

(2008) 01 BOM CK 0183

In the Bombay High Court

Case No : Letters Patent Appeal No. 186 of 2007 in Writ Petition No. 1778 of 2007

Sanjeevkumar Dada Thane

APPELLANT

Vs

Dr. J.J. Magdum Charitable Trust, The Principal, Dr. J.J. Magdum Charitable Trust and The Joint Director of Technical Education, Pune Region

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Citation : (2008) 4 ALLMR 404 : (2008) 2 BomCR 628

Hon'ble Judges : Swatanter Kumar, C.J.;J.P. Devadhar, J

Bench : Division Bench

Advocate : S.S. Pakale, for the Appellant; A.V. Bukhari and B.V. Bukhari for respondent Nos. 1 and 2, for the Respondent

Judgement

Swatanter Kumar, C.J.—Challenge in this appeal is to the order dated August 2, 2007, whereby the learned single Judge stayed the implementation of the judgment and order dated 6th November, 2006, in Appeal No. 52 of 2002. The facts which are necessary for disposal of this appeal are as under.

2. The appellant, after obtaining Degree in Engineering (Electrical with Electronics) in second class, applied for the post of Lecturer in response to the advertisement issued by respondent No. 1 in a clear vacancy. He was interviewed and thereafter he was appointed as a Lecturer with effect from 2nd September, 1981. In the advertisement, the required minimum qualification mentioned was B.E. No specific requirement of First Class in B.E. was mentioned. The appellant has been paid consolidated salary rather than the regular scale of Rs. 2200-3700.

3. On 26th May, 1992, the State of Maharashtra passed a resolution whereby it was resolved that all the Lecturers who were appointed on or after 20th September, 1989, would have to acquire prescribed qualification for being eligible for grant of revised pay scale.

The management once again published an advertisement inviting applications for the post of Lecturers. The appellant and other Lecturers filed a Writ Petition being W.P. No. 3651 of 1995 challenging the publication of the said advertisement. During the pendency of the writ petition, a settlement was entered into between the respondent and the Union representing the appellant and other lecturers whereby it was agreed that the lecturers who did not have the minimum prescribed qualification for holding the post of Lecturer would acquire the said qualification before 31st December, 2000, and till then they would be continued in the employment with payment of Rs. 4,000/- per month. The said settlement was placed before this Court. Minutes of order dated 22nd September, 1995 came to be passed in the pending writ petition. The said writ petition came to be disposed of in terms of the said settlement. Another writ petition was filed by the appellant being Writ Petition No. 648 of 1998 seeking regular pay scales on the ground that he was in continuous employment of the management. The said writ petition was summarily dismissed vide order dated 23rd September, 1998. Show cause notice was issued to the appellant to which he filed no reply. Vide order dated 29th December, 2000, the services of the appellant came to be terminated with effect from 1st January, 2001. The appellant challenged his termination by filing Writ Petition No. 226 of 2001. The said writ petition came to be dismissed on 14th March, 2002, granting liberty to the appellant to prefer appeal before the School Tribunal. The appellant filed appeal before the School Tribunal, Kolhapur, being Appeal No. 52 of 2002. Parties filed documents before the Tribunal. After hearing the parties, the Presiding Officer of the said Tribunal allowed the appeal filed by the appellant thereby directing the management to reinstate the appellant with full back wages and continuity of service with all incidental benefits vide order dated 6th November, 2006. The management assailed the order of the School Tribunal before the learned single Judge who, as stated hereinabove, has granted relief in terms of prayer Clause (b). The learned single Judge also held that the pendency of the petition would not preclude the appellant from suitably qualifying himself by securing the requisite degree. Hence the present appeal by the appellant challenging the order of the learned single Judge.

4. The learned Counsel for the appellant has argued that there are no reasons whatsoever recorded in the impugned order while granting interim prayer staying the operation of the order of Tribunal in favour of the appellant. To some extent, it may be true that there is no detailed discussion in the order but for the reasons hereinafter stated we are not willing to take a view different than the one taken by the learned Single Judge.

5. The main argument is that the appellant was duly qualified and was appointed to the post in a regular manner. Thus, the respondents could not have dispensed with the services of the appellant on the ground that he was not qualified. No doubt, the Tribunal in its order dated 6th November, 2006, had recorded that in terms of the Government Resolution dated 26th June, 2000 the condition of acquiring revised educational qualification made applicable to the lecturers

having B.E. or M. Sc. in second class since 20th September, 1989 was made applicable to the lecturers appointed after 22nd November, 1993. The Tribunal further recorded that that in view of the Government Resolution dated 22nd January, 1993 in order to get the revised pay scale, the lecturers having B.E. Or M. Sc. qualification in second class were required to have revised educational qualification prescribed in Appendix V of the Government Resolution dated 26th May, 1992 which was B.E. or M. Sc. First Class in the branch of Engineering Technology or in appropriate branch of study for teaching posts in Humanities and Science, respectively. Thereafter, the Tribunal observed that the lecturers appointed on or after 20th September, 1989 who were having second class in B.E. or M. Sc. were required to have revised educational qualification to get revised pay scale. After noticing this, the Tribunal had set-aside the termination of the appellant. The contention on behalf of the respondents was and is that in terms of the notification of All India Council for Technical Education, which was duly placed on record Clause (5) deals with the qualifications and provides that the teachers already in service prior to 1st January, 1996 who, at the time of their recruitment, passed only in second class in their bachelor's degree or master's level but met all other qualifications, shall be exempted from the requirement of first class for the degree. The revised qualifications were applicable to the fresh appointees. However, the contention of the respondents is that either way the appellant was not entitled to protection, inasmuch as, the rules in existence at the time of his selection were not satisfied. The norms and standards for polytechnic issued by All India Council for Technical Education, as applicable even in the year 1991 under the Government Resolution dated 6th January, 1991, had provided for qualifications which require first class degree in appropriate branch of Engineering or first class M. Sc. or the candidate should have been selected through the prescribed selection procedure. Reliance was also placed on the Resolution dated 26th May, 1992.

6. After hearing the learned Counsel for the parties, the learned Single Judge has exercised the discretion and granted stay to the order passed by the Tribunal. In the impugned order itself, the learned Single Judge had also granted liberty to the appellant to secure requisite degree and directed the respondents to render all possible assistance. Rule was issued. The questions raised in the writ petition do require an early final adjudication so as to put an end to the agony of the appellant, inasmuch as, he was appointed in 1981 and his services were dispensed with on 1st January, 2001.

7. Without commenting any further upon merits or otherwise of various contentions raised by the parties, we dispose of the appeal with liberty to the appellant to request the learned Single Judge for an early disposal of the writ petition itself. We are hopeful that if such a request is made to the learned Single Judge same would be considered in accordance with law.

8. The appeal is disposed of accordingly. Any observations made in this order shall not be treated as precedent in the matter.