
(2018) 10 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 1962? Of 2012

Ku. Mala D/O Tameshwar Gawande Now Ms. Mala Pramod Wankhede APPELLANT

Vs

State Of Mah. Thr. Its Secty. And Ors RESPONDENT

Date of Decision : 10-10-2018

Acts Referred:

Citation : (2018) 10 BOM CK 0056

Hon'ble Judges : B.P. Dharmadhikari, J;M.G.Giratkar J

Bench : Division Bench

Advocate : Anand Parchure, Kalyani Desphade, Abhay Sambhare

Final Decision : Disposed Off

Judgement

B.P. Dharmadhikari, J

1.Â These matters were heard yesterday and today judgment is to be dictated.Â Learned AGP, however, in the meanwhile got knowledge of order

dated 30th August 2013 passed by Director ofÂ VocationalÂ training dismissing appeal filed byÂ petitioners in Writ Petition No.4241 of 2012. He

has produced that copy for perusal of Court.

2.Â As groundsÂ given in said order are not different, learned advocate Mr.Parchure, seeks oral leave to incorporate a prayer clause forÂ setting it aside.

3.Â Learned Asstt. Government Pleader fairly does not oppose the prayer. Hence, oral leave granted. Necessary amendment be carried out immediately.

4.Â Shri. Mohgaonkar learned counsel appearing for petitionerÂ in Writ Petition No.1962 2012 seeks leave to place on recordÂ fact of retirement

of the petitioner Ku. Mala on 31.5.2017. That affidavit is also taken on record.

5. Writ Petition No. 2873 of 2012 is filed by employer questioning the order dated 11.7.2011 passed by respondent no.2 director whereby

said authority has refused to grant approval to the appointment of petitioner Ku.Mala.

6. Very same order is questioned by employee Ku.Mala. In Writ Petition No.1962 of 2012.

7. The petitioner Ku.Sandhya in Writ Petition No.4241 of 2012 is the employee of very same employer and she also assails order refusing

approval to her appointment.

8. In view of interim orders passed by this Court in the matter, the employer has been paying the salary of petitioners. They have not received

the wages from public exchequer.

9. Insofar as, entry of petitioner Ku.Sandhya or Ku.Mala in employment is concerned, it is after advertisement in news paper. It is also not in

dispute that after their appointment they were granted approval on year to year basis subject to employer fulfilling the backlog in recruitment.

10. The petitioner Ku. Sandhya therefore, had such approval from academic year 1994-95 till year 2000 and during this period she has received

salary and wages through salary grants. Because of omission on part of employer to fill in back log she has not been given approval after

academic year 2000-2001.

11. The petitioner Ku.Mala also joined after proper advertisement and she also was given approval on year to year basis from the year

1993-1994 till 1999-2000. However, thereafter as management did not fill in backlog director of vocation has not granted any approval.

12. Services of Ku.Sandhya were sought to be terminated by notice dated 21.1.2010 as she had no approval. She approached this court for grant of

approval in WP No. 952 of 2010.

13. Ku.Mala had approached this Court in writ petition no.1073 of 2007. High Court on 11.6.2008 directed respondents to get the roster certified

and then to take final decision on issue of approval. It appears that thereafter, the roster was prepared and certified by backlog Cell on

16.8.2007. Office of director found that Ku.Mala was in open category and as backlog was not filled in, again refused to grant approval.

She filed writ petition No.4306 of 2009 and this Court on 3.3.2010 disposed of that writ petition with direction to take decision afresh within 6 weeks.

14. It appears that writ petition No.952 of 2010 filed by Ku. Sandhya was also disposed of with similar orders alongwith writ petition no. 4306 of 2009.

15. Though lengthy arguments have been advanced before us by all concerned, we do not find it necessary to reproduce the same. Facts

mentioned supra, are not in dispute. Thus, advertisements, selection of respective petitioners, appointment orders issued to them and grant of approval on year to year basis, is admitted. Non-grant of approval after 2000, is also not in dispute. Fact that the roster has been approved for the

first time by the Backward Cell on 16.08.2007, is also not in dispute. Petitioners have not been given approval even thereafter.

16. Papers on record show that employees recruited after respective petitioners in open category have been given approval. In case of Ku. Mala

(Writ Petition No. 1962/2012), few such orders are produced on record. We find that one Shri A.R. Deshmukh, has been given approval on full

time basis by order dated 28.07.2000, that too w.e.f. 29.12.1993, as he satisfactorily completed the period of probation. In Seniority List made

available for our perusal, his name has been placed after petitioner.

17. This order appears to have been modified on 02.09.2000, by giving Shri Deshmukh permanent approval from 17.09.1994. In seniority list, name

of petitioner Ku. Mala, is at Sr.No.67, while name of Shri Deshmukh, is at Sr.No.70, and both are shown in open category.

18. This contention has been specifically raised in Writ Petition in paragraph no.17, and it has not been rebutted either by the employer or by the department.

19. Petitioner Ku. Mala has on 07.06.2010, submitted a representation to the Joint Director and pointed out these developments. This has

been reiterated again on 10.03.2011.

20. The department has filed reply before this Court and it is supported by affidavit of one Shri Nilay Hande. He has in paragraph no.17 of the

reply affidavit submitted that petitioners' appointment was beyond permissible quota in open category, and hence, the department was constrained to

issue order rejecting approval as full time teacher in MCVC Bio-focal stream. This affidavit therefore conveniently overlooks the assertions that

juniors recruited in open category have been given approval, while petitioner Ku. Mala has been denied the same.

21. In case of petitioner Ku. Sandhya (Writ Petition No.4241/2012), she also complained that juniors were given approval. These assertions are contained in paragraph nos. 18 and 19 of her Writ petition. She has also given names in paragraph no.23, and pointed out case of Mala Gawande (other petitioner before us), as similarly situated employee.

Again these assertions have remained un rebutted.

22. Respondent has produced before us list of employees who were working as full time instructors. This list forms part of Annexure 8,

and it is submitted under the signature of the Education Society pointing out position as on 16.08.2017. It carries an order of one Shri Kedare on

it. Shri Kedare, has pointed out that for total 124 sanctioned posts of instructor, there was backlog of 6 Scheduled Caste, 7 Scheduled Tribes, 3

V.J.A., and 2 Other Backward Class. In the accompanying list, names of instructors like Shri J.S. Mohod, A.R. Deshmukh and Mangla Dahane,

who joined the employment after Sandhya are shown at Sr.Nos. 70, 11 and 8 respectively. Name of petitioner Sandhya is at Sr.No.64.

23. This material on record therefore, shows that juniors have been given approval by respondent retrospectively and senior persons like petitioners have been declined the same.

24. Even if we accept that the Backward Cell has certified the roaster for the first time on 16.08.2007, we cannot blame petitioners for this

position. On the contrary, on 03.08.2005, after lacunae pointed out by the department, the employer sent a communication along with list indicating

backlog. Very fact that initially approvals were given on year to year basis, show the knowledge with the department that backlog existed. It

appears that despite this, the recruitment was going on and approvals on year to year basis were being granted. The communication dated

18.04.2008, sent by the employer to the Joint Director, while seeking approval to appointment of Ku. Mala, invites attention to roaster certified by the

Backward Cell on 06.08.2003.

25. In view of these documents, conflicting positions in various seniority list, we

tried to find out the truth in it. Learned A.G.P. upon instructions has fairly explained that records are not available with the department at all.

26. Petitioners entered service in 1994, and as on today period in excess of 24 years had expired. We in this situation, cannot blame them for

the prevailing situation. If their employer was on fault, respondent could have taken action against the employer and cancelled approval or recognition

of the school. If officers in the department were/are at fault, action against the employees/officers in education department could have been

taken. That also has not been done.

27. In this situation, when juniors of petitioners have been given approval on full time basis, we direct respondents to grant approval also to these

petitioners on full time basis from respective dates i.e. the dates on which the immediate junior has been given that approval.

28. Needless to mention that all consequential benefits shall also be released accordingly.

29. This exercise shall be completed within a period of 6 months. Writ Petitions filed by the employees are accordingly allowed and disposed of.

Rule is made absolute in the aforesaid terms with no order as to cost.

30. Petitioner Mala has retired on 31.05.2017. Hence, the amount due to her along with pension, if any, shall also be released within the same time.

31. In view of above orders, independent challenge in Writ Petition No. 2873/2012 by the Management need not be dealt with separately. It is

accordingly disposed of. No cost.