
(2008) 08 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 3139 of 1998

Shailendra Shikshan Sanstha

APPELLANT

Vs

Khandu Bhagwan Kawade and Another

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2008) 6 BomCR 855

Hon'ble Judges : Majmudar P.B., J

Bench : Single Bench

Advocate : Ajeet Manwani, instructed by G.K. Masand, for the Appellant;

Judgement

Majmudar P.B., J.—By filing this petition, the petitioner institution has challenged the judgment and order passed by the School Tribunal, Pune Region, Solapur, dated 29th April, 1998 in Appeal No. 202 of 1994.

2. The respondent No. 1 herein instituted the aforesaid proceedings before the Tribunal by way of challenging his termination order dated 5th June, 1994 issued by the petitioner management. The petitioner is a Public Charitable Trust and a Society duly registered under the Bombay Public Trust Act, 1950 and Societies Registration Act, 1860. The said trust runs a School namely Loni Maratha Vidyalaya, Solapur. The first respondent was appointed as an Assistant Teacher with effect from 17-10-1992 and in this behalf an appointment order dated 15-10-1992 was issued in his favour. Since the first respondent was over aged at the relevant time, the appointment order was made subject to giving relaxation in age by the Deputy Director of the State.

3. The grievance of the first respondent before the Tribunal was that he was prevented to sign the muster roll from 1st June, 1994. It is his case that he requested the management to give him back Rs. 30,000/- which he had paid by way of donation to the institution at the time of getting his appointment. The first respondent thereafter approached the Tribunal by way of appeal challenging the

action of the management in terminating his services. It is his case that the Deputy Director by his letter dated 13th August, 1994 condoned the overage. The appeal filed by the first respondent was resisted by the present petitioner by submitting reply at Exhibit-11. It is the case of the petitioner that the appointment of the first respondent was purely temporary in nature and the post in question was reserved for S.T. Category and even advertisement was also issued in that behalf on 10th October, 1992. According to the management, since no S.T. Candidate was available, the first respondent was appointed by way of stop gap arrangement and on temporary basis.

4. It is also the case of the management that the Administrative Officer, Municipal School Board, Solapur, gave approval to the appointment of the petitioner only upto 31st May, 1994. The allegation made in the appeal memo was denied on behalf of the petitioner management. It is also the case of the management that during the Academic year 1994-95, one division of Fifth Standard was reduced and, therefore, since there was reduction in the number of sanctioned staff, the services of the first respondent was required to be terminated.

5. The Tribunal after considering the record of the case and after considering the arguments of both sides allowed the appeal by setting aside the termination order dated 1st June, 1994 and the petitioner herein was directed to reinstate the concerned teacher with full back wages. The Tribunal also further observed that back wages which may be paid to the concerned teacher may be deducted from the grant payable to the institution. The aforesaid order of the Tribunal is impugned at the instance of the petitioner management in this writ petition.

6. Mr. Ajeet Manwani, learned Counsel appearing for the petitioner, has submitted that since the appointment of the first respondent was temporary in nature, the Tribunal has erred in allowing the appeal filed by the first respondent. It is submitted on behalf of the petitioner that the appointment of the petitioner was in reserved vacancy and, therefore, he was not entitled to continue on the post in question. The learned Counsel for the petitioner has further submitted that the Deputy Director granted approval only for a limited period and in that view of the matter, even though the management had submitted a proposal to give sanction to the appointment, the management had no option but to discontinue the services of the first respondent.

7. It is also submitted by the learned Counsel for the petitioner that subsequently since the strength of Fifth Standard was reduced for want of students, the first respondent being a junior most teacher was subjected to termination order. Learned Counsel has further submitted that since there is no adequate strength and since few classes have been closed down and even subsequently services of other teachers were also terminated as they were declared surplus, the management was justified in not continuing the services of the first respondent. Learned Counsel has relied upon the decision of the Division Bench of this Court in the case of (Shri Malikarjun Shikshan Prasarak Mandal,

Dist Solapur, through its President v. R.V. Rajmane and Ors.) 1993 C.T.J. 67, to substantiate his say that if the appointment is temporary and was made only because the candidate belonging to the reserved category was not available, the management is justified in terminating such appointment.

8. Though served, none appears for the first respondent. I have also gone through the records and proceedings which have been called for during the pendency of this petition.

So far as the question about appointment of the first respondent is concerned, it is required to be noted that as per the appointment order dated 15th October, 1992, there is no stipulation at any place in the order that appointment of the petitioner is on a reserved post. On the contrary, the appointment order clearly states that the appointment is made subject to obtaining sanction from the Administrative Officer and after obtaining exemption regarding the age limit. Considering the nature of appointment order, the Tribunal has, in my view, rightly found that the appointment of the petitioner is made on a clear vacancy and there is nothing on record to show that any backlog was there at the relevant time as the appointment order is clearly silent on the same. Not only that, the management in fact sought for exemption in outer age limit by recommending to the Administrative Officer to give relaxation in the age of respondent No. 1. The Administrative Officer in fact granted permission for such appointment, may be for a limited period.

9. Under these circumstances, in my view", it cannot be said that the Tribunal has committed an error in coming to the conclusion that the appointment of the first respondent was on a clear vacancy and there is nothing to show that he was appointed in view of the backlog prevalent at the relevant time and that his appointment was made on a post reserved for Scheduled Tribe. Even though it may be true that the advertisement was given by the management inviting applications for S.T. Category, no material has been produced before the Tribunal to show that any backlog was there at the relevant time and even the appointment order issued by the petitioner nowhere states that the appointment is made on a reserved vacancy. Under the circumstances, in my view, the Tribunal was justified in coming to the conclusion that there is nothing to show that the appointment was made against the reserved vacancy.

10. Apart from that, as per the approval letter issued by the Administrative Officer, which was produced at Exhibit-17 on record, the appointment of first respondent was approved for the period between 17th October, 1992 and 31st May, 1994. Even such approval letter also does not indicate that the appointment was made against the reserved vacancy. The said order only indicates that the backlog for the period between 1994 and 1995 should be removed. The Tribunal was justified in coming to the conclusion that such remark does not indicate that the appointment of the first respondent was against the reserved vacancy. In any case, learned Counsel for the petitioner has fairly submitted that no roster was produced before the Tribunal to justify the stand of the management that the

appointment of the first respondent was against a reserved vacancy.

11. Even the Tribunal has properly appreciated a letter which was produced at Exhibit-20 issued by the Headmaster of the School to the Administrative Officer and as per the same, no candidate belonging to S.T. Category appeared for interview and as there was no backlog regarding Other Backward Category, the first respondent was selected for appointment to the post in question. Even the said letter nowhere states that the appointment of the first respondent was against any reserved vacancy. The management has failed to produce the roster to substantiate its order that the appointment was on a reserved vacancy and that there was a prevailing backlog at the relevant time. The management has deliberately chosen not to produce any roster before the Tribunal. It is also required to be noted that the petitioner management has tried to support the termination order on the ground that one division of Standard-V was reduced and as a result of the same, the staff strength was reduced from 14 to 13 and in that view of the matter, respondent No. 1 who was the junior most teacher was not entitled to be continued for the Academic year 1994-95. The stand taken by the management, therefore, is clearly contrary to the stand taken earlier to the effect that since the appointment of the first respondent was in a reserved vacancy, his services were not required to be continued after a stipulated time.

12. So far as the question about reduction of division is concerned, the Tribunal has rightly held that no material has been produced on record in this behalf. It is also held that no notice was issued to the concerned teacher before terminating his services. The said finding of fact, as pointed out by the learned Counsel for the petitioner, cannot be interfered with at this stage as the Tribunal has given cogent reasons while dealing with this point. So far as the reliance placed by the learned Counsel for the petitioner on the Division Bench judgement is concerned, in that case it was not in dispute that the appointment was on a reserved vacancy and under the circumstances it was found that the concerned teacher had no right to continue on the post.

13. However, in the instant case, after appreciating the evidence, the Tribunal has found that there is nothing on record to show that the appointment of the petitioner was made against a reserved vacancy. There was no stipulation in the appointment order. In this behalf, the management had not even produced roster on record and had not led any cogent material to show that at the time of appointing first respondent any backlog of S.T. Category was there. Considering the reasoning of the Tribunal, in my view, no interference of this Court is called for in the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

14. At this stage, the learned Counsel for the petitioner has submitted that the Tribunal has recommended to the Government to deduct the amount of back wages from the grant payable to the institution. So far as this aspect is concerned, it is not in dispute that the institution is a 100 per cent grant-in-aid institution and it is argued by the learned Counsel for the petitioner that there is

no other source of income. The learned Counsel for the petitioner submits that they would not have terminated the services of the first respondent, had the Administrative Officer granted permanent approval. Considering the aforesaid aspect of the matter, direction given by the Tribunal regarding deduction of amount from the grants in connection with the payment of back wages is not justified and, therefore, the said direction is set-aside.

15. It is clarified that it will be open to the petitioner to follow the procedure and after hearing the first respondent may pass separate order in case the services of the petitioner is required to be terminated on the ground of reduction of class.

Subject to what is stated above and subject to setting aside the direction given by the Tribunal regarding deducting the amount of grant payable to the institution, rest of the order of the Tribunal is confirmed. The petition is accordingly disposed of. Rule is accordingly discharged.