

(2016) 05 BOM CK 0009
In the Bombay High Court
Case No : Writ Petition No. 11576 of 2014

Ms. Kiran Chhaganlal Pawar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 16

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 5

Citation : (2016) 4 AIRBomR 80 : (2017) 1 ALLMR 269 : (2016) 5 SLR 693

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. S.D. Kulkarni, h/f Mr. Kulkarni Sanket S., Advocates, for the Appellant; Mr. V.S. Badakh, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Shinde, J.—This Petition takes exception to the impugned judgment and order dated 8th December, 2014 passed by the learned Member of the Maharashtra Administrative Tribunal, ("MAT" for short) Mumbai, bench at Aurangabad in Original Application No. 653 of 2013 and the show-cause notice dated 31st August, 2013.

2. The brief facts, as disclosed from the memo of the Petition, leading to filing of this Writ Petition are that in the year 2007, Respondent No.1 published an advertisement for filling up the post of Supervisor from the female candidates. It is submitted that the petitioner, being qualified for the said post, sent necessary application along with various documents on 15th November, 2007. On 26th July, 2009, the petitioner appeared for written examination and successfully passed the same. It is submitted that thereafter, the petitioner was called for interview on 7th August, 2009. Thereafter, on 30th October, 2009, the petitioner was informed that she was selected for the post of Supervisor in the Scheduled Tribe category and hence, as per the Government Resolution dated 16th August, 2000,

she should submit the caste validity certificate. It is submitted that on 6th November, 2009, the petitioner sent an application along with her relieving letter from the earlier employment, caste certificate and caste validity certificate.

3. It is submitted that the order dated 10th November, 2009 was issued to the petitioner informing that she has been appointed on the vacant post of Supervisor in the Child Development Service Scheme, on the terms and conditions mentioned therein. It is submitted that as per the appointment order dated 10th November, 2009, the petitioner joined the services on 19th November, 2009. It is submitted that in the month of July, 2010, the petitioner was given the first increment and thereafter the second increment in the month of July, 2011. The petitioner has become permanent employee, after completion of probation period of two years and the service of the petitioner were continued till 31st August, 2013 and even today she continues to be in service. It is submitted that for the first time on 31st August, 2013, the show-cause notice was issued to the petitioner by respondent No.2, stating that she applied from the category of female heir of ex-soldier/ex-serviceman though she was not eligible and qualified and had given incorrect information, therefore, calling upon her to explain why her services should not be terminated. It is further submitted that on 3rd October, 2013, the petitioner gave her explanation/reply to the said show-cause notice and pointed out that she had applied only from the category of S.T. and not from the category of the heir of ex-serviceman/ex-soldier. However, Respondent Nos. 1, 2 and 3 did not accept her explanation. Hence, the petitioner filed Original Application No. 653 of 2013 on 31st August, 2013 before the MAT. It is submitted that the MAT by its judgment dated 8th December, 2014 dismissed Original Application filed by the petitioner by observing that the last candidate selected from the post of ST category was having higher marks than that of the petitioner and hence the petitioner was not qualified for the post of ST, and it is clear that she was selected from the category of heir of ex-serviceman/soldier. Therefore, being aggrieved by and dissatisfied with the above judgment, the petitioner has filed the present Writ Petition under Article 226 and 227 of the Constitution of India.

4. The learned counsel appearing for the petitioner submitted that the petitioner never had applied from the category of female heir of ex-soldier. She had not given any documents to support the said claim. The Respondents were not justified in coming to the conclusion that the petitioner had given incorrect information for selection on the said post. It is submitted that the Respondents ought to have considered that from the various documents produced by the petitioner, i.e. application, letter dated 7th August, 2009, further letter dated 30th October, 2009 and communication sent by the petitioner dated 6th November, 2009, the petitioner was claiming to be a candidate from Scheduled Tribe (S.T.) category and all these documents were given to support the said claim; and even appointment order refers her selection from S.T. category. It is submitted that though this Court ordered to maintain status-quo, by order dated 29th January, 2015, the services of the petitioner have been terminated illegally

during pendency of the present Writ Petition. In fact, the petitioner has sent an application dated 28th January, 2015 for leave during the period 28th January, 2015 to 2nd April, 2015, as the petitioner was called for giving instructions by her Advocate. The learned counsel appearing for the petitioner invited our attention to paras 11A and 11B of the Petition, which are inserted by way of amendment, and submitted that the Respondents had given notice calling upon the petitioner to explain as to why her services should not be terminated. However, without waiting further, the Respondents terminated the services of the petitioner during the pendency of the Petition. Respondent No.2 issued the said show-cause notice in arbitrary manner, contrary to Rule 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Rules, 1981 and contrary to the law laid down by the Hon''ble Supreme Court. It is submitted that the petitioner''s selection was from the scheduled tribe category and to that effect the validity certificate was also submitted by her. Therefore, the impugned action against the petitioner was unwarranted. It is submitted that after joining the services on 19th November, 2009, the petitioner completed her probation period and she was given two increments and thereafter, for the first time on 31st August, 2014, the show-cause notice was issued to the petitioner informing her that by giving incorrect information, she had obtained appointment to the post of female heir of the ex-serviceman, when she never had made such a claim. Even in her reply dated 3rd October, 2013, it was specifically stated by her that she has never applied under the category of the female heir of ex-soldier/ex-serviceman and all the documents submitted by her would show that she was claiming a post from S.T. category. It is submitted that the petitioner has completed more than five years service and prior to issuing show-cause notice, she completed about 3 years service and hence she becomes permanent employee, and therefore, the Respondents before terminating the services of the petitioner ought to have followed the proper procedure. In support of this submission, the learned counsel appearing for the petitioner relied on the ratio laid down by the Hon''ble Supreme Court in the case of Basudeo Tiwary v. Sido Kanhu University and others AIR 1998 SC 3261 and the judgment of Division Bench of this Court at Principal Seat in the case of Masood Alam Khan Pathan v. State of Maharashtra and others 2009(5) Mh.L.J. 68 . He submitted that the proper opportunity to defend the case during enquiry has not been given by the Respondents to the petitioner. It is submitted that the MAT has not properly considered the contentions of the petitioner that total 24,939 applications were received for the post of Supervisor and after necessary scrutiny, only 21424 applications were considered as valid and from that only the selection is made after written and oral examination, and hence it cannot be accepted that by mistake the petitioner was selected from the category of S.T. It is clear from the order dated 10th November, 2009 and order dated 18th November, 2009 issued to the other three candidates that though Tadvī Pravinabano Raheman was shown from S.T. category and she had secured only 87.5 marks and the petitioner had secured 110 marks, the said Tadvī Pravinabano Raheman continued to be in service, which amounts to arbitrary exercise of powers by the

Respondents. It is submitted that the petitioner was given two promotions after appointment. She was sent to training on 16th February, 2010, 7th July, 2011 and in July, 2013. She has completed the said training. Therefore, she acquired status of permanent employee. It is submitted that the petitioner belongs to Hindu Pardhi community and considering the intention and object of the reservation policy, the respondents were not justified in harassing the candidates from the schedule tribe, when she had been working on the said post for last more than 8 years and had become permanent employee. Therefore, relying upon the pleadings in the Petition, grounds taken therein, annexures thereto and the judgments cited supra, the learned counsel appearing for the petitioner submitted that the Petition deserves to be allowed.

5. Though sufficient opportunity was granted to the Respondents, no reply is filed. In fact, this Writ Petition pertains to the year 2014 and the Petition was listed for hearing on a number of occasions. However, the Respondents did not bother to file reply.

6. The learned A.G.P. appearing for the Respondent/State, relying upon the reasons recorded by the MAT, submitted that the MAT has considered the documentary evidence, which was placed on record, and thereafter came to the conclusion that even if the petitioner has not applied from the category of heir of Ex-serviceman, she could not qualify from the category of S.T. Therefore, he submits that the Petition is devoid of any merits and same may be rejected.

7. We have given careful consideration to the rival submissions advanced by the learned counsel appearing for the parties. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein and annexures thereto.

8. Upon careful perusal of the impugned judgment and order passed by the MAT, it appears that the Tribunal has adverted to the submissions of the learned counsel appearing for the applicant from paras 2 to 4. In paras 5 and 6, the Tribunal has adverted to the submissions of the learned counsel appearing for the State. In para 8 of the impugned judgment, the MAT has recorded findings/reasons, after perusal of the original record received from the office of Respondent No.1. The Tribunal has observed that in the application form under the caption "whether the applicant is Ex-serviceman, Freedom Fighter, Project Affected Person", the petitioner had tick marked (?) against column "Heir/ward of Ex-serviceman". Therefore, the MAT recorded the finding of fact that the petitioner in her form had declared that she was applying from the category of S.T. (Heir/Ward of Ex-serviceman). It further appears that the MAT has gone through the merit list of the candidates, which is a part of the original record received from the office of Respondent No.1 and has observed that in the merit list, there are 14 candidates, who are from S.T. (General). The 14th, i.e. the last candidate in the said category is one Chavan Vaishali Yuvraj, who had secured 120 marks. The petitioner ? Ku. Kiran Chhaganlal Pawar ? is the first between the two candidates in the category of Heir of Ex-serviceman having secured 110.5

marks. Therefore, the MAT recorded the finding that the applicant did not score well enough to qualify from the category of ST (General) and she qualified from the category of S.T. (Female) (heir/ward of Ex-serviceman). The MAT also adverted to the appointment letter issued to the petitioner and observed that in clause (10) under `terms and conditions of appointment', it is stated that the petitioner's appointment is on the basis of the documents and certificates submitted by her and if it is revealed that the documents or information provided by her are false, her appointment will be cancelled. Therefore, MAT held that there is no reason to interfere with the impugned notice of termination dated 29th January, 2015 and hence, the Original Application is without any merits and accordingly, Original Application was rejected.

9. We have carefully perused the record received from the Registry of the MAT and in particular, the copy of the application filled in by the petitioner for the post of Supervisor from the female candidates. The finding recorded by the Tribunal that in the application form under caption "whether the applicant is Ex-serviceman, Freedom Fighter, Project Affected Person", the applicant had tick marked (?) against column "Heir/ward of Ex-serviceman" are in consonance with the copy of the application. We have also perused the merit list of the selected candidates. The findings recorded by the MAT that "in the merit list, there are 14 candidates, who are from S.T. (General). The 14th, i.e. the last candidate in the said category is one Chavan Vaishali Yuvraj, who had secured 120 marks. Applicant ? Ku. Kiran Chhaganlal Pawar ? is the first between the two candidates in the category of Heir of Ex-serviceman and she had secured 110.5 marks", so also "the petitioner did not score well enough to qualify from the category of ST (General) and she qualified from the category of S.T. (Female) (heir/ward of Ex-serviceman) are in consonance with the merit list of the candidates, which is a part of the record. Upon perusal of the copies of the documents placed on record which clearly show that the show cause notice was issued to the petitioner on 31st August, 2013 and after seeking response of the petitioner, her services came to be terminated on 23rd January, 2015. Therefore, the reliance placed by the learned counsel appearing for the petitioner on the judgments cited supra is misplaced in the facts of the present case, in as much as, in the present case, show::: cause notice was given and after seeking response of the petitioner, her services have been terminated. The findings recorded by the MAT are in consonance with the documents in original record maintained by the Respondents. Therefore, there is no reason to interfere in the impugned judgment and order of the MAT. Hence the Petition stands rejected.