
(2000) 12 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 4675 of 2000

Kum. Saroj J. Kamble

APPELLANT

Vs

Smt. Latha Mohan and Others

RESPONDENT

Date of Decision : 16-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2001) 3 BomCR 471 : (2001) 2 BOMLR 948 : (2001) 2 MhLj 874

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Mr. R.S. Apte and Mr. A.A. Garge, for the Appellant; Mr. N.V. Walawalkar, instructed by , Mr. V.N. Tayade, Mr. N.V. Bandiwadekar, Mr. S.P. Kadam, for the Respondent

Judgement

S. A. Bobde, J.—1. This writ petition under Articles 226 and 227 of the Constitution of India, praying for a writ of certiorari for quashing and setting aside the judgment and order of the School Tribunal, Navi Mumbai dated 27.9.1999, allowing the appeal of respondent No. 1 i.e. Smt. Lata Mohan, is preferred by Kum. Saroj J. Kamble. The first respondent had filed the said appeal being Appeal No. 142 of 1997 challenging her reversion from the post of headmistress. This reversion had become necessary because of the order of the School Tribunal in an earlier appeal bearing No. 18 of 1994, which set aside the reversion of the petitioner and found the petitioner entitled to hold the said post of headmistress. It is the post of headmistress which is the bone of contention in this dispute.

2. The litigation has been going on for quite some time. It appears from the seniority list dated 22.1.1993 that respondent No. 1 is senior to the petitioner, having been appointed on 6.6.1979, the petitioner having been appointed on 23.6.1989, though her claim to the post of headmistress on that basis has been rejected, as would appear hereafter.

3. The petitioner was appointed as a teacher in the school run by respondent No.

2 - management. On 8.6.1992 she was first promoted as a headmistress and her promotion was approved by the Education Department on 9.2.1993.

4. Respondent No. 1 filed an appeal bearing No. 48 of 1993 in the School Tribunal against the appointment of the petitioner. While this appeal was pending, the petitioner was reverted from the post of headmistress by an order dated 13.9.1993. The appeal was eventually dismissed by the School Tribunal on 7.5.1994. The reasons for dismissing the appeal are not that the petitioner had since been reverted but are as follows :

The School Tribunal while dismissing respondent No. 1's appeal has held that respondent No. 1 has failed to prove that she is the senior most teacher and is not entitled to be promoted as headmistress.

5. This judgment of the School Tribunal, in Appeal No. 48 of 1993, has admittedly not been set aside. Respondent No. 1 did not take any steps to have that judgment set aside except, by way of Writ Petition No. 500 of 1996, filed about two years thereafter. This writ petition has been rejected by a Division Bench of this Court on the statement made by her Advocate that she has preferred an appeal being Appeal No. 1 of 1995 in which identical relief is claimed. This is the same appeal against the decision of which the present writ petition is preferred.

6. As observed earlier, while Appeal No. 48 of 1993 was pending, the petitioner was reverted by an order dated 13.9.1993. In her place, respondent No. 1 was promoted as the headmistress. The petitioner challenged that order of reversion from the post of headmistress by way of an appeal before the School Tribunal. Respondent No. 2 - management was a party to that appeal. The petitioner's appeal was allowed. The School Tribunal held that the petitioner's reversion is liable to be set aside and directed the management to reinstate the petitioner in the post of headmistress. This order, passed by the School Tribunal in Appeal No. 18 of 1994 setting aside the petitioners' reversion and directing her reinstatement as headmistress, was dutifully implemented by the management, which did not challenge it. Respondent No. 1, who was not a party, but was reverted as a result thereof, challenged it by way of the abovementioned Writ Petition No. 500 of 1996, which was rejected, as observed earlier i.e., on the statement made on behalf of respondent No. 1 that an appeal filed by her seeking identical relief is pending before the School Tribunal.

7. During this period when the petitioner had been reverted i.e. from 13.9.1993 till 25.10.1994, it is an admitted fact that respondent No. 1 was functioning as a headmistress of the school.

8. As a result of the reinstatement of the petitioner, respondent No. 2 - management ordered the reversion of respondent No. 1 from the post of headmistress. Respondent No. 1 challenged her reversion by way of an appeal bearing No. 1 of 1995 which was re-numbered as 142 of 1997. This appeal has been allowed by the School Tribunal by its order dated 27.9.1999, which has

been impugned by the petitioner herein.

9. Having heard learned counsel for the parties at length, I am of view that the School Tribunal was in error in allowing respondent No. 1 's appeal by setting aside her reversion and reinstating her in the post of headmistress. This appears to be an error mainly due to the fact that this has been done by the Tribunal in spite of the fact that there are two earlier judgments of the Tribunal upholding the petitioner's right to hold the post of headmistress and holding that the first respondent is not entitled to be promoted to that post. The two judgments, referred to earlier, are as follows :

In Appeal No. 48 of 1993, preferred by respondent No. 1 praying that she ought to have been promoted to the post of headmistress instead of the petitioner, the Tribunal categorically concluded that respondent No. 1 has failed to prove that she is the senior most teacher and, therefore, she is not entitled to be promoted. The Tribunal dismissed her appeal. 10. The second judgment of the same Tribunal is the one rendered by it in the petitioner's Appeal No. 18 of 1994 preferred against her reversion. By the Judgment in this appeal dated 25.10.1994 this very Tribunal held that the petitioner ought not to have been reverted and in fact directed her reinstatement as headmistress. I am of view that these two judgments, not having been set aside by any superior Court, the Tribunal could not have in another proceedings instituted by respondent No. 1 passed an order which had the effect of again dislodging the petitioner from the post of headmistress, the challenge to which, at the respondent's instance, had failed initially in Appeal No. 48 of 1993, decided on 7.5.1994; and subsequently where the same Tribunal had reinstated the petitioner to that very post.

11. Mr. Walawalkar, learned counsel appearing for respondent No. 1 strongly urged that the Tribunal was entitled, while considering the validity of respondent No. 1's reversion, to reopen the issues decided earlier. It is not possible for me to agree to this submission since the earlier Judgments of the School Tribunal in respect of the same petitioner and the same post clearly had the effect of (a) repelling respondent No. 1's claim to be promoted to that post on the ground of her seniority, and (b) set aside the petitioner's reversion and directed her reinstatement to that post. While these judgments had decided the rights in the manner they did, I am of view that their effect could not have been nullified in a subsequent appeal filed by respondent No. 1 in regard to the same post in which she had challenged her reversion which was made because the Tribunal had reinstated the petitioner in an earlier appeal. I am of view that what has happened in this case is opposed to the Principles of Finality before the same forum.

12. Learned counsel for respondent No. 1 further submitted that in fact that respondent had challenged the two orders i.e., the orders in Appeal Nos. 48 of 1993 and 18 of 1994 in Writ Petition No. 500 of 1996. As stated earlier, the said writ petition was rejected on respondent No. 1's own statement that she had filed an appeal before the School Tribunal seeking identical reliefs and that

appeal was pending adjudication. It is clear that the reliefs were not identical and in any case the rejection of that writ petition on her own claim that she had availed of an alternative remedy did not entitle respondent No. 1 to have the earlier orders set aside, as if by side wind. The impugned Judgment has the effect of reviewing and reverting the earlier judgments of the same Tribunal by that very Tribunal in a subsequent appeal. It is equally pertinent to note that respondent No. 1 did not challenge the decision in Writ Petition No. 500 of 1996 and in fact decided to pursue the remedy before the School Tribunal in which what was really challenged was her reversion which had been necessitated on account of the petitioner's reinstatement, as ordered by the School Tribunal in the earlier appeal.

13. I am, therefore, of view that merely because Writ Petition No. 500 of 1996 was rejected, it would not enable the School Tribunal to set aside the effect of two of its earlier orders, as discussed earlier. Mr. Walawalkar further pointed out that the matter before the School Tribunal i.e.. Appeal No. 1 of 1995 in which respondent No. 1 had challenged her reversion had been dismissed for default against which she had preferred a Writ Petition to this Court and the matter had been remanded back to the School Tribunal for decision on merits. This was done after setting aside the dismissal in appeal. I do not see how this can confer any right on respondent No. 1 to invoke the Jurisdiction of the School Tribunal to do what, I have found, could not have been done. I find that the order of the School Tribunal suffers from a grave error of law, apparent from the face of the record and is not sustain able.

14. In the result, I find that the present petition deserves to succeed. Rule is made absolute. The impugned order of the School Tribunal in Appeal No. 1 of 1995, re-numbered as Appeal No. 142 of 1997 and decided on 27.9.1999, is quashed and set aside. In the circumstances of the case, however, there shall be no order as to costs.

15. At this stage, Mr. Walawalkar, learned counsel for respondent No. 1 submits that respondent No. 1 has been holding the post since 1993 and in the circumstances of the case, prays that the effect of this order be stayed for a period of four weeks. Having regard to this fact, it is appropriate in the interest of justice to stay the operation of this order for a period of four weeks from today.

Parties to act on the ordinary copy of this-order duly authenticated by the Sheristedar of this Court.