. We find that the School Tribunal has dismissed the appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short, hereinafter referred to as "the M.E.P.S. Act") vide Appeal No.STC17/ 1999 on 4/7/2008, while passing orders on preliminary issues framed on 18/9/2006.

4. We reproduce the preliminary issues and the findings thereon as under :

" PRELIMINARY ISSUES FINDINGS

1. Whether the school was a recognized school as defined under the MEPS Act ?
Yes.

2. Whether the appointment of the appellant was made as per Section 5 of the MEPS Act and Rules thereunder ? No.

3. Whether such an appointment has been approved by the Education officer in pursuance of the provisions of the Act does not survive as well as Rules framed thereunder including Govt. resolutions issued from time to time regarding reservation etc. ? Does not survive.

4. What order ? As per this order."

5. The School Tribunal did not delve into merits of controversy because of its findings on preliminary issues. The preliminary issues have been dealt with as per directions of the Division Bench of this Court in the judgment, reported at 1997 (3) Mh.L.J. 697 (Anna Manikrao Pethe...Versus...Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati and others) and the full Bench judgment of this Court, reported at 2007 (1) Mh.L.J. 597 (St. Ulai High School and another...Versus...Devendraprasad Jagannath Singh and another). The Division Bench directed the School Tribunal to find out whether the School in which employee worked is recognized under the M.E.P.S. Act or not, whether the appointment of employee was legal and valid as per Section 5 of the M.E.P.S. Act and lastly, whether the appointment was approved by Education Officer.

6. It has been found that though the Division Bench expected answer on all three issues after the full Bench judgment, answer on issue regarding approval was not decisive. It has therefore not given that answer.

7. The appellant, in turn, then approached the learned Single Judge of this Court in Writ Petition No.4192/2008 and on 30/7/2009 the learned Single Judge has maintained the said order.

8. Advocate Shri Shiralkar submits that in present matter, fact that appointment order has not been signed by Headmaster or Secretary of School Committee is not material because after proper advertisement and selection process the Management has passed Resolution and accepted the entire process and resolved to appoint the appellant. He is relying upon the Division Bench judgment of this Court, reported at 2009 (5) Mh.L.J., 300 (Gajanan Uddhaorao Garole...Versus...State of Maharashtra and others) to buttress his submission. He further states that in fact respondent no.4 - Education Officer has granted approval to the appointment of petitioner on 8/5/1996 as Assistant Teacher from 17/8/1991 till end of 199596 session. He submits that appellant therefore had become permanent employee.

9. Learned Assistant Government Pleader appearing for respondent no.4 does not dispute the facts. However, he submits that as appeal has been dismissed without going into merits of the controversy, the matter needs to be sent back to the School Tribunal and question whether the appellant was appointed on probation and has become permanent or not needs to be looked into by the School Tribunal.

10. With the assistance of respective Counsel, we have perused the records. The Education Officer has granted approval on 8/5/1996 and if for a moment modification by full Bench of this Court in the judgment in the case of St. Ulai High School and another...Vrs....Devendraprasad Jagannath Singh and another (supra) is ignored, in the light of Division Bench judgment in the case of Anna Manikrao Pethe...Vrs....Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati and others (supra), it implies legal and valid selection and appointment. The School Tribunal has found that it had no jurisdiction because appointment order is signed by President of the Public Trust, i.e., Institution managing the school. The Division Bench of this Court in judgment in the case of Gajanan Uddhaorao Garole...Vrs...State of Maharashtra and others (supra) has looked into identical controversy. There, it found that when the order of appointment is supported by Resolution of Management, fact that it is signed by President or that it is not signed by Headmaster is not decisive. It is always apparent that once the selection process is looked into by Management and the Management resolves to appoint present appellant, it is implementation of decision of Management that actual results it issuance of appointment order. Normally, such Resolution is to be executed by Secretary and therefore it should have been signed by Headmaster of the School. But when it is signed by President and the appellant was permitted to join and he functioned for almost four years, such fault in his appointment order cannot be said to be fatal. The Division Bench judgment in the case of Gajanan Uddhaorao Garole...Versus...State of Maharashtra and others (supra) clearly clinches this controversy. Perusal of judgment delivered by the School Tribunal shows that the Management has passed Resolution on 1/3/1992 and accepted the selection and decided to appoint present appellant as Assistant Teacher.

11. This Resolution or its impact has not been looked into either by the School Tribunal or by the learned Single Judge.

12. Thus, the Resolution of Management and approval by Education Officer show that approach of School Tribunal in deciding the preliminary issue against appellant is too technical and unsustainable. Merely because the appointment order is not signed by Headmaster or then it is signed by President in present facts, appeal could not have been dismissed by answering preliminary issue against him.

13. We, therefore, quash and set aside the order of Tribunal on preliminary issue, dated 4/7/2008 and restore Appeal No.STC - 17/1999 back to file of School Tribunal at Chandrapur.

14. We direct parties to appear before the Tribunal on 29/9/2017.

15. The Tribunal shall, after giving parties necessary opportunity including leave to add their pleadings or to file additional pleadings/documents, proceed further to decide the appeal on merits at the earliest and in any case within next six months. Accordingly, we allow this letters patent appeal. No costs.