

(2009) 11 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 4242 and 4532 of 2004

Ku. Shalini Gajananrao Dalal, Now Sou. Shalini Onkar Sorte APPELLANT
Vs

New English High School Association and Others
 New RESPONDENT
English High School Association and Governing Council, New
English High School Association Vs Ku. Shalini Gajananrao
Dalal, Now Sou. Shalini Onkar Sorte and Others

Date of Decision : 11-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142, 16
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9

Citation : (2010) 1 BomCR 307 : (2010) 112 BOMLR 26

Hon'ble Judges : Vasanti A Naik, J

Bench : Single Bench

Advocate : S.P. Bhandarkar and S.R. Deshpande, for the Appellant; S.R. Deshpande and 2, S.B. Ahirkar, AGP for Respondents No. 3 to 7, S.P.Bhandarkar, for Respondent 1 and S.B. Ahirkar, AGP for Respondent No. 2 to 4, for the Respondent

Judgement

Vasanti A Naik, J.—Rule. Rule made returnable forthwith. Both the petitions are heard finally with the consent of the parties. Since the issues involved in both these petitions, are almost identical, they are being heard together and are decided by this common judgment.

2. The petitioner in Writ Petition No. 4242/2004, is the employee and the petitioner in Writ Petition No. 4532/2004 is the management who had terminated the services of the petitioner in Writ Petition No. 4242/2004. The petitioner in Writ Petition No. 4242/2004 was appointed as Assistant Thatcher by the management on 6.11.1981 in a post earmarked for the Scheduled Tribe Category. The Assistant Teacher claimed to be belonging to Halba Caste. The Caste Certificate Scrutiny Committee, Nagpur however, invalidated the caste claim of the petitioner by an order dated 19.8.2003. The Assistant Teacher who

was at the relevant time working as Headmistress filed Writ Petition before this Court against the order dated 20.8.2003,, but the writ petition was dismissed and the Assistant Teacher was permitted to make a representation to the management. The Assistant Teacher made a representation to the Management but the same was rejected and her services were terminated by an order dated 9.10.2003. The Assistant Teacher who was at the relevant time working as Headmistress challenged the order of termination before the Presiding Officer, School Tribunal, Nagpur u/s 9 of the Maharashtra Employees of Private Schools [Conditions of Services Regulation] Act 1977. The Presiding Officer, School Tribunal, Nagpur by the impugned order dated 28.6.2004 partly allowed the appeal and directed the management to reinstate the Assistant Teacher in service with continuity of service and full back wages. The management is aggrieved by the order passed by the Presiding Officer, School Tribunal, Nagpur on 28.6.2004 so far as it directs the management to reinstate the Assistant Teacher in service with continuity in service and full back wages and has therefore filed Writ Petition No. 4532/2004. Since the employee was directed to be reinstated on the post of Assistant Teacher and not on the post of Headmistress which she was holding at the relevant time, the Assistant Teacher has filed Writ Petition No. 4242/2004 challenging the judgment passed by the Tribunal on 28.6.2004.

3. Shri S.R. Deshpande, the learned Counsel for the management submitted that the Presiding Officer, School Tribunal was not justified in reinstating the Assistant Teacher in service with continuity of service and full back wages as her caste claim was invalidated by an order passed by the Caste Certificate Scrutiny Committee on 20.8.2003 and no sooner than the caste claim of the Assistant Teacher was invalidated the management had a right to terminate her services. The learned Counsel for the management submitted that the benefit of the government resolution dated 15.6.1995 or the government resolution dated 30.6.2004 could not have been availed by the Assistant Teacher in view of the decision of the Three Judges Bench of the Hon. Supreme Court reported in Union of India (UOI) Vs. Dattatray Mendhekar and Others, as also the two Full Bench decisions of this Court reported in 2009 (5) Mh.L.J. 482 Vandana Bhazrat Kauthalkikar v. State of Maharashtra and Ors. and Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, . The learned Counsel for the management submitted that this Court has held in the judgment reported in 2009 (2) ALL MR 867 Sunil Ingle v. Zilla Parishad and Anr. that the government resolution dated 15.6.1995 in terms violates the fundamental rights guaranteed by Articles 14 and 16 of the Constitution and therefore, the High Court will not be justified in issuing its writ for enforcement of such invalid government resolution. According to the learned Counsel for the management the Tribunal committed a serious error in allowing the appeal filed by the Assistant Teacher.

4. Shri S.P. Bhandarkar, the learned Counsel for the Assistant Teacher supported the judgment passed by the School Tribunal so far as it directs the reinstatement of the Assistant Teacher in service with continuity in service and full back wages

and it is submitted on behalf of the Assistant Teacher that in fact the School Tribunal ought to have reinstated the Assistant Teacher on the post of Headmistress which she was holding since the year 1994. The learned Counsel for the Assistant Teacher submitted that the Assistant Teacher was entitled to be protected in view of the government resolution dated 15.6.1995. According to the learned Counsel for the Assistant Teacher, such a protection is granted to a similarly situated employee by the Hon. Supreme Court by the judgment reported in 2008 (Supp) Bombay CR 266 Punjab National Bank and Anr. v. Vilas Govindrao Bokade and Anr. and an unreported judgment of the Hon. Supreme Court also in the case of Punjab National Bank and Anr. v. Vilas Bokade and Anr.. The learned Counsel for the Assistant Teacher relied on the decision of the Hon. Supreme Court reported in 2007 (3) Mh.L.J. 795 State of Maharashtra and Ors. v. Sanjay K. Nimje. The protection in the case of the Assistant Teacher was also sought by the learned Counsel on the basis of an unreported judgment of the learned Single Judge of this Court in Writ Petition No. 1561/2009 dated 16.10.2009, as according to the learned Counsel for the Assistant Teacher, the similar protection was granted to the employee in that case in similar set of facts. According to the learned Counsel for the Assistant Teacher, in case this Court is not of the view expressed by the learned Single Judge in Writ Petition No. 1561/2009, this Court should make a reference of the issue to the Larger Bench instead of deciding the same. The learned Counsel for the Assistant Teacher relied on the decision reported in State Bank of India and Ors. v. Labour Enforcement Officer (Central) and Anr., (1997) 10 SCC 258 and 2001 (2) SCC 135 District Manager AP SRTC, Vijaywada v. Sivaji and Ors. to substantiate this submission. According to the learned Counsel for the Assistant Teacher, this Court may not rely on the Full Bench Decision reported in Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, as the decision does not pertain to the government resolution dated 15.6.1995. The learned Counsel for the Assistant Teacher then submitted that this Court may also not follow the Full Bench decision reported in 2009 (5) Mh.L.J. 482 as this decision merely relies on the earlier decision of the Full Bench reported in Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, and the findings of the Hon. Full Bench are not supported by any reasons. The learned Counsel for the Assistant Teacher sought for the dismissal of the petition filed by the management.

5. I have considered the submissions made on behalf of the parties and have minutely perused the judgments relied on by the learned Counsel in detail. The issue involved in the instant case is squarely covered by the decision by the three Judges Bench of the Hon. Supreme Court reported in Union of India (UOI) Vs. Dattatray Mendhekar and Others, and the two Full Bench decisions of this Court reported in Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, . In the Full bench decision reported in 2009 (5) Mh.LJ. 482, this Court has framed the question as under:

Whether an employee is entitled to protection of his employment in view of Government Resolution dated 15th June 1995 even after his caste claim on the

basis of which he was appointed is found to be invalid.

This question is answered in the negative in paragraph 6 of the judgment of the Full Bench. In 2007 (2) Mh.LJ. 788, it is observed that the direction issued by the Supreme Court in paragraph 36 of this judgment in the case of State v. Milind Katware reported in 2001 (1) Mh.L.J. 1 is not Law declared by the Supreme Court under Article 141 of the Constitution of India. The Full Bench went on to add that the said observations/directions are issued in exercise of powers under Article 142 of the Constitution and they have no application to the cases relating to the appointment and is restricted to the cases relating to the admissions. It was then observed that as powers under Article 142 are not available to the High Court no protection can be given by the High Court even in cases relating to admission. The Full Bench Decision reported in Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, lays down that an employee is not entitled to protection of his employment after his caste claim on the basis of which he was appointed was found to be invalid. In view of the three aforesaid decisions reported in Union of India (UOI) Vs. Dattatray Mendhekar and Others, , Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, it would not be necessary to refer the judgment rendered by the learned Single Judge of this Court on 16.10.2009 in Writ Petition No. 1561/2009 as the same is contrary to the judgment of the Hon. Supreme Court reported in Union of India (UOI) Vs. Dattatray Mendhekar and Others, and the two Full Bench decisions of this Court reported in Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, . The judgments reported in 2008 (Supp) Bombay CR 266, 2007 3 Mh.L.J. 795 and the unreported judgment in case of Punjab National Bank v. Vilas Bokade and Anr. are of no assistance to the case of the Assistant Teacher as they are rendered by the two judges Bench of the Honourable Supreme Court and the Three Judges Bench of the Hon. Supreme Court has held otherwise, in the judgment reported in Union of India (UOI) Vs. Dattatray Mendhekar and Others, and the said decision of the Hon. Supreme Court has been considered by the Full Bench of this Court in the judgment reported in Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, . It is thus clear from the well settled position of law that the Assistant Teacher was not entitled to protection in this case. The Tribunal committed a serious error in allowing the appeal and granting reinstatement with continuity in service and full back wages.

6. For the reasons aforesaid Writ Petition No. 4242/2004 is dismissed and Writ Petition No. 4532/2004 is hereby allowed. The impugned order passed by the Presiding Officer School Tribunal, Nagpur on 28.6.2004 is quashed and set aside. The appeal filed by the Assistant Teacher before the Presiding Officer, School Tribunal, Nagpur u/s 9 of the Act of 1977 stands dismissed. Rule in Writ Petition No. 4242/2004 stands discharged and rule in Writ Petition 4532/2004 is made absolute. Order accordingly. No order as to costs.

7. Since the Assistant Teacher is still in service, in view of the order passed by the Presiding Officer, School Tribunal, Nagpur on 28.6.2004, this judgment is

stayed for a period of 15 days on the oral request made on behalf of the Assistant Teacher by the learned Counsel.