

(2017) 04 BOM CK 0096
In the Bombay High Court
Case No : 3292 of 2009

Sahebdas Sakharam Borkar

APPELLANT

Vs

Maharashtra Rural Education Society, Lakhandur, through its
Secretary, & Ors.

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service)
Regulation Act, 1977, Section 5(2) - Certain obligations of
Management of private schools
Maharashtra Employees of Private Schools

Citation : (2017) 04 BOM CK 0096

Hon'ble Judges : R.K. Deshpande

Bench : SINGLE BENCH

Advocate : P.N. Shende, Prachi Joshi, G.N. Khanzode, K.L. Dharmadhikari

Final Decision : Dismissed

Judgement

1. The School Tribunal, Nagpur, has dismissed Appeal No.STN/252/1995 by its judgment and order dated 8-12-2008 challenging the order of termination dated 26-7-1995. Hence, the employee terminated from the post of Assistant Teacher is before this Court in this petition.

2. The School Tribunal records the finding on a preliminary issue that the appointment of the petitioner as untrained graduate teacher on 1-7-1986 was legal and valid, but ultimately dismisses the appeal challenging the termination, holding that the petitioner was appointed afresh on 22-6-1994 as Junior College Lecturer for a period from 1-7-1994 to 30-4-1995, i.e. on purely temporary basis for a specific period of one academic session. It further holds that in view of this event, the petitioner himself has waived his right to the post of Assistant Teacher. It holds that the Deputy Director of Education rejected the approval to the appointment of the petitioner as Junior College Lecturer on the ground that he was not qualified for appointment to the said post. It further holds that the petitioner did not possess the requisite qualifications for the post of Junior

College Teacher, as laid down in Schedule B in the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("the MEPS Rules").

3. The petitioner claims that he was initially appointed on 1-7-1986 as untrained graduate teacher, and at that time, he was holding Master's Degree in Arts, i.e. M.A. The said order of appointment is not placed on record of the School Tribunal. It is also not placed on record of this Court. The petitioner has placed on record the order of appointment dated 8-8-1987, by which he was appointed as Assistant Teacher on purely temporary basis for the Academic Session 1987-88. He claims to have obtained training qualification on 20-5-1994, and relying upon the provision of Rule 6 of the MEPS Rules read with the Government Resolution dated 10-2-1994, it was claimed before the Tribunal that he was entitled to regularization in service upon obtaining B.Ed., i.e. training qualification. In this background, the Tribunal, relying upon the order dated 22-6-1994, produced by the Management, holds that the appointment of the petitioner was afresh as Junior College Teacher on purely temporary basis from 1-7-1994 to 30-4-1995, and the earlier service rendered on the post of Assistant Teacher has been waived by the petitioner.

4. Even if the contention of the petitioner is accepted that the Tribunal committed an error on the factual aspects, holding that the petitioner was appointed afresh by an order dated 22-6-1994 as Junior College Teacher on temporary basis, still he cannot succeed unless he satisfies the Court that either he was to be regularized in service by granting benefit of Rule 6 of the MPES Rules read with the Government Resolution dated 10-2-1994, or that his initial appointment is to be treated as on probation, and having continued beyond the maximum period of two years of probation, he acquires deemed confirmation in service in terms of subsection (2) of Section 5 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In order to succeed in this petition, it is not enough for the petitioner to demonstrate that the findings recorded by the Tribunal dismissing the appeal suffered from the error apparent on the face of the record, but he has to satisfy this Court on merits of his claim made before the Tribunal.

5. Perusal of Rule 6 of the MEPS Rules shows that the Education Officer may permit the Management to appoint untrained graduate teachers in Secondary Schools in exceptional circumstances, such as nonavailability of trained graduates, and such appointment has to be on year to year basis, on the clear understanding that such appointee will have to obtain training qualification at their own cost and further subject to the condition that their services shall be liable to termination as soon as a trained graduate teachers become available.

6. What is required to be emphasized in the present case is that the petitioner was required to come before the Court with a specific case (i) that his appointment as untrained graduate teacher was because of nonavailability of trained graduates for appointment, (ii) that the permission of the Education Officer was obtained for making such appointment by the Management, and (iii)

that there was a clear understanding that the appointee shall have to obtain training qualification at his own cost within a stipulated period, else his services were liable to be terminated. The petitioner has neither come to the Tribunal with such a case, nor the Tribunal has adverted to any such aspects of the matter. There is no case made out by the petitioner for grant of reliefs on the basis of Rule 6 of the MPES Rules read with the Government Resolution dated 10-2-1994.

7. Only two orders of appointments are placed on record. As pointed out earlier, the first is dated 8-8-1987, indicating the appointment on purely temporary basis for the Academic Session 1987-88, and the second is dated 7-6-1994 appointing the petitioner as Junior College Teacher on temporary basis for the period from 1-7-1994 to 30-4-1995. The petitioner has disputed this second appointment order dated 7-6-1994, and if that is ignored, there is nothing brought on record to show that the appointment of the petitioner as untrained graduate teacher was for want of availability of trained graduate teacher and that the Education Officer granted his permission for making appointment of the petitioner as untrained graduate teacher. Merely because the petitioner was permitted by the Management to obtain B.Ed. qualification while in service, will not advance the case of the petitioner to claim the benefit available under Rule 6 of the MEPS Rules read with the Government Resolution dated 10-2-1994, which extends the period of acquiring the training qualification for inservice untrained graduate teachers up to 1-6-1995 so as to get regularization in service. The petitioner cannot, therefore, succeed to get the relief in this petition.

8. Even otherwise, when the petitioner was terminated from service on 26-7-1995, he had rendered service as untrained graduate teacher from 1-7-1986 on purely temporary basis for one academic session and obtained training qualification on 20-5-1994. There is nothing on record to show that the appointment of the petitioner on 7-6-1994 was on probation for a period of two years. The petitioner was aged about 40 years at the time of termination of his service, and by now in the year 2017, he crossed the age of superannuation of 58 years. On this count also, the petitioner is not entitled to any relief.

9. In view of the foregoing discussion, the petition is dismissed. Rule stands discharged. No order as to costs.