

(2010) 10 BOM CK 0089
In the Bombay High Court
Case No : Writ Petition No. 1792 of 2010

Ku. Arti Warkhede

APPELLANT

Vs

The Education Officer (Secondary) and Others

RESPONDENT

Date of Decision : 15-10-2010

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5, 9(1)
Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 12, 77.11, 77.9
Secondary School Code — Section 3.2(5)

Citation : (2011) 129 FLR 261 : (2011) 1 MhLj 638

Hon'ble Judges : S.A. Bobde, J;Mridula Bhatkar, J

Bench : Division Bench

Advocate : A.M. Gorday, for the Appellant; T. Khan, Assistant Government Pleader for Respondent Nos. 1 and 2 and Ahirrao, for the Respondent

Judgement

S.A. Bobde, J.—Rule returnable forthwith. Heard the learned Counsel for the parties by consent.

2. The petitioner has approached this Court against the order dated 11.4.2008 passed by the respondent No. 1 Education Officer rejecting the approval to her services as a Shikshan Sevak in the respondent No. 5 school. The main contention in the petition is that the reason given for rejecting approval, namely, that the petitioner who is a reserved category candidate could not have been appointed in the post which was earlier occupied by an open category candidate is not correct.

3. However, consequent upon the rejection of the approval, the petitioner's services have been terminated with effect from 9.4.2008 and the petitioner challenged the termination initially before the Grievance Committee and thereafter, after an amendment to Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the appeal is now pending before the Schools Tribunal. The question, therefore, that arises is whether the

petitioner can challenge the rejection of her approval in the appeal which she has filed against her termination.

4. Mr. A.M. Gorday, learned Senior Advocate for petitioner, pointed out that Division Bench of this Court in the case of Anna Manikrao Pethe v. Presiding Officer, School Tribunal, Amravati and Aurangabad Division, Amravati and Ors. reported in 1997(3) Mh. L.J. 697, has laid down that in an appeal against termination, it was necessary for the Tribunal to frame and decide three preliminary issues, namely,

- i. whether the school was a recognised school as defined under the MEPS Act,
- ii. whether the appointment of the concerned teacher was made as per Section 5 of the MEPS Act and Rules and
- iii. whether such an appointment was approved by the Education Officer in pursuance of the provisions of the Act and Rules framed thereunder, including Government Resolutions issued from time to time.

The Division Bench further observed that these points be decided as preliminary points and in case the Tribunal answers any of the preliminary issues in the negative, the appeal must fail.

5. The learned Counsel, however, pointed out that the position laid down by the Division Bench in Anna Manikrao Pethe's case (supra) has undergone a change due to the decision of a Full Bench in the case of St. Ulai High School and Shri Adishakti Hindi Prachar Samitee Vs. Shri Devendraprasad Jagannath Singh and The Zilla Parishad, where the Full Bench has expressly held that the decision in Anna Manikrao Pethe's case to the extent it holds that an appeal is not maintainable before the Tribunal at the behest of an employee whose appointment has not been approved stands overruled, along with another decision in the case of Shailaja Ashokrao Walse Vs. State of Maharashtra and others, . According to the learned Counsel, there is no doubt now that the question of approval need not be decided as a preliminary issue.

6. We find substance in this submission. It is clear that in a given case, the question whether approval to the services of the teacher has been wrongly refused or granted might itself be a question that may arise for determination in an appeal. The present case is one such example. The petitioner's services have been terminated on the ground that the Education Department has refused to grant approval to her services. In such a case, we have no doubt that the question whether the petitioner has been wrongly refused approval is a question that will arise for determination before the School Tribunal. We are of the view that a School Tribunal, which has the jurisdiction to decide whether the dismissal, removal or otherwise termination of the services of a teacher by the management is wrongful or not, has the power to decide whether reason for such termination, i.e. whether the refusal of approval is right or wrong, as an ancillary or incidental question. The want of an express enumeration of powers

does not exclude such incidental powers as are reasonably necessary to accomplish the purpose of deciding whether the dismissal or termination of services is wrongful or not. We might notice that in relation to another aspect, this Court has held that the School Tribunal is vested with the incidental power to decide the question of seniority of a teacher while considering his appeal that he has been wrongfully superseded. This Court observed vide Umesh Balkrishna Vispute (Shri) Vs. State of Maharashtra and Others, as follows:

21. We, after having heard the parties at length and after having considered the aforesaid judgments, are of the considered view that finalisation of the seniority list in terms of Rule 12 of the Rules is not final and conclusive and not binding on the tribunal and Section 9(1) of the Act has overriding effect as it opens with non obstante clause and the dispute relating to seniority list can also be considered by the Tribunal as an incidental question while deciding the controversy in regards to the supersession....

Likewise, we find that there is no finality of any kind conferred on such a decision by the Act by which the Education Officer grants or refuses approval. In fact, approvals are not granted under any of the provisions of the Act. It seems that approvals to appointments of teachers are granted or withheld by way of a supervisory function carried out by the Education Department to ensure compliance by the school of the Rules and Regulations governing such school, vide Section 3.2(5) of the Secondary Schools Code which reads as follows:

3.2(5): The education imparted in the school is considered by the appropriate authority to be satisfactory in all respects. All the members of the teaching staff are suitable and possess the prescribed qualifications and are sufficient in number and the school does not employ any member notified as unsuitable for employment by the Deputy Director or the Director, under Rule 77.9 and Rule 77.11.

7. In the circumstances, we are not inclined to entertain this petition. The petitioner may raise the question of the correctness of the impugned order dated 11.4.2008 in the Appeal No. STC. 5/10 pending before the Presiding Officer, Additional School Tribunal, Nagpur (Chandrapur).

8. With the above observations, the Writ Petition stands disposed of. Rule stands discharged with no order as to costs.