

(2017) 03 BOM CK 0232
In the Bombay High Court
Case No : 6833 of 2015

Miss. Seema Shitalaprasad Mishra

APPELLANT

Vs

The Principal

RESPONDENT

Date of Decision : 23-03-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2017) 03 BOM CK 0232

Hon'ble Judges : Shantanu S. Kemkar, Prakash D. Naik

Bench : DIVISON BENCH

Advocate : A.A. Garge

Judgement

1. Rule. Rule is made returnable forthwith.
2. By consent of respective parties, matter is taken up for final disposal forthwith. None appears for respondent no.5, though served.
3. Petitioner has preferred this petition under Article 226 of the Constitution of India with a view to challenge the order dated 22nd February, 2013, passed by respondent no.4 rejecting the proposal of approval of the petitioner for the post of FTI (MLT) in the respondent no.1 college.
4. The petitioner was appointed as Full Time Instructor (Medical Lab Technician) in Vocational department with respondent no.1 college on 13th June, 2005. She was appointed in the place of respondent no.5 whose appointment was cancelled vide communication dated 14th September, 2004 with retrospective effect from 1995-96. It was also directed that the salary paid to the respondent no.5 be recovered along with interest.
5. Respondent no.5 filed an Appeal before the School Tribunal challenging the termination order. The said Appeal was dismissed. However, the School Tribunal has observed that the respondent no.5 is not liable for refund of salary at the rate of 9% p.a. and at the most institution may be liable as they had obtained

the service of respondent no.5. In pursuant to the aforesaid order, the respondent no.5 preferred writ petition no.1758 of 2005 before this Court challenging the adverse part of the order passed by the School Tribunal. The management of the respondent no.1 college also preferred writ petition no.3319 of 2005 challenging the order of the School Tribunal with regard to refund of salary. Both the petitions are pending in this Court.

6. The petitioner executed an undertaking on 18th October, 2006 stating that she had been appointed in place of respondent no.5 and she would be bound by the decision of this Court in writ petition no.1758 of 2005 which is preferred by the respondent no.5.

7. Respondent no.1 forwarded a proposal for approval of the petitioner for the aforesaid post to respondent no.4 on 27th November, 2006. The petitioner was called for verification of proposal and hearing on 17th December, 2012 vide communication dated 4th December, 2012. The petitioner and the management of respondent no.1 attended the hearing on 17th December, 2012.

8. The management of respondent no.1 by letter dated 25th March, 2014 intimated respondent no.4 that the petitioner has not been granted approval although the hearing was conducted on 17th December, 2012 and hence approval of the petitioner is deemed to be approved as per the decision of High Court in the case of Shailaja Ashokrao Walse Vs. The State of Maharashtra & Ors. decided on 7th December, 1998. The management also forwarded pay bills of the petitioner. Respondent no.4 forwarded the letter dated 11th April, 2014 to the respondent no.1 stating that the approval proposal of the petitioner has been rejected on 22nd February, 2013. Respondent no.4 also sent the order dated 22nd February, 2013 rejecting the approval of the petitioner.

9. The said proposal was rejected on the following grounds: (a) That, at the time of filling the post, the advertisement is required to be issued at State level. The advertisement is defective;

(b) No list of candidates was sought from the employment exchange;

(c) Dispute regarding the subject post is pending in the High Court;

(d) Candidates are not appointed as per directions given in Government Resolution dated 6th February, 2012.

10. Learned counsel appearing for the petitioner submitted that there is apparent error in the impugned order passed by respondent no.4. He submitted that the proposal was forwarded in the year 2006 which was rejected on 22nd February, 2013 by placing reliance upon G.R. dated 6th February, 2012. The said G.R. cannot be applied retrospectively and that the same is not applicable to the linguistic minority institutions under Article 30(1) and (2) of the Constitution of India. He further submitted that pendency of the petitions preferred by the management and respondent no.5 was no ground to reject the approval of the petitioner for the said post. He submitted that at the most, the approval could

have been granted to the proposal of the petitioner subject to outcome of writ petition no.1758 of 2005 which is pending in this Court. He submitted that the other reasons mentioned in the impugned order are not indicated to the petitioner's approval and, therefore, there is total non application of mind on the part of respondent no.4 while passing the impugned order. The learned counsel relied upon the decision of this Court in Writ Petition No.5715 of 2014 delivered in the cae of Hindi Prachar Mandal and Anr. Vs. The Joint Director (Vocational Education) & Ors. dated 14th March, 2017. He submitted that the issue involved in the present petition is covered by the said decision and this petition may be disposed of in accordance with the said decision. Learned AGP did not controvert the submission of the petitioner.

11. We have perused the documents on record. It is pertinent to note that the proposal of approval of the petitioner was forwarded to respondent no.4, on 27th November, 2006. The petitioner continued to discharge her duties with respondent no.1. Respondent no.4 had belatedly taken a decision to reject the said approval vide order dated 22nd February, 2013. The reliance upon G.R. dated 6th February, 2012 is misplaced. Apart from the fact that the said G.R. is not applicable to minority institutions, the said G.R. cannot be made applicable retrospectively. Merely because the petitions preferred by respondent no.5 and respondent no.1 with regard to the appointment of the petitioner and the order passed by the School Tribunal are pending before this Court, the impugned order was not warranted. The petitioner has been appointed on 13th June, 2005 and has continued to work with respondent no.1. Although the Writ Petitions stated above are pending in this Court, there are no interim order granting stay to the impugned orders therein. The reasons assigned by the respondent no.4 while rejecting the approval are uncalled for and are misplaced.

12. In the aforesaid decision in Writ Petition No.5715 of 2014, it was observed that Government Resolution dated 10th April, 1991 is not applicable to the minority institution and that petitioner therein was qualified to be appointed for the subject post. In the said decision the proposal for grant of approval to the appointment of the petitioner therein for the post of full time teacher for the course of Medical Laboratory Technician was rejected. The said petitioner preferred Writ Petition No.3594 of 2009 challenging the rejection of approval by relying upon the G.R. dated 10th April, 1991. The petition was disposed of by order dated 21st January, 2010 by remitting the matter back to the Deputy Director (Vocational Education), directing him to reconsider the said petitions claim on its own merits in accordance with law. It was observed that rejection of approval on the basis of said G.R. Is not correct, as it is not applicable to minority institution. The Deputy Director again rejected said proposal. The petitioner therein challenged the said rejection by preferring Writ Petition No.5044 of 2010. The order was set aside on 23rd February, 2011 and once again the Deputy Director was directed to give hearing to the said petitioner. Surprisingly, the approval was again rejected by stating that there was defective advertisement for the said post. Hence, the said petitioner once again preferred

Writ Petition No.5982 of 2011. While disposing of the said petition, this Court observed as follows: "5 This very issue came up for consideration before the same authority on the earlier occasion, but vide his orders dated 7th June 2008 and 19th June 2008, Respondent No.2 rejected the proposal forwarded by Petitioner No.1 for grant of approval to Petitioner No.2 as medical laboratory technician. That view was taken relying on the Government Resolution dated 10th April 1991. The Petitioners had challenged the said decision of Respondents 1 and 2 by way of Writ Petition 3594 of 2009. That Petition was allowed in terms of order dated 21st January 2010 in which it has been plainly held that paragraph 5 of the Government Resolution dated 10th April 1991 itself makes it amply clear that the said Government Resolution has no application to minority institution. This Court, therefore, remitted the matter back to the authority for reconsideration of the matter in issue.

6 After remand, the Deputy Joint Director vide impugned order dated 17th May 2011 has nonsuited the Petitioner and found that the advertisement issued by the Petitioner was defective, rendering the selection process as nontransparent and vitiated. For that, the Deputy Director placed reliance on the circular dated 19th November 2003. What has been glossed over by the authority is that the circular dated 19th November 2003 is founded on Government Resolution dated 10th April 1991. On the earlier occasion this Court has held that the restriction specified in the said Government Resolution have no application to minority institution. For that very reason, the circular dated 19th November 2003 will have no application to the Petitioner institution which has been held to be minority institution by the competent authority. So long as the status of the Petitioner institution continues to be minority institution and until the State Government evolves a policy regarding minority institution pertaining to matters in employment, the question of answering the controversy on the basis of Government Resolution dated 10th April 1991 or circular dated 19th November, 2003 does not arise. To that extent the decision of the Deputy Joint Director will have to be set aside.

7 The other reason stated in the impugned decision is that the management has not taken any certificate from the Employment Exchange regarding nonavailability of candidates or no objection certificate in that regard. As aforesaid, if the concerned Government Resolution necessitating obtaining of such certificate itself has no application, the question of default committed by the Petitioner in not obtaining such certificate does not arise. In any event, the Petitioner has asserted that even this condition has been complied with without prejudice to the rights and contentions of the Petitioners. It is not necessary for us to examine this matter any further.

8 Suffice it to observe that the basis on which the Deputy Joint Director proceeded to answer the controversy is completely untenable. For that reason the impugned decision deserves to be set aside and the Petitioners will have to be relegated before the Deputy Joint Director of Vocational Education and

Training, Regional Office for consideration of the proposal on its own merits in accordance with law.

9 The learned AGP did submit that instead of sending back the matter, this Court itself should decide the matter in issue. We do not propose to do that. As considering grant or non-grant of proposal, is a matter within the discretion of the appropriate authority to be answered on the basis of extant regulation. The authority will have to be satisfied that all reasonable requirements applicable to minority institutions have been fulfilled by the Petitioner institution before accepting the proposal of the Petitioner.

10 Accordingly, we dispose of this Petition with the observation that the said authority will decide the proposal expeditiously, preferably within three months from today".

However, the approval was again rejected and hence Writ Petition No.5715 of 2014 was preferred before this Court. The Court allowed the said petition by order dated 14th March, 2017. It was observed that the reasons stipulated by authority are not applicable to minority institutions. There was no need to issue advertisement and the petitioner therein had requisite qualification for the post in question. The defective advertisement is no ground for rejection of approval. Hence, Court directed that approval for appointment of the said petitioner may be granted.

13. It is not the case of the respondent no.4 that the petitioner was not qualified to be appointed for the said post. However, the approval was refused on the grounds enumerated in the impugned order which are not tenable in law. In view of the aforesaid circumstance, we are inclined to allow this petition and grant the reliefs sought for by the petitioner.

14. Hence, we pass the following order: :: O R D E R ::

i The impugned order dated 22nd February, 2013, passed by respondent no.4 rejecting the proposal of approval of the petitioner for the post of FTI (MLT) with respondent no.1 college is quashed and set aside;

ii Respondent no.4 is directed to grant approval to the appointment of the petitioner for the post of FTI (MLT) with respondent no.1 with all consequential benefits thereof;

iii The directions issued in clause (ii) of this operative order are subject to outcome of Writ Petition Nos.1758 of 2005 and 3319 of 2005 which are pending in this Court;

iv The Writ petition stands disposed of.