

(2014) 07 BOM CK 0166
In the Bombay High Court
Case No : Writ Petition No. 176 of 2013

Pratibha Ramchandra Kawale

APPELLANT

Vs

Tukaram Shikshan Sanstha

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 11(01)(e), 5

Citation : (2014) 07 BOM CK 0166

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : K.V. Deshmukh, Advocate for the Appellant; H.N. Potbhare,
Advocate, A.D. Sonak, A.G.P. and M.P. Khajanchi, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Z.A. Haq, J.—Heard Shri K.V. Deshmukh, learned Advocate for the petitioner, Shri H.N. Potbhare, learned Advocate for the respondent Nos. 1 and 2, Shri A.D. Sonak, learned A.G.P. for the respondent Nos. 3 and 5 and Shri M.P. Khajanchi, learned Advocate for the Respondent No. 4.

2. Rule. Rule made returnable forthwith.

3. The petitioner has challenged the order dated 23.8.2012, passed by the School Tribunal, Chandrapur rejecting the appeal filed by the petitioner and upholding the termination order dated 25.1.2005 issued by the respondent No. 4 terminating the services of the petitioner.

4. The respondent Nos. 1 and 2 had issued an advertisement in daily newspaper "Tarun Bharat", on 17th June, 2000, pursuant to which the petitioner had submitted his application and was selected and given appointment order dated 26th June, 2000. The petitioner joined the services on 1st July, 2000 and continued in service till 27th June, 2005. The respondent 6 No. 4 had issued termination order dated 25th June, 2005 terminating the services of the

petitioner from 27th June, 2005 on the ground that the appointment of the petitioner was made contrary to the scheme of "Shikshan Sevak". It is undisputed that the Headmaster of the school had not forwarded the proposal, seeking approval to the appointment of the petitioner, and the appointment of the petitioner was, therefore, not granted approval.

5. The School Tribunal has dismissed the appeal filed by the petitioner on the ground that the appointment of the petitioner is not according to the provision of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter referred as, "Maharashtra Act No. III of 1978).

6. Shri K.V. Deshmukh, learned Advocate for the petitioner has submitted that the learned Presiding Officer, School Tribunal, Chandrapur has committed an error in concluding that the provisions of Section 5 of the Maharashtra Act No. III of 1978 requires the management and the school to seek prior approval of the Education Officer before granting permission to issue advertisement for filling up the post in the school. It is submitted that the requirement according to the proviso below Section 5 of the Maharashtra Act No. III of 1978 is that the management has to ascertain whether any surplus teacher is available on the list maintained by the Education Officer who is required to be absorbed in the vacancy, before the management appoint any employee directly. It is submitted that the erroneous approach of the Tribunal has resulted in illegal order, which is unsustainable in law.

7. Shri H.N. Potbhare, learned Advocate for the respondent Nos. 1 and 2 has supported the case of the petitioner.

8. Shri M.P. Khajanchi, learned Advocate for the respondent No. 4 submits that there are two groups in the management and the group, represented by Shri Potbhare learned Advocate, is favoring the petitioner. It is submitted that the respondent Nos. 1 and 2 had appointed the petitioner illegally and when respondent No. 4 got information about it, he had taken steps to terminate the services of the petitioner.

9. After hearing the learned Advocates for the respective parties and examining the record, I am of the view that the appointment of the petitioner is not in consonance with the provisions of Section 5 of the Maharashtra Act No. III of 1978. The petitioner and the respondent Nos. 1 and 2 have not placed any material on record to show that the respondent Nos. 1 and 2 have made necessary correspondence with the Education Officer to ascertain whether any surplus teacher was available with it, before issuing advertisement and appointing the petitioner. It is settled law that any employee who is appointed contrary to the mandatory provisions of Section 5 of Maharashtra Act No. III of 1978 is not entitled to make any claim of continuation in service.

10. In this view of the matter, I find that the order passed by the School Tribunal cannot be said to be unsustainable in law. Though, the Tribunal has given an

improper reason, however, the conclusions of the Tribunal cannot be said to be illegal or unsustainable in law. Therefore, the claim made by the petitioner for reinstatement cannot be considered.

11. However, on the basis of the facts which came on record it is clear that the petitioner was appointed by the respondent No. 1 after issuing advertisement and was continued for the period of more than four years and seven months.

12. In view of this, I hold that the petitioner is not entitled for reinstatement in service. However, Mr. P.R. Akre, who was Secretary of the Respondent No. 1-Trust in 2000 when the petitioner was appointed, has to pay compensation to the petitioner. For calculating the amount of compensation payable to the petitioner the guidelines provided u/s 11(01)(e) of the Maharashtra Act No. III of 1978 can be considered.

Mr. P.R. Akre-the then Secretary of the respondent No. 1-Trust shall pay compensation equal to six months salary receivable by the petitioner at the current rate.

The amount of compensation shall be paid by Shri P.R. Akre-the then Secretary of the respondent No. 1-Trust to the petitioner till 30th November, 2014.

13. The writ petition is disposed of in the above terms.

In the circumstances, the parties to bear their own costs.