

(2009) 06 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 960 of 2009

Punjababa Govardhane Vidyavikas and Another	APPELLANT
Vs	
Govind Pundlik Jadhav and Another	RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2009) 6 MhLj 119 : (2009) 8 SLR 127

Hon'ble Judges : V.M. Kanade, J

Bench : Single Bench

Advocate : M.M. Sathaye, for the Appellant; Anil kumar Patil, for the Respondent

Judgement

V.M. Kanade, J.—Heard Counsel for the petitioner and the Counsel for the respondent.

2. Petitioner No. 1 is a registered public trust. Petitioner No. 2 is a school run by the petitioner No. 1. Respondent No. 1 is a teacher. For the sake of convenience, the petitioner is referred to as " the management" and respondent No. 2 is referred as " the teacher" .

3. The petitioners are challenging the judgment and order passed by the Presiding Officer, School Tribunal, Nashik, dated 9th September, 2008. By the said judgment and order, the Presiding Officer was pleased to allow the appeal which was filed by the respondent No. 1 herein and was pleased to set aside the order of termination dated 5.6.2003 issued by the management and was pleased to further direct them to reinstate the respondent No. 1 on the post of Assistant Teacher with 50% back wages along with consequential benefits attached to the said post.

Brief facts are as under:

4. The services of respondent No. 1 were terminated by the management by letter dated 5.6.2003. The respondent No. 1 preferred an appeal before the

Presiding Officer, School Tribunal, Nashik. It was urged on behalf of the respondent No. 1 before the Tribunal that he was appointed initially as a Shikshan Sevak on 25th September, 2000 for a period of three years from 3.10.2000. It is his case that however, on the same date, the said order was changed and he was appointed as Assistant Teacher on probation for a period of two years. It was urged before the Tribunal that the respondent teacher had worked for a period of two years and eight months and had, therefore, deemed to be a permanent teacher and without holding any inquiry or issuing show cause notice, his services were illegally terminated by the management. It was contended by the management that the teacher had submitted false, fabricated and bogus documents and that the appointment of the teacher was illegal. The Education Officer also filed the reply stating that the appointment of the teacher was not as per the provisions of the Act and required workload was not observed and the quota of reserved category candidates was not filled up by the management.

5. The Presiding Officer, School Tribunal, Nashik, by his judgment and order dated 30.6.2005, however, was pleased to allow the appeal filed by the respondent No. 1 and by the said order, he set aside the order of termination of the teacher directing the management to reinstate in the post of Assistant Teacher with full back wages and benefits of continuity and seniority attached to the said post.

6. Against the said order, the management filed writ petition in this Court being Writ Petition No. 9037/2005. This Court by judgment and order dated 30th August, 2007 was pleased to set aside the order passed by the Tribunal and the matter was remanded back to the School Tribunal and a specific direction was given by this Court to decide whether the appointment of the teacher was legal and on other issues. After remand, the matter was again reheard by the Presiding Officer, School Tribunal. However, by judgment and order dated 9.9.2008, the impugned order was passed.

7. Shri Sathaye, learned Counsel appearing on behalf of the management submitted that the Tribunal had not taken into consideration the judgment in the case of Shivshakti Shikshan Sanstha Kotha (Veni) and Another Vs. Nilkanth Kawaduji Shivankar and Another, which was relied upon by the management and it was also noticed by the learned Single Judge in its order dated 30th August, 2007. He submitted that the other issues also which were raised in the reply filed by the management were not taken into consideration. He submitted that the qualifications of the teacher are B.A. (subject English) and B.P.Ed. from the Marathwada university. He submitted that the petitioner did not possess the necessary educational qualification to be appointed as Assistant Teacher. He submitted that the qualifications of the B.P.Ed. were not equivalent to the B.Ed. Degree and as such, therefore, his appointment to the post of Assistant Teacher was patently illegal. He submitted that in fact, the petitioner had been appointed as Shikshan Sevak and that he had produced false and fabricated documents

which were not considered by the School Tribunal. He submitted that the Tribunal had erred in relying on the judgment of this Court in the case of Anna Manikrao Pethe v. Presiding Officer, School Tribunal, Amrawati and Aurangabad Division Amrawati and Ors. reported in 1997(3) Mh.L.J. 697 since the said judgment had been overruled by the Full Bench of this Court in the case of St. Ulai High School and Shri Adishakti Hindi Prachar Samitee Vs. Shri Devendraprasad Jagannath Singh and The Zilla Parishad, . He invited my attention to the provisions of MEPS Act and the Rules and submitted that u/s 5, a person who had necessary qualifications as prescribed under the Rules alone could be appointed. He submitted that the person having qualifications of B.A. B.P.Ed. was not competent and allowed to take other subjects i.e. Maths, science, etc. and therefore, his appointment as Assistant Teacher in the said school was patently illegal. He submitted that since the appointment itself was illegal, the teacher was not entitled to claim protection of the provisions of Section 5 and claim any permanency in the said post. He submitted that the initial appointment itself being illegal, the said teacher would not be entitled to claim the rights which will be available to a trained teacher. He also submitted that the criminal complaint had been filed against the teacher.

8. It was further contended in the reply that the teacher had suppressed certain facts from the court. It was stated that the ex-secretary of the trust had appointed one other person viz. Mr. Kishor Mahajan on the same post on 1.12.2000 and therefore, the post of teacher was in dispute since 2000. The issuance of letter of appointment dated 25.9.2000 of the Assistant Teacher also was denied. It was also stated in the reply the action against the teacher had been taken u/s 340 of the Cr.P.C. for filing false affidavit of documents which were forged and fabricated. It was further submitted that there was no express bar in the rules. A conjoint reading of Schedule " B" II and Schedule C clearly made a distinction in respect of teachers of B.Ed. Training qualifications and teachers who had B.P.Ed. i.e. Physical training qualification. He submitted that therefore, the teachers who had B.P.Ed. Qualification were not entitled to teach in the secondary school. He invited my attention to the pay scale which was provided under category " C" to the teachers who had B.Ed qualification and teachers who had B.E.Ed. Qualifications.

9. Shri Patil, learned Counsel appearing on behalf of the teacher, on the other hand, invited my attention to Schedule " B" II(i)(v). He submitted that the qualifications for trained teacher in the secondary schools and junior colleges of education is laid down under Schedule " B" in Clause II. He submitted that in Clause (v), there was a clear reference to physical education viz. B.P.Ed of various universities -Marathwada, Shivaji, Poona, Bombay, Nagpur. He submitted that therefore, the petitioner had the requisite qualification for being appointed as trained teacher in secondary schools and junior colleges of education and therefore, it was submitted that it could not be said that the teacher's appointment in the secondary school was illegal. He further submitted that the petitioner had taken into consideration all the documents which were produced

by the teacher and thereafter, had come to the conclusion that his appointment was made on probation as Assistant Teacher for a period of two years and he had worked for more than two years and was, therefore, deemed to be a permanent teacher. He submitted that the contention raised by the management that the respondent's appointment is made as Shikshan Sevak was not accepted by giving cogent and sound reasons and as such, the school Tribunal which was the fact finding authority had given the finding after perusing the material on record and this Court while exercising its jurisdiction under Articles 226 and 227 could not come to a different conclusion. He then submitted that the submission made by the management about the subjects which would be taught by the teacher was not specifically raised at any time either in the first reply filed in the appeal which was initially allowed by the Presiding Officer or subsequently when the matter was remanded back by this Court for deciding the issue of illegality of the appointment. He submitted that even in this petition, neither any averment was made nor any ground was raised and therefore, the management was precluded from raising this issue for the first time while making submissions across the bar. He submitted that since there was no pleadings in the reply filed by the management, no specific issue was framed and as such, no opportunity was given to the teacher to bring on record the material in respect of the said fact. He submitted, therefore, that the ratio of the judgment in the case of Shivshakti Shikshan Sanstha Kotha (Veni)(supra) does not apply to the facts of the present case.

10. I have heard the learned Counsel appearing for the petitioner -management and the learned Counsel for the respondent -teacher at length. In my view, there is substance in the submission made by the Counsel appearing on behalf of the respondent/teacher and I am unable to accept the submission made by the management. This Court while remanding the matter back to the School Tribunal was pleased to make the following observations:

3. The School Tribunal, without considering whether the appointment of Respondent No. 1 was legal, has allowed the appeal. In my view, the illegality in appointment of Respondent No. 1 is crucial and would affect the ultimate decision in the appeal. It has been so pleaded by the petitioner in its written statement and, therefore, the school tribunal ought to have framed an issue as to whether the appointment of Respondent No. 1 itself was legal. In fact the judgment of this Court in the case of Shivshakti Shikshan Sanstha Kotha (Veni) and Another Vs. Nilkanth Kawaduji Shivankar and Another, considers the equivalence of training qualifications of B.P.Ed. And B.Ed. as also the Government Resolution dated 14.5.1987. A learned Single Judge of the Nagpur Bench of this Court has held that the B.P.Ed degree is not a substitute for the qualifications of B.Ed. as they are not equivalent. The Tribunal ought to have considered all these factors before arriving at the conclusion that the services of Respondent No. 1 had illegally been terminated..

11. In view of the specific direction which was given by this Court when the

matter was remanded back, the Tribunal was pleased to frame the following points:

1. Whether the school is recognised school as defined under MEPS Act?
2. Whether the appointment of the appellant was made as per Section 5 of the MEPS Act and rules there under?
3. Whether such an appointment has been approved by the Education Officer in pursuance of the provisions of the Act as well as Rules framed thereunder including the Government resolution issued from time to time regarding reservation etc.?
4. Whether the appellant has proved that the order of termination dt. 05.06.2003, terminating the services of appellant is illegal and is liable to be set aside?
5. Whether the appellant is entitled to get reliefs as prayed for?
6. What order?

12. The Tribunal on the question whether the appointment of the teacher as a Shikshan Sevak (education employee) or as a Assistant Teacher has taken into consideration various documents which were brought on record and after going through the said documents which has the original joining report, copy of proforma No. 1., the signature of the head master of the school on the said documents, the proposal for approval of appointment of the teacher as Assistant Teacher, copy of letter dated 10.3.2003 issued by the respondent No. 2 Head Master of the School to the Education Officer, letter dated 11.3.2003 which is a letter issued by the Block Education Officer, Panchayat Samittee, Igatpuri to the Education Officer, Zilla Parisha Nashik, a copy of order of termination dated 5.6.2003, all these documents clearly showed that the respondent No. 1 herein was described as a Assistant Teacher and nowhere it was mentioned that his appointment was made as Shikshan Sevak (education employee). In my view, there is no infirmity in the said observation and finding of the Tribunal regarding the appointment of the respondent No. 1 as a Assistant Teacher.

13. Though a specific plea was raised on behalf of the management -petitioner herein that these documents are forged and fabricated and at no time show cause notice was issued to the respondent No. 1 teacher or inquiry was held either for the alleged misconduct or for issuance of these documents or production of forged and fabricated documents. The Tribunal, therefore, was justified in giving the said finding. Secondly, apart from making a bald allegations in the reply to the appeal memo that one other person viz. Kishor Mahajan was appointed in the place of Assistant Teacher, no other document was produced by the management in support of the said contention since a positive assertion was made in the reply to the appeal memo, burden of establishing this fact was on the management and not on the teacher. Since no documents were produced on record, this aspect had not been established by the management.

14. So far the issue of illegality of the appointment of the respondent No. 1 - teacher as concerned, in view of Schedule " B" II(i)(v), it is obvious that respondent No. 1 had requisite qualifications for being appointed as a trained graduate teacher in the secondary school.

15. Since the management petitioner herein did not raise the issue on the subjects which were being taught by the respondent teacher in the school, it is not now open for the petitioner management to contend that he is not competent to take other subjects besides physical training subject. Since this issue has not been raised either in the reply to the appeal memo before the Tribunal or even in this Court, no averment has been made in the writ petition, no ground is raised while challenging the impugned order, it is now not open for the petitioner management to contend that the petitioner was taking subjects other than physical training subject. If such a contention had been raised by the management in their reply, the teacher could have produced documents either to show that he was taking physical education subjects and not the other subjects or he could have argued that there was no bar for a teacher who was appointed through B.P.Ed. Qualifications to teach subjects other than physical training subject. However, no plea was raised either before the Tribunal or in the petition. Hence, it is not open now for the petitioner to raise this contention.

16. There cannot be any dispute about the fact that the Act and the Rules framed thereunder make a distinction between a teacher who had a graduation degree and B.P.Ed training degree or B.Ed training degree. This is evident from the fact that separate pay scales are also prescribed under Schedule " C" to those teachers who had B.P.Ed degree. The question before the Tribunal was whether the appointment of the respondent -teacher was legal and proper as per the provisions of MEPS Act and Rules. As I have observed earlier he had the necessary qualifications for being appointed as a trained graduate teacher which is evident from Schedule " B" II(i)(v). The Tribunal was justified in answering the said issue in the affirmative.

17. In view of these, the ratio of the judgment in the case of Shivshakti Shikshan Sanstha Kotha (Veni) (supra) will not be applicable to the facts of the present case. There cannot be any manner of doubt that qualification of B.P.Ed. is not a substitute for a qualification of B.Ed. and they are not equivalent with each other. However, since the facts in the present case are different, the ratio of that judgment would not apply. In the said case, the petitioner trust had challenged order of School Tribunal who had directed reinstatement of the respondent teacher either as a Assistant Teacher or as a Physical Training Instructor. In the said case, the teacher admittedly possessed B.Com. B.P.Ed. Qualification. He was initially appointed as Physical Training Instructor in the school for one year in the pay scale of trained graduate teacher. The Education Officer also granted approval for a period of one year. Thereafter, again the management issued advertisements for various posts including the post of Assistant Teacher and the post of Physical Training Instructor. The teacher applied for the post of Assistant

Teacher and after his selection, he was appointed for a period of one year as Assistant Teacher. Thereafter, again approval was granted for one year, the respondent again was terminated and thereafter, he applied to the post of Assistant Teacher. He was selected and appointed on probation for a period of one year. The approval, however, was not granted by the Education Officer and therefore, his services were terminated. Under the said facts and circumstances, the School Tribunal found that the teacher ought to have been appointed as a Physical Training Instructor on probation for a period of two years in the year 1985-86 itself. The Tribunal relied on the Government Resolution dated 14.5.87 and came to the conclusion that the qualifications like H.D.Ed., B.P.Ed. were treated as equivalent to B.Ed. The learned Single Judge, therefore, under these circumstances, after distinguishing the judgment of the Division Bench came to the conclusion that the qualification of B.P.Ed and B.Ed. was not equivalent.

18. So far as schedule " B" is concerned, the learned Single Judge observed in para 12 as under:

12. As pointed out by the learned Counsel for the parties, there seems to be some inadvertent error in mentioning of relevant clause of Schedule B in this para 8 of judgment of Division Bench. It is mentioned as " Clause 2(1)(ii) of Schedule B" . If Schedule B is viewed in this light, it will be seen that relevant entry is (ii) which deals with qualification for trained teachers in Secondary Schools and Junior Colleges of Education. Further, the relevant sub-entry of this Schedule is (i) which deals with graduate teachers. The Entry (ii) which is mentioned in para 8 of the above judgment deals with teaching diploma of any statutory university acquired before 1-10-1970. The said Entry (ii) is, therefore, not relevant and it appears that said entry should have been Entry No. (v) which deals with qualification of B.P.Ed of Nagpur university. When this entry of Schedule B-2(i)(v) is looked into, it becomes clear that in Part II of Schedule B, B.Ed. Training qualification has been separately mentioned and all qualifications in physical education are mentioned separately under a separate entry. This distinction is also maintained in Schedule C which prescribed pay scales. Part III deals with pay scales of secondary school teachers and Entry No. 1 to 10 deals with the teachers who are specialised to teach various subjects (in subject of physical training). The Physical Training Instructors are maintained in para IV which deals with pay scale of special teachers in Secondary School and Junior Colleges of education. The B.P.Ed. Qualification holders are mentioned in Part IV(c) (4). In view of the above mentioned Government Resolution dated 14-5-1987 or earlier Resolutions in this respect, Physical Training Instructors having graduation and training qualification of B.P.Ed. Have been given same pay scale as that of trained B.Ed. Teaches. However, this separate treatment clearly shows that a teacher with qualifications prescribed for Physical Training Instructor cannot be a substitute for a training graduate teacher holding qualifications as mentioned in Part III, Entry 8, 9 or 10. It is thus clear that as clarified by the State Government in its Resolution dated 14-5-1987, there is a

provision already made in M.E.P.S. Rules, 1981 and B.P.Ed. And B.Ed. holders are treated separately.

The said observations which are made are not relevant to the facts of the present case. Even otherwise, perusal of schedule " B" II clearly reveals that the categories mentioned in II(i) are:

II. Qualifications for trained Teachers in Secondary Schools and Junior Colleges of Education (i) For Graduate Teachers :

(i) A Bachelor's degree in Teaching or Education of any statutory University or a qualification recognised by Government as equivalent thereto;

(ii) A Teaching Diploma of any statutory University, if a person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without break after that date.

(iii) A Secondary Teachers' Certificate of the Education Department of Maharashtra State, if a person holding it is appointed for the first time before the 1st October 1970 and continues to serve as a teacher with or without break after that date;

(iv) A Diploma in Education of the Graduates Basic Training Centers ;

(v) A Diploma in Physical Education or a qualification recognised by Government as equivalent thereto; or Bifocal Higher Diploma in Physical Education of the Government of Maharashtra as Physical Education with one of the method subjects) or B.P.Ed. (Marathwada University) or B.P.Ed. (Shivaji University) or B.Ed. (Physical Education)(Poona University)or B.Ed. (Physical Education) (Bombay University) or B.P.Ed. (Nagpur University) or Diploma in Physical Education, Culture and Recreation awarded by Hanuman Vyayam Prasarak Mandal, Amravati; or

(vi) any other degree, diploma or certificate which Government or the Inter University Board may sanction as equivalent to any of the above qualifications.. the various categories which are included in the definition of the trained graduate teachers and these qualifications ,therefore, do not form separate categories but are to be treated as various categories which are included in the definition of trained graduate teachers.

19. The question whether such a trained graduate teacher who, in fact, has the physical training degree can teach other subjects or not would depend on the facts which are pleaded by the parties. In the present case, no such facts had been pleaded by the petitioner -management. It is not now open for them to make arguments across the bar and to say that the respondent -teacher was taking some other subjects. Further it is an admitted position that even the teacher having a graduate qualification with B.P.Ed training qualification would be entitled to take 50% PT classes and 50% other subjects which was clarified by Government in its resolution dated 14.5.87. Whether, in fact, the respondent No.

1 was taking these subjects or not has not been pleaded by the management. In this view of the matter, the ratio of the judgment in Shivshakti Shikshan Sanstha Kotha (Veni)(supra) will not apply to the facts of the present case.

20. It has come on record that the respondent No. 1 was appointed by the ex-secretary, Shri Sahebrao Pawar. This Secretary was replaced by the present secretary, Uttam Rambhau Mande and after he took over as secretary of the management, the proceeding against the present respondent No. 1 was initiated. There is, therefore, some dispute between the erstwhile secretary and the present secretary. The Tribunal passed the impugned order on 9.9.2008. The respondent filed his reply in February 2009. The petition was once dismissed for default and was restored on 20.4.2009. the management, therefore, waited till the execution proceedings were taken out by the respondent No. 1 and thereafter, urgent circulation in this petition was sought. Taking into consideration all these facts and circumstances, therefore, in my view, this is not a fit case where this Court should exercise its jurisdiction under Articles 226 and 227 of the Constitution of India to interfere with the impugned order passed by the Presiding Officer, School Tribunal, Nashik.

21. Writ Petition, therefore, is dismissed. The Tribunal shall pass appropriate orders in respect of the amount deposited by the petitioner management.

22. It is clarified that it is always open for the management to institute their appropriate inquiry against the allegations of forgery and fabrication of documents and other such misconduct, in accordance with law.

23. At this stage, Counsel for the petitioner management submits that some protection may be granted to the management for a period of four weeks from today.

24. This request cannot be accepted. This Court had not granted any stay to the impugned order at any time. It is no doubt true that the learned Counsel appearing for respondent No. 1 had assured that no coercive steps would be taken during the pendency of the writ petition. However, taking into consideration the conduct of the petitioner, in my view, they are not entitled to seek an order of stay. Therefore, request made is not accepted.