

(2008) 01 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 6021 of 1995

Jan Seva Mandal and Another

APPELLANT

Vs

Shri Sadashiv Hari Patil and Others

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5(2), 9
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule
6, 9(7), 9(9)

Citation : (2008) 2 BomCR 554 : (2008) 4 MhLj 282

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : Prakash G. Lad, for the Appellant; N.R. Bubna and Mandar Limaye,
instructed by y., R.S. Apte, for respondent No. 1, S.K. Chinchalikar, AGP for
respondent Nos. 2 and 3, for the Respondent

Judgement

B.H. Marlapalle, J.—This petition under Article 227 of the Constitution impugns the Judgment and Order dated 16/9/1995 rendered by the School Tribunal, Nasik Region, Nasik whereby Appeal No. 58 of 1993 came to be allowed and the petitioner-management has been directed to reinstate the respondent no.1-appellant in his original post and to pay the difference of emoluments, including pay and allowances, from the date of termination till he is reinstated. The termination notice dated 30/4/1993 was quashed and set aside. The petition was admitted and stay to the impugned order was granted by this Court and consequently, the respondent-appellant could not be reinstated.

2. The appellant before the School Tribunal, while challenging the order of termination dated 30/4/1993, in his appeal u/s 9 of the M.E.P.S. Act, 1977 (the Act for short) had claimed that he was appointed as an Assistant Teacher with effect from 18/12/1987 till the end of the academic year 1987-88. In the next academic year 1988-89 he was again appointed from 23/6/1988 and as per the

notice dated 27/3/1989 he was informed that his tenure came to an end at the end of the academic year. In similar fashion he was continued in the academic year 1989-90 and till the academic year 1992-93 and, therefore, he had attained the status of a deemed permanent Assistant Teacher u/s 5(2) of the Act. Consequently, he could not have been terminated as per the notice dated 30/4/1993 and the said order being illegal, he was required to be reinstated with all consequential benefits, including backwages and continuity of service.

3. The respondent-management filed Written Statement and opposed the appeal both on the points of merit and non-joinder of the Education Officer, Secondary, Zilla Parishad, Thane as well as the Deputy Director of Education, Mumbai Region. On merits it was contended that he was not continuously appointed as claimed by the appellant from the academic years 1987-88 till the academic year 1992-93 and it was pointed out that his appointment was only on temporary basis in every academic year and as a reserved category candidate was not available, he was issued an appointment order on temporary basis. The post against which he was appointed was reserved for Scheduled Tribe. It was further pointed out that the appellant was not belonging to Scheduled Tribe, he could not be continued and reappointed in the academic year 1993-94. In short, it was the contention of the management that there was no termination of appellants services and his service had come to an end by efflux of time and thus there was no cause of action to file the appeal, more so when the appellant himself was aware that his appointment was for each academic year on temporary basis.

4. The School Tribunal noted that the appellant was Kunabi by caste and, therefore, he belongs to OBC and as per Rule 9(9)(a) of the M.E.P.S. Rules, 1981 (for short the Rules) the appellant was entitled for protection in as much as if the Scheduled Tribe category candidate was not available, the appellant himself being from OBC category ought to have been appointed. The management did not do so and thus acted in breach of Rule 9(9)(a) of the Rules. As per the School Tribunal the appellant had worked from 1987 onwards and he was treated to be a deemed permanent teacher. The learned Counsel for the petitioners submitted that the impugned Judgment and Order is patently erroneous and also contrary to the facts. As per the petitioners there was no material before the School Tribunal to hold that the appellant was continued right from 1987-88 in each academic years and, therefore, he had attained the status of deemed permanency. As per the petitioners Rule 9(9)(a) of the Rules was not applicable in the instant case and even otherwise at no point of time the appellant was appointed on probation and hence he could not have claimed the status of a deemed permanent teacher. On the other hand, Mr. Bubna and Mr. Limaye the learned Counsel for the appellant supported the impugned Judgment and Order and by relying upon the following decisions contended that the petition deserves to be dismissed:

(a) Hindustan Education Society and another Vs. Sk. Kaleem Sk. Gulam Nabi and others, .

(b) Vilasrao Sarjerao Patil Vs. Asarondi Panchkroshi Shikshan Prasarak, Mandal, Madhyamik Vidyamandir and State of Maharashtra, .

(c) President, Mahila Mandal, Sinnar and Anr. v. Sunita Bansidhar Patole 2007(2) Mh.L.J. 105.

(d) Hareshwar Shikshan Prasarak Mandal and Shree Malveer Vidyamandir Vs. Smt. Rajashree Sarjerao Lokhande, The Education Officer (Secondary), Zilla Parishad and Shri Bhimrao Phadtare, .

5. There is no dispute that the appellant was never appointed on probation and it was also admitted that in every academic year his tenure of appointment was specified and he was informed that he was appointed against a post reserved for Scheduled Tribe. It is also not in dispute that in every academic year the appellants appointment was against a post reserved for Scheduled Tribe and more particularly from the academic year 1992-93. The appellant had also furnished a declaration that he was aware about his appointment having been made against a post reserved for Scheduled Tribe and given an undertaking that he would not claim any right of permanency in the said post if appointed on temporary basis and till the Scheduled Tribe candidate was available. The approval was granted by the Education Officer for the academic year 1992-93 and the said approval was for the petitioners appointment from 24/8/1992 till the academic year 1992-93. The said Education Officer, Secondary was not made party before the School Tribunal, the said officer could not place before the School Tribunal any other record prior to the academic year 1992-93 and more particularly whether the appellants appointment was approved by the said authority. It is also not in dispute that the petitioner no.1 is running the High School - Nav Samaj Vidya Mandir, Manivali, Taluka Bhiwandi, District Thane.

6. If we go through the appeal memo submitted by the respondent no.1-appellant before the School Tribunal, it is very clear that initially he had completed B.Sc. degree in 1986 and he was appointed with effect from 18/12/1987 when he did not possess the B.Ed. degree. In the academic year 1988-89 till the academic year 1989-90 (for three academic years), the appellant was continued only on his B.Sc. qualifications. He did not point out whether the said appointment was approved as required under the proviso to Rule 6 of the Rules. As per the own admissions of the appellant, in the academic year 1989-90 he was appointed with effect from 17/8/1989 and the said appointment ended on 30/3/1990. In the academic year 1990-91 he joined the B.Ed. Course and completed the same and thus in the said academic year he was not in the employment of the petitioners. In the academic year 1991-92 he obtained his B.Ed. degree and claimed that he was appointed as an Assistant Teacher on temporary basis. No document was brought on record before the School Tribunal though the termination order dated 26/3/1992 was claimed to have been placed before the School Tribunal. Even if it is accepted that the appellant was appointed in the academic year 1991-92 and was also reappointed in the next academic year 1992-93, the fact remains that in both these years he was not

issued an appointment order appointing him on probation. At the same time, he had not undergone a regular selection. The findings of the Tribunal that the appellant continuously worked in each of the academic years from 1987-88 to 1992-93 is, therefore, contrary to the record and, as admitted in the appeal memo, the appellant was not in the employment of the petitioners in the academic year 1990-91.

7. The approval granted and which has been placed on record to the appointment of the appellant was for the period from 24/8/1992 till the end of the academic year 1992-93. It is also clear from the record that the management had appointed a candidate belonging to the Dhangar caste which falls in VT-NT category in the academic year 1993-94. The appointment of the said Assistant Teacher Shri Vajire Gokul Kautik was approved by the Education Officer as per his order dated 9/9/1993 for the academic year 1993-94. Rule 9(7) which has been relied upon by the School Tribunal, while allowing the appeal, deals with the reservation for SC, ST and Other Backward Classes etc. and the percentage of reservation in each category has been specified. As per the School Tribunal if the Scheduled Tribe category candidate was not available in the academic year 1993-94 the appellant was required to be appointed, as he belongs to OBC and, therefore, the appeal was allowed on the grounds that the management acted in breach of Rule 9(9)(a). The said Rule reads as under:

In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in Sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year-to-year basis by a candidate not belonging to the Backward Classes.

8. The view taken by the School Tribunal is unsustainable on two grounds: At the first instance, it is clear that the candidate belonging to VJ-NT category was appointed by the petitioners in the academic year 1993-94 and his appointment was approved. The said teacher also possessed the degree of B.Sc. B.Ed. as is the qualification of the appellant. Thus, the post was not kept vacant. Secondly, in any case, as per the categories specified in Sub-rule (7) of Rule 9, if the ST category candidate was not available, VJ-NT category candidate would get priority upon the OBC and, therefore, Mr. Vajire Gokul Kautik was rightly appointed by the management against a post reserved for ST. The Tribunal was not right in saying that as the ST category candidate was not available, the appellant belonging to OBC category was required to be appointed, in the facts of this case.

9. It is also pertinent to note that the School Tribunal fell in manifest error in taking into consideration the service of the appellant in the academic year 1987-88 to 1989-90 when he did not possess the requisite qualifications for appointment as an Assistant Teacher in a secondary school in as much as he did not possess the B.Ed. degree during that period. As noted earlier, the appellant

did not bring on record whether his appointment for this period (on academic year basis) was approved by the Education Officer, Secondary, Zilla Parishad, Thane as required under the proviso below Rule 6 of the Rules. On these facts none of the judgments relied upon by the learned Counsel for the respondent no.1 and as noted hereinabove are applicable. On the other hand, in the case of Hindustan Education Society and Anr. v. Sk. Kaleem Sk. Gulam Nabi and Ors. (Supra) it has been held that unless the appellant was appointed on probation, he could not have claimed the status of deemed permanent teacher and the decision in the case of President, Mahila Mandal Sinnar (Supra) rendered by this Court follows the law laid down in the case of Hindustan Education Society (Supra).

10. In the premises, the impugned Judgment and Order is unsustainable and, therefore, this petition succeeds. The same is hereby allowed and the Judgment and Order dated 16/9/1995 passed by the School Tribunal, Nasik Region, Nasik in Appeal No. 58 of 1993 is hereby quashed and set aside and the said appeal stands dismissed.

11. Rule is made absolute accordingly with no order as to costs.