

(2002) 08 BOM CK 0125

In the Bombay High Court

Case No : Writ Petition No's. 2388, 2389, 2390, 2391 and 2392 of 1999

Shri Ganesh S. Durafe

APPELLANT

Vs

Maharashtra Bhatkya Vimukti Jati Shikshan Prasarak Mandal
and Others

RESPONDENT

Date of Decision : 26-08-2002

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 9

Citation : (2002) 4 ALLMR 652 : (2002) 104 BOMLR 826

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Judgement

R.J. Kochar, J.—By a common though rather unintelligible judgment the School Tribunal was pleased to dismiss the Appeals filed by the School Teachers u/s 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 to challenge their termination notices dated 29.3.1997 passed by the Respondent No. 1 to terminate their employment with effect from 30.4.1997.

2. The Appellants were appointed as Asstt. Teachers on and from 1.7.1996 on purely temporary basis. The Education Officer granted approval for the appointments for the academic year 1996-97 only. By a notice of one month dated 29.3.1997 they were to be terminated with effect from 24.4.1997. The Appellants were aggrieved by the said orders, and therefore, they filed the present Appeals before the School Tribunal. The Respondent No. 1 School Management contested the Appeals mainly on the ground that the Appellant-teachers were appointed on temporary basis for one year and they were terminated under Rule 28(1) by giving one month's notice, and therefore, there was no illegality in the termination orders. It was further contended that they were appointed at the roster points of the reserved posts, and therefore, they were required to be terminated as except one teacher Ms. Darshana Ovhal all others belonged to open category and as there was backlog of the reservations as pointed out by the Education Officer. The Respondent No. 1 denied all other

allegations of mala fides and ulterior motives etc.

3. The School Tribunal by its interim orders in all the Appeals stayed the impugned termination orders and therefore, the Appellants continued in employment till the final order of the Tribunal dismissing the Appeals and vacating the interim orders on 21.7.1999. The Petitioners have challenged the said final orders of the School Tribunals in the present group of the Petitions. On 25.10.1999 my learned brother A. P. Shah, J. was pleased to grant Rule in all the Petitions and granted an interim order in the Petition of Smt. Ovhal only, to continue her in service and in the case of Smt. N. S. Kulkarni he allowed her to opt for work in the primary section of the School, if she so desired. It appears that Smt. Kulkarni opted to work as an Asstt. Teacher in the primary section without prejudice to her rights and contentions in the Petition and subject to the final result of her petition. That is how she continues to be in the service of the primary school drawing the pay of a primary teacher. It is in these circumstances both these teachers have continued to be in the service subject to the outcome of their Petitions.

4. The other 3 Petitioners who were from the open category did not get any interim orders and therefore, they stood terminated with the final order of the School Tribunal.

5. I will first consider the cases of the Petitioners except Smt. N. S. Kulkarni in Writ Petition No. 2392 of 1999 and Smt. Darshana Ovhal in W. P. No. 2389 of 1999.

6. There is no dispute that they were appointed on purely temporary basis for the academic year 1996-97 and their appointments were also approved for only one year by the Education Officer. They were terminated from service after one month's notice in accordance with Rule 28(1). As their appointments were approved only for one year they could not be continued thereafter and therefore they were lawfully terminated from employment. Besides, it is on record that they were appointed on the roster points of posts reserved for backward classes. The Roster points have been approved as correct by the Asstt. Commissioner (B. C. Cell), Konkan Bhavan, New Mumbai on 16.7.1999. As no open candidates can be appointed in the reserved posts for the backward classes on regular and permanent basis, the Education Officer could not and did not approve their appointments for more than one year. It is therefore, not possible to agree with the submissions of Shri Garge the learned Advocate for the Petitioners that they were appointed on probation in clear vacancies, and therefore, they could not be terminated from service. He also submitted that they were not informed in the appointment orders that they were appointed in the posts reserved for backward classes nor were informed in the notice that they were being terminated on that ground. Shri Garge finds fault with the appointment and the termination orders on the ground that there was no mention therein that they were appointed in reserved posts. If a mention is important in that case the orders however do mention that they were appointed as purely temporary for one academic year

only and therefore, they were informed in writing that they were being appointed for one academic year and that they would be liable to be discontinued by the end of the year. I, therefore, do not find merit in his submission. The above Writ Petition Nos. 2388, 2390 and 2391 of 1999 fail and they are dismissed.

7. It further appears from the record that as a natural growth of the School new appointments became necessary as new additional divisions were allowed. It further appears that the School Management had appointed on 13.6.1999 two Asstt. Teachers from open category and on 2.8.1999, three Asstt. Teachers from open category and two from reserved category. According to Shri Mogre, the learned Counsel for the School the Petitioners did not avail of the opportunity to get regular appointments by applying for those posts in response to the advertisement for new recruitment and if they were to apply they would also have been considered for permanent posts. Shri Mogre also added that the process of recruitment had to be undertaken under the rules and they could not suo mota regularise the Petitioners as open candidates. The three open candidates were recruited on 2.8.1999 after the orders of the Tribunal dismissing the Appeals. Shri Mogre further submitted that the school had considered and appointed other similarly placed candidates from the teaching and the non-teaching staff whose cases were pending but who had responded to the advertisement inviting applications for the vacancies. According to him, there was nothing against any one of them not to consider their cases. There is lot of substance in the submissions of Shri Mogre. In spite of failure in their appeal the Petitioners chose not to apply for the posts as invited by the School and they chose to accept the risk of the litigation. For all these reasons the Petitioners are not entitled to get any relief in the present Petitions. The School Management however, shall consider their applications for any vacancies of the Asstt. Teachers in future taking into account their experience and qualifications and not getting prejudiced by the fact of their litigation and appoint them if they would be found eligible in accordance with Rules.

8. These Petitions therefore, stand dismissed subject to above directions. Rule is discharged. No order as to costs.

WRIT PETITION NO. 2389 OF 1999.

9. Shri Garge tried to distinguish the case of Smt. D. P. Ovhal on the ground that she belonged to S. C. and therefore, though she came to be appointed in the vacancy of O.B.C., she must be deemed to be appointed as a reserved class candidate and not from open category. Shri Garge has strongly relied on the judgment of the Supreme Court on this point reported in Shakuntala Ganpatsa Shirbhate Vs. Industrial Weaving Co-operative Society and others, the Supreme Court had considered the very same point, and therefore, the contention of Shri Garge in this respect deserves to be accepted. There is no dispute and it is an admitted position even from the record that the Petitioner belonged to the S. C. category and she was appointed in the vacancy reserved for the O.B.C. category on 1.7.1996. She was appointed as O.B.C. candidate was not available. Her

appointment in the vacancy of the O. B. C is therefore deemed to be on regular basis as per Rule 9(a). The Supreme Court has observed as under :-

4. Several other questions were raised by the parties before the School Tribunal and the High Court, but since they are not being agitated not before us, we are not detailing the facts relevant to those questions. The learned Counsel for the appellant before us has contended that assuming the other findings recorded against her by the High Court to be correct, she is still entitled to regular appointment in view of Rule 9(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, which is quoted below :-

(9)(a) In case it is not possible to fill in the teaching post for which a vacancy is reserved for a person belonging to a particular category of Backward Classes, the post may be filled in by selecting a candidate from the other remaining categories in the order specified in Sub-rule (7) and if no person from any of the categories is available, the post may be filled in temporarily on an year to year basis by a candidate not belonging to the Backward Classes....

Since the appellant is a member of one of the backward classes referred to in the said Rule, she was entitled to a regular appointment in the very first year when no person belonging to a Nomadic Tribe was available.

5. The argument of the learned Counsel appears to be well founded. Admittedly the respondent No. 4 was available for appointment only in 1988. On the first occasion when the post was being filled up, there was no member of a Nomadic Tribe available for appointment. In the absence of a candidate belonging to a Nomadic Tribe, the Rule enjoins year to year appointment only if an available candidate does not belong to the backward classes. The question, therefore, is whether the appellant belongs to a backward class.

The Petition therefore succeeds. The order of termination of the Petitioner is quashed and set aside as she was deemed to be a permanent and regular employee, and therefore, she could not have been appointed for one year and terminated thereafter on the basis that she was purely temporary for the academic year 1996-97. The Respondent No. 1 is hereby directed to continue her in the post of Asstt. Teacher as a regular and permanent Asstt. Teacher appointed with effect from 1.7.1996. Respondent No. 4, the Education Officer shall grant approval to her appointment with effect from 1.7.1996 as regular Asstt. Teacher and pass appropriate orders in accordance with law. The Rule is made absolute.

WRIT PETITION NO. 2392 OF 1999

10. This bring me to the case of Smt. N. S. Kulkarni, She is M. A. with Economics and B. Ed. She was also the Principal of a D.Ed. College at Chandrapur. According to her she was appointed as an Asstt. Teacher for the Secondary High School of the respondent No. 1 with effect from 30.6.1992. However, the Respondent No. 1 emphatically states that she was appointed not in the Secondary Section but in

the Primary Section of the School with effect from 30.6.1992 as temporary. She was appointed for the first time in the Secondary School only from 27.6.1996 for one year as temporary and she came to be validly terminated at the end of the academic year from 30.4.1997 after one month's notice. Shri Mogre the learned Advocate for the Respondent No. 1 points out from the School's record that she was appointed in the Primary Section of the School and not in the Secondary School. He relies on Service Book and Salary Register for the Primary Teachers where she used to sign for her attendance. As against this Shri Garge submits that some appointment letters indicate her appointment for the Secondary School. He has, however, relied on very strong evidence in favour of the Petitioner, which she has produced before this Court under direction from the Court, to substantiate her case that though her appointment order and attendance or Salary Register might show her name in the Primary Section but actually she was teaching the Secondary School students and that she was a Class teacher for VI Std. She has produced with her affidavit dated 31.10.2001 five progress books of the Students of VI Standard from 1992-93 and onwards for 1993-94, 1994-95, 1995-96 and 1996-97. These progress books clearly establish that she was the class teacher of 6th Std. in the Secondary High School. Her name and signature appears on these progress books which are also counter-signed by the Head Master of the High School. She has also produced a statement on which the signatures of the Students appear to show that she was the class teacher of 6th Std. She has also produced progress book of one student for 1997-98 which is counter-signed by the Head Mistress of the High School.

11. I am of the clear and firm opinion that ex facie this record proves that she was actually in the Secondary High School though the school record prepared by the School shows her to be in the Primary Section. I am not attaching more value to the students' signatures but their progress books counter-signed by the Head Master is clinching evidence that she was teaching in the Secondary School from 1992-93 onwards till 1996-97 and even thereafter. In comparison with the service record, salary register which can be conveniently maintained as per the desire of the Management, the progress books of the students cannot be written as per the convenience of the Management. This record is of the High School and is signed by the Petitioner and the Head Master in the regular course of the business of the School from 1992-93 onwards. If she was the class teacher of the 6th Std. she alone could sign on the progress books of the students and no other teacher could sign. Even the Head Master has put his/her signature as the Head of the High School. This documentary evidence has greater evidential value and more credit worthiness than the record relied on by the Management which was prepared for its convenience. Besides, there is no denial by the Management of these facts by way of rejoinder. It is therefore beyond any pale of doubt that she was employed as a Secondary School Teacher to teach in the High School and not in the Primary Section from 1992-93 onwards continuously without any break in service. She is therefore, deemed to have become permanent after two years from 1992-93. She therefore, could not be terminated from 30.4.1997 on the

ground that she was appointed as a temporary teacher for one year in the Secondary School for 1996-97. The fresh appointment order issued to her on 27.6.1996 purportedly as a Secondary School Teacher was a sheer manipulation to be able to terminate her on the basis of her being only a temporary teacher appointed in a reserved post. She was appointed in 1992 in a clear vacancy and she continued to work/teach in the Secondary School from the beginning though her name was kept in the record of the primary section. This record appears to be the record of sheer convenience or adjustment. This record has been falsified and countered by the more reliable, authentic, impeccable and unflinching record of the School itself in the form of the students progress books of the year from 1992 onwards signed by her and the Head of the School, She also appears to have been paid the pay scale of the Secondary School Teacher and not that of a Primary Teacher. In these circumstances the order of her termination from service is illegal and improper and is therefore quashed and set aside. It is held that she is entitled to be reinstated as a Secondary School Teacher with continuity of service and all other consequential benefits,

12. Pursuant to the orders of this Court she continues to be in the employment of the School in the Primary Section as an interim arrangement. She is being paid the scale of Rs. 1400/- p. m. applicable to the Primary Teachers during this period. As held by me hereinabove she would be entitled to be reinstated in the Secondary School with the Secondary School teachers pay scale with effect from 30.6.1996. Though she would also be entitled to claim the whole difference in the scales of the Primary and Secondary Teachers from 1992 onwards, I am not granting the same considering the fact that the School is managed by the Nomadic Tribe people from the lower strata of the Society to spread education amongst them. They deserve to be spared from this financial burden from 1992 to 1996.

13. The Respondent Nos. 1 and 2 shall within four weeks apply for the necessary approval and grant for the salary of Smt. N. S. Kulkarni, the Petitioner and the Respondent No. 3 and the State shall release such grants within 12 weeks from the date of receipt of such application from the Respondent Nos. 1 and 2.

CONCLUSIONS :

14. For the reasons recorded by me the impugned order of the School Tribunal in :-

(1) the Writ Petition Nos. 2388, 2390 and 2391 of 1999 is confirmed and the said Writ Petitions are dismissed. Rule in these Petitions is discharged. No orders as to costs.

(2) For the reasons recorded by me the impugned order in the Writ Petition No. 2389 of 1999 is quashed and set aside and the Writ Petition is allowed and Rule is made absolute as above.

(3) For the reasons recorded by me the impugned order in the Writ Petition No.

2392 of 1999 is quashed and set aside and the Writ Petition is allowed and Rule is made absolute as above.

Certified copy is expedited.