
(2016) 03 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 7680 of 2014

Meena

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Citation : (2016) 2 ALLMR 901 : (2016) 2 BCR 741 : (2016) MCR 1179

Hon'ble Judges : S.S. Shinde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : R.D. Biradar, Advocate, for the Appellant; S.D. Kaldate, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Rule. Rule made returnable forthwith and heard finally, by the consent of the learned counsel appearing for the parties.

2. This Petition is filed with the following prayers :-

"b) Respondent No. 4 be directed to include the petitioner in surplus list of teachers dated 26.6.2014 (annexed at Exhibit-A) and kindly be directed to release the salary of petitioner.

(bb) To quash and set aside order dtd. 31/12/2005 passed by the Respondent No. 2 i.e. Director of Education, Research and Training Center, Pune, Dist. Pune by which postal D.Ed. of petitioner is cancelled and the Respondent authority be directed to pay the arrears of petitioner from 26/6/1995 till today."

3. The brief facts leading for filing this Writ Petition are that, the petitioner was appointed as untrained teacher on 26.6.1995, and her appointment has been continued by the management by issuing appointment orders from time to time, and she is in continuous service. The management prepared the surplus table in the year 2003-2004, and also prepared seniority list, and petitioner's name is shown at Sr.No.11 of the said list. On 6.9.2003 the Education Officer issued staff

approval and the school also prepared the list of teachers class-wise for the year 2000-2001. The petitioner completed Postal D.Ed. Course on 6.6.2005.

4. It is the case of the petitioner that, on 26.7.2005, a show cause notice was issued by the Deputy Director, Maharashtra State Education, Research and Training Center, Pune, to the petitioner, and others, suspecting the record of the Postal D.Ed. Course completed by them. Though petitioner submitted her explanation, it was not accepted and the authority cancelled the Postal D.Ed. Qualification of more than 300 teachers, including petitioner, on 31.12.2005. Aggrieved teachers preferred various Writ Petitions in the High Court, and order dated 31.12.2005 was stayed, and thereafter the High Court allowed some Writ Petitions. The petitioner did not challenge the order dated 31.12.2005 at the relevant time, but she is in continuous service. It is the case of the petitioner that, thereafter the school has prepared the seniority list for the year 2006-07, and the Education Officer has given staff approval on various dates and, as per the list for the year 2006-07, 2007-08, 2008-09, the petitioner's name is shown at Sr. No. 11. It is the case of the petitioner that, on 24.01.2012, 25.01.2012 and 08.02.2012, the Education Officer has written letters to the Respondent No. 6 and directed to absorb the petitioner in service and release her salary, and further directed to cancel illegal approval given to other teachers instead of accommodating the petitioner as trained teacher. The Assistant to Secretary, Maharashtra State written letters on 31.01.2012 and 29.02.2012 to the Director, Maharashtra State Education and Research Training Center, Pune and Divisional Deputy Director of Education, Latur division in respect of the absorption to the petitioner and releasing her salary. Thereafter, the Respondent No. 4 directed to enquire and submit report and accordingly the Deputy Education Officer, Zilla Parishad, Latur after enquiry submitted report on 27.08.2012. Thereafter, as per the directions of the Education Officer, the Head Master of the school allowed the petitioner to join the services regularly and the proposal was submitted to the Education Officer for approval to the post of the petitioner.

5. It is the further case of the petitioner that, as per the list dated 20.03.2014, the name of the petitioner was shown at sr. no.4 and the Education Officer by letter dated 26.04.2012 has given permanent approval w.e.f. 21.04.2012 to the petitioner. Thereafter on 31.10.2013, the headmaster of the school had written a letter to Education Officer, Zilla Parishad, Latur and stated that, one teacher is less in the surplus list, and requested for granting approval to the surplus teachers. It is the case of the petitioner that, on 27.05.2014, the Respondent No. 4 has written letter to the Respondent No. 5, and directed to provide the information in respect of surplus teachers or non-teaching employees, therefore, the Respondent No. 5 provided the detail information in respect of the surplus employees by covering letter dated 29.05.2014.

6. It is the further case of the petitioner that, on 17.06.2014, 23.06.2014, 30.06.2014 and 03.07.2014 the petitioner made representations to the Respondent No. 4 and requested to include her name in the list of surplus

teachers, but the Respondent No. 4 has not considered the representations of the petitioner and not included her name in the said list dated 26.06.2014. It is the case of the petitioner that, the petitioner has also taken objection on 30.06.2013, in respect of removing her name from surplus teachers list, but till today the said objection has not been decided by the Education Officer. Hence this Writ Petition.

7. The Respondent Nos. 5 and 6 have filed the affidavit in reply. It is stated in the said affidavit in reply that, the petitioner was appointed in the year 1995 and she is in continuous service, since her date of appointment. On 31st December, 2005, the postal D.Ed. certificate confirmed upon the petitioner, has been cancelled by the Deputy Director of Education and Training Center, Pune. Similarly some of the employees like the petitioner preferred the Petition before the High Court. The High Court held that, an alleged enquiry initiated by the concerned authority was after completion of the said course by the petitioners in Writ Petition No. 610/2006 (Uddav S/o Bapurao Baswade V/s The State of Maharashtra and others), the High Court protected the petitioners therein.

8. The learned A.G.P. appearing for the State submits that, as and when the turn of the petitioner will come as per the seniority, the Respondent - Education Officer will take appropriate steps for redressal of the grievance of the petitioner for inclusion of her name in the list of the surplus teachers.

9. We have given careful consideration to the submissions made by the learned counsel appearing for the petitioner and the learned counsel appearing for the respective Respondents. With their able assistance, we have perused the pleadings in the Petition, annexures thereto, and the reply filed by the Respondent Nos. 5 and 6. It appears that, the petitioner completed her postal D.Ed. course in the year 2005. The petitioner has placed on record the certificate issued by the Commissioner, Maharashtra State Examination Council, Pune dated 6th June, 2005, mentioning therein that, the petitioner has successfully completed/passed D.Ed. qualification. It appears that, on 31st December, 2005, in pursuant to the show-cause notice issued to the petitioner on 26th July, 2005 by the Deputy Director, Maharashtra State Educational Research and Training Center, Pune, after seeking response of the petitioner, the admission in the year 2000-2001 of the petitioner for D.Ed. course has been cancelled. The Division bench of this Court in Writ Petition No. 610/2006 (Uddhav S/o Bapurao Baswade V/s The State of Maharashtra and others) decided on 7th December, 2010, considered the similar controversy and reached to the conclusion that, before the orders were passed by the Deputy Director, Maharashtra State Educational Research and Training Center, Pune, cancelling the admission, most of the candidates completed their D.Ed. course, and therefore, the Petitions came to be allowed on the ground that, some of the petitioners therein completed the said course even prior to initiating enquiry. In the present case also, though the Petition is filed belatedly, the petitioner has assailed the order dated 31st December, 2005 cancelling her admission to the Postal D.Ed. course. Since in the

case of similarly situated employees, this Court has taken aforesaid view, the petitioner's prayer to quash and set aside the impugned communication/order dated 31st December, 2005 cancelling the admission of the petitioner for the course of D.Ed. deserves acceptance.

10. The contention of the petitioner that, the petitioner's objection to the declaration of surplus teachers list and non-inclusion of her name in the said list, has not been considered by the Respondent No. 4. In that respect, in case the said objections are already not considered or the petitioner's name is not included in the name of list of surplus teachers, we direct the Respondent No. 4 to take decision keeping in view service record of the petitioner, vis-a-vis other candidates and relevant rules about claim of the petitioner for inclusion of her name in the list of surplus teachers, as expeditiously as possible, and preferably within eight weeks from today and communicate the said decision to the petitioner.

11. It appears that, in pursuant to the cancellation of admission of the petitioner for D.Ed. course, she was removed from the employment of the Respondent Nos. 5 and 6. Thereafter, it appears that, she was reinstated in service and the Education Officer granted approval to her services on 21st April, 2012. Therefore, after such approval is granted, whatever period for which the petitioner has rendered services, the salary bills of the petitioner should be submitted by the Respondent Nos. 5 and 6 with Respondent No. 4 within three weeks from today and upon receiving such salary bills, after following procedure, the Respondent No. 4 shall verify the said bills, and if the salary bills are found in order, disburse the salary for which the petitioner is entitled, as expeditiously as possible, and preferably within four weeks from receiving such salary bills from the Respondent No. 6.

12. So far prayer of the petitioner for salary for the services rendered prior to the date of approval, it is needless to observe that, the petitioner is at liberty to take appropriate remedy, if available in law, against the Respondent Nos. 5 and 6 for such payment of salary. It is not possible for this Court while exercising writ jurisdiction to entertain the Petition for salary for the earlier period before three years preceding to filing of this Petition. Apart from it, the learned A.G.P. during the course of arguments has rightly submitted that, since the approval was granted in April, 2012, at the most the petitioner would be entitled to receive the salary from the Government from the date of approval.

13. In the light of discussion in foregoing paragraphs, the impugned communication/order dated 31st December, 2005 stands quashed and set aside. The Respondent No. 4 is directed to take decision on the objections raised by the petitioner challenging the inclusion of other employees in the list of surplus teachers and non-inclusion of her name in the said list, as expeditiously as possible, and preferably within eight weeks from today and communicate the said decision to the petitioner, as already observed.

14. The Petition is partly allowed and same stands disposed of.

15. Rule made absolute in the above terms.