
(2010) 11 BOM CK 0033

In the Bombay High Court

Case No : Writ Petition No. 3508 of 2001

Mudhaidevi Shikshan Prasarak Mandal

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Constitution of India, 1950 — Article 141, 142

Citation : (2011) 7 ALLMR 54 : (2011) 1 MhLj 906

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : A.M. Joshi, for the Appellant; P.I. Khemani, AGP for Respondent Nos. 1 to 3, Uday Warunjikar and S.P. Kadam, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The Writ Petition has been filed by the Petitioner - Management challenging the order passed by the School Tribunal, Kolhapur on 7th March, 2001 in Appeal No. 207 of 1997. By this order, the School Tribunal has directed the Petitioner to reinstate Respondent No. 4 to his original post as a "Lecturer" with full backwages and other incidental benefits such as continuity of service, increments, difference in pay etc. from the date of his termination till reinstatement.

2. The facts giving rise to the present Petition are as follows:

In July, 1993, the Respondent No. 4, was initially appointed as a "Lecturer" in M.K. Mane Junior College, Deur, Tal. Koregaon, Dist. Satara. As it was found that he did not possess the requisite experience, his appointment as a "Lecturer" was cancelled and instead he was appointed as an "Instructor". The post was reserved for a candidate belonging to the Other Backward Classes, (hereinafter referred to as "the OBC"). A suitable candidate from this class was not available. The Petitioner appointed Respondent No. 4 for one year against this post. The Respondent No. 4 claimed that he belonged to a Nomadic Tribe being a "Gadi

Lohar". The Respondent No. 4 was reappointed in 1994-95 since no suitable candidate from the OBC category was available. The Petitioner terminated the services of Respondent No. 4 on 30th March, 1995 as his tenure of appointment for one year had come to an end. Being aggrieved by that order, the Respondent No. 4 approached the School Tribunal, Kolhapur by preferring Appeal No. 146 of 1995. The School Tribunal set aside the order of termination and held, by taking recourse to Rule 9(9)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, that since the Respondent No. 4 belonged to the Nomadic Tribe category, if no OBC candidate was available, he was entitled to continue in service. Accordingly, the School Tribunal reinstated the Respondent No. 4 with continuity of service and full backwages.

3. The Petitioner complied with the order of the School Tribunal and sent the Caste Certificate of the Respondent No. 4 for scrutiny. The Caste Scrutiny Committee by its order dated 28th November, 1997 declared that the Respondent No. 4 did not belong to the Nomadic Tribe category and cancelled the Caste Certificate issued to him. Immediately thereafter on 11th December, 1997, the Petitioner terminated the services of the Respondent No. 4 as his Caste Certificate had been invalidated by the Scrutiny Committee. An Appeal was preferred in 1997 by Respondent No. 4 before the School Tribunal challenging the order of the Petitioner. The School Tribunal granted him an interim stay to the termination order.

4. While the Appeal was pending before the School Tribunal, a Writ Petition was preferred by the Petitioner against the stay order issued by the School Tribunal. The order of the School Tribunal was stayed and, therefore, during the pendency of the Appeal before the School Tribunal, the Respondent No. 4 was not in service. In 1998, Respondent No. 4 preferred Writ Petition No. 2084 of 1998 challenging the order passed by the Caste Scrutiny Committee on 28th November, 1997. He also challenged the order of his termination from service. The Division Bench of this Court issued rule but no interim relief was granted. It appears that due to the change in the Appellate Side Rules, the Petition was listed before a learned Single Judge of this Court on 17th January, 2000. The order of the Scrutiny Committee was set aside and it was directed to hold an enquiry de novo into the caste claim of Respondent No. 4.

5. On 1st February, 2001, the School Tribunal dismissed the application of the Petitioner seeking a stay of the proceedings before the School Tribunal in view of the pendency of the proceedings before the Caste Scrutiny Committee. The School Tribunal declined the stay and proceeded with the Appeal before it. By an order dated 7th March, 2001, which is the impugned order in this Writ Petition, the Appeal filed by the Respondent No. 4 was allowed by the School Tribunal.

6. It appears that the Scrutiny Committee by its order dated 23rd March, 2001, passed an order on the enquiry conducted by it afresh, invalidating the Caste Certificate produced by Respondent No. 4 once again.

7. From the impugned order it appears that the reason for granting relief to the Respondent No. 4 was that the proceedings regarding the validation of the Caste Certificate were pending before the Caste Scrutiny Committee, Pune. There is no other reason mentioned in the impugned order for granting relief to the Respondent No. 4.

8. This matter came up for hearing on 20th September, 2007 when an affidavit was sought from the Caste Scrutiny Committee to indicate as to whether it had decided the matter afresh. An affidavit has been filed and it indicates that the Caste Scrutiny Committee had invalidated the Caste Certificate of Respondent No. 4 initially in 1997. Thereafter, the Scrutiny Committee reiterated its view on 23rd March, 2001, on remand. The order of the Scrutiny Committee dated 23rd March, 2001 was challenged by the Respondent No. 4 in Writ Petition No. 4446 of 2004. The Division Bench once again remanded the matter to the Scrutiny Committee on 1st April, 2005. The Scrutiny Committee ultimately decided the matter on 17th December, 2007 reiterating its earlier view and declaring that the Respondent No. 4 was not a "Gadi Lohar" but a "Hindu Lohar" and, therefore, could not seek the benefits and concessions available to the Nomadic Tribe category.

9. An additional affidavit has been filed by Respondent No. 4 on 15th October, 2010 to which he has annexed a copy of the certificate dated 6th May, 2010 issued by the Caste Scrutiny Committee, validating his claim that he belongs to the Nomadic Tribes Category, being a "Lohar". Apparently, this certificate has been issued in view of the G.R, dated 1st March, 2006 which includes the Lohar community in the Nomadic Tribes category.

10. Mr. Joshi, the learned Advocate for the Petitioner, submits that Respondent No. 4 had obtained employment by deceit, on obtaining a Caste Certificate which was false. The Petitioner should not be bound to reinstate him in such circumstances, according to Mr. Joshi. The fact that the Respondent No. 4 now has a valid Caste Certificate in view of a G.R. issued by the State Government would not reflect on the termination order passed by the Petitioner - Management, submits the learned Advocate.

11. In my view, the submission of Mr. Joshi is well founded. The Caste Certificate which has been issued in favour of Respondent No. 4 is based on a G.R. of 2006, which now includes "the Lohar" caste in the Nomadic Tribe category. However, there can be no doubt that when the Respondent No. 4 was initially appointed, he did not belong to the Nomadic Tribe category as he was not a "Gadi Lohar" but a "Hindu Lohar". It is only because of the G.R. of 1st March, 2006, which includes all "Lohars" in the Nomadic Tribe category, that the Respondent No. 4 has been issued a Caste Validity Certificate. The Respondent No. 4's appointment itself was based on an invalid Caste Certificate. The subsequent G.R. cannot validate such an appointment. The inclusion of the "Lohar" caste in the Nomadic Tribe category has not been made retrospectively.

12. In the case of Shri Shivaji High School and Junior College, Dongaon and Anr. v. Raju Laxman Gadekar and Anr., reported in 2010 (4) Mh.L.J. 183, the Division Bench of this Court has considered the issue as to whether the protection granted by the Supreme Court to a student who had secured admission based on an incorrect Caste Certificate in the case of State of Maharashtra v. Milind and Ors., reported in 2001 (1) Mh.L.J. 1 could be extended to an employee. The Division Bench has then taken note of the judgment of the Full Bench of this Court in the case of Ganesh Rambhau Khalale Vs. The State of Maharashtra and Others, , wherein it has been held that the protection granted by the Supreme Court in Milind's case (supra) was in exercise of its powers under Article 142 of the Constitution of India in the peculiar facts and circumstances of that case. The Full Bench in Ganesh's case (supra) has concluded thus:

13. Having regard to the legal position that emerges from the above referred judgments we record the following conclusions and answer the question framed:

1). The observations/directions issued by the Supreme Court in para 36 of the judgment in the case of State v. Milind, reported in 2001 (1) Mh.L.J. (SC) 1 is not the Law declared by the Supreme Court" under Article 141 of the Constitution of India.

2). The said observations/directions are issued in exercise of powers under Article 142 of the Constitution.

3). The said observations/directions have no application to the cases relating to appointments and are restricted to the cases relating to admissions.

4). The protection, if any, to be granted in the facts and circumstances of the case would depend upon the exercise of discretion by the Supreme Court under Article 142 of the Constitution. As the powers under Article 142 are not available to the High Court no protection can be granted by this Court even in cases relating to admissions.

(Emphasis added).

13. The submission of Mr. Warunjikar, the learned Advocate, appearing for the Respondent No. 4, that the services of Respondent No. 4 should be protected in view of the fact that he has subsequently obtained a Caste Validity Certificate is thus unsustainable.

14. Accordingly, the impugned order dated 7th March, 2001, passed by the School Tribunal, Kolhapur, in Appeal No. 207 of 1997, is set aside.

15. The Writ Petition is allowed.

16. Rule made absolute. No order as to costs.