

(2007) 08 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 4645 of 2006

Ram Avadh Mahel Pal

APPELLANT

Vs

Shivdutta Educational Trust and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 12, 2, 5(2), 5(4)

Citation : (2007) 6 ALLMR 716 : (2007) 6 BomCR 23 : (2007) 6 MhLj 659

Hon'ble Judges : R.S. Dalvi, J;J.N. Patel, J;D.Y. Chandrachud, J

Bench : Full Bench

Advocate : S.D. Dighe, for the Appellant; U.A. Kohir and A.A. Kumbhakoni, Associate A.G. and P.I. Khemani, AGP for respondent Nos. 3 to 5, for the Respondent

Judgement

D.Y. Chandrachud, J.—The reference before the, Full Bench has been occasioned by an order dated 21st August, 2006 passed by a Learned Single Judge. The Learned Single Judge formulated the issue upon which there are conflicting judgments of two Division Benches of this Court and which consequently required a determination by the Full Bench, thus:

Whether the Shikshan Sevak on completion of three years or 30 months service appointed on regular basis as an Assistant Teacher in a school in terms of Clause 8 of the Government Resolution dated 13th October, 2000 is required to be appointed as a confirmed teacher or a teacher on probation?

2. In a judgment dated 11th December, 2003 delivered by a Division Bench of this Court consisting of Dr. Justice S. Radhakrishnan and Mr. Justice V.M. Kanade in Swati Vasant Patil v. Kandivli Education Society Writ Petition 2627 of 2003, the Court held that Clause 8 of the Government Resolution dated 13th October, 2000 indicated that on the satisfactory completion of three years service, the candidate has to be absorbed on a regular post, on a regular pay scale. The Court was also of the view that Clause (6)(3) of the Appendix to the Government

Resolution dated 13th October, 2000 made it clear that if a Shikshan Sevak has completed three years of service, such a person shall be absorbed in a regular post, in a regular pay scale. However, a contrary view was expressed by another Division Bench of this Court consisting of Mr. Justice H.L. Gokhale (as he then was) and Smt. Justice V.K. Tahilramani in *Swati Vasant Patil and Another Vs. Kandivli Education Society and Others*, . In its decision the Division Bench held that the relationship of a Shikshan Sevak with the appointing authority is purely contractual and there was a doubt as to whether the "various propositions concerning the probationers will have an applicability to this kind of contractual appointment". The Division Bench noted that while a probationer obtains the benefit of service during the period of probation on the completion of the period of probation, this was not so in the case of a Shikshan Sevak except that after the completion of three years' service a Shikshan Sevak will become eligible for fresh appointment. This service, noted the Division Bench, would qualify for increments and the service would count only for retirement benefits provided a regular appointment as a teacher was made after three years. It was in view of this divergence of the views expressed by two Division Benches that the reference was made before the Full Bench.

3. The Learned Associate Advocate General has during the course of these proceedings on the reference before the Full Bench placed on the record the provisions of the Bombay Primary Education and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 2007 which was published in the gazette on 30th April, 2007 after the assent of the Governor. The Statement of Objects and Reasons appended to the Bill notes that the State Government introduced the scheme for appointment of Shikshan Sevaks on "honorary basis" on the post of teachers since 2000. The scheme was implemented by issuing Government Resolutions from time to time and a number of petitions were instituted to challenge the validity of the scheme including on the ground that it was ultra vires the provisions of the Bombay Primary Education Act, 1947 and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Accordingly, the Government had decided to continue the scheme by suitably amending the aforesaid statutory enactments so as to bring the post of Shikshan Sevak under the purview of the said Acts.

4. By the Amending Act, Clause (24A) has been inserted in Section 2 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. Under this provision the expression "Shikshan Sevak" is defined as follows:

(24A) "shikshan sevak" means a member of base teaching cadre appointed on honorary and subject to such terms and conditions as specified in the Government Resolution published in "the Maharashtra Government Gazette, Extraordinary, No. 12, Part I - Central Sub-Section, dated the 15th February, 2007, for eventual appointment as a teacher:

Section 5(2) of the Act prior to its amendment read as follows:

Every person appointed to fill a permanent vacancy shall be on probation for a period of two years. Subject to the provisions of subsections (3) and (4), he shall, on completion of this probation period of two years, be deemed to have been confirmed.

As a result of the Amending Act, Sub-section (2) of Section 5 has been amended to insert the words "except Shikshan Sevak" after the words "permanent vacancy". The following proviso has been inserted after Sub-section (2) of Section 5:

Provided that, every person appointed as shikshan sevak shall be on probation for a period of three years.

Moreover, Sub-section (2A) has been inserted in Section 5 which is to the following effect:

(2A) Subject to the provisions of Sub-sections (3) and (4), shikshan sevak shall, on completion of the probation period of three years, be deemed to have been appointed and confirmed as a teacher.

5. Section 12 provides for the regularization of appointments of Shikshan Sevaks in the following terms:

12. (1) Notwithstanding anything contained in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, all shikshan sevaks appointed in accordance with the provisions of the Government Resolution published in the Maharashtra Government Gazette, Extraordinary, No. 12, Part I - Central sub-section, dated the 15th February 2007, shall be deemed to have been appointed as base cadre shikshan sevak under the said Act, for appointment as teachers on completion of three years service as such shikshan sevak rendered here to before or heretofore, as the case may be.

(2) The terms and conditions prescribed by Government for appointment of shikshan sevak, by issuing Government Resolutions, from time to time, before the date of commencement of the Bombay Primary Education and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 2007, shall continue to be in force unless modified or revoked.

6. The reference before the Full Bench will now stand covered by the amendments made by Maharashtra Act XIV of 2007. As a result of the amendment, it has been provided that every person appointed as Shikshan Sevak shall be on probation for a period of three years. Moreover, subject to the provisions of Sub-sections (3) and (4) of Section 5 a Shikshan Sevak shall on completion of the probation period of three years be deemed to have been appointed and confirmed as a teacher. Incidentally, it may be necessary to note that the gazette notification dated 15th February, 2007 which is referred to in the definition of the expression "Shikshan Sevak" in Clause (24A) of Sub-section (2) as amended incorporates the Government Resolution dated 13th October, 2000.

7. The reference shall accordingly stand answered. The Writ Petitions shall now be placed by the registry in accordance with the roster of work before the appropriate Bench.