
(2009) 02 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 3036 of 1996

Shvaji Shikshan Sanstha and Another

APPELLANT

Vs

Ram Dnyanoba Latpate and Others

RESPONDENT

Date of Decision : 09-02-2009

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 — Rule 9(9)

Citation : (2009) 5 BomCR 36 : (2009) 7 SLR 638

Hon'ble Judges : Borde R.M., J

Bench : Single Bench

Advocate : V.G. Sakolkar, for the Appellant; M.B. Bharaswadkar and K.M. Suryawanshi, A.G.P. for respondent Nos. 2 and 3, for the Respondent

Judgement

Borde R.M., J.—The petitioner-management has raised challenge to the order dated 29.2.1996, passed by Presiding Officer, School Tribunal, Aurangabad in Appeal No. 147 of 1993.

2. Respondent No. 1-employee was inducted in service by the petitioner-Management by issuing appointment order on 27.7.1992. Respondent-employee was appointed as Lecturer in Junior College to teach subjects Economics and Marathi. It is stated in paragraph No. 2 of the appointment order that the appointment is purely temporary for a period of one year against a seat reserved for Scheduled Tribe category candidate. It is also noted in the order that on the expiry of said period, his services shall stand terminated without any notice. A letter came to be issued on 31.3.1993 informing respondent No. 1 employee that his appointment comes to an end on 30.4.1993.

3. It further transpires that the Institution issued an advertisement for making appointment to the posts of Lecturers in the year 1993. It was mentioned in the advertisement that out of four posts, two posts are earmarked for reserved category. Respondent No. 1 employee tendered an application on 26.10.1993 requesting the Management to consider him for the post. However, it appears

that respondent-employee's name was not considered and another candidate came to be appointed in place of respondent-employee. Respondent-employee, therefore, raised challenge before the School Tribunal with a prayer to issue directions to the Management in respect of reinstatement in service. The School Tribunal, after considering rival contentions, proceeded to allow the appeal presented by respondent-employee and directed his reinstatement in service with full back wages.

4. Shri Sakolkar, learned Counsel appearing for the petitioners, has vehemently contended that initial appointment of respondent-employee was limited for a period of one academic year and at the end of academic year, his service stood terminated. The approval, that was accorded by the Education Officer for appointment of respondent, was also for one academic year and subject to condition that the Management shall fill in the post earmarked for reserved category candidate after following due procedure. It is contended that after observing due procedure, appointment has been made in place of respondent-employee. Apart from this, it is contended that respondent-employee has no right to the post and as such, cannot seek reinstatement in service.

5. It has been urged on behalf of respondent-employee that the post filled in by the Management was earmarked for Scheduled Tribe category candidate and at the relevant time, as candidate belonging to specified category was not available, as such, respondent-employee came to be inducted in service, who belongs to VJNT category. It is contended that respondent-employee tendered application thereafter, but was not selected. Placing reliance on Rule 9(9)(a) of Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, it is contended that it was not open for the Management to issue appointment order on year to year basis. The appointment to be made, which is within contemplation of Rule 9(9)(a) of the Rules, shall be treated to be regular one. It has also been contended that the Education Officer did not accord approval to the candidate appointed to fill in the vacancy occupied by respondent-employee, as the candidate, who was inducted by the Management, did not belong to required reserved category and also did not fulfil the eligibility criteria. It is the contention of respondent-employee that the appointment made within contemplation of Rule 9(9)(a) shall have to be treated regular one and it was not open for the Management to dispense with the services of respondent-employee.

6. Rule 9(9)(a) is quoted here under for ready reference.

9(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 a year to year basis by a candidate not belonging to the Backward Classes.

7. Reliance is placed on the judgment in the matter of Kankavali Shikshan

Sanstha and Others Vs. M.R. Gavali and Others, . The Apex Court, in the reported judgment, has observed that, in the even candidate belonging to Scheduled Tribe, for whom the vacancy was reserved, not being available, candidate belonging to Other Backward Class is entitled for regular appointment on said post in terms of provisions of Rule 9(9)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981. The Apex Court placed reliance on the earlier judgment in the matter of Shakuntala Ganpatsa Shirbhate Vs. Industrial Weaving Co-operative Society and others, . The Apex Court has observed in the aforesaid judgment that:

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

8. Reliance is also placed on the judgment of this Court in the case of Jeles Education Society and The Head Master, Mahatma Gandhi Vidya Mandir Vs. Shri R.T. Bhitale and The Presiding Officer, School Tribunal, . In para 8 of the judgment, this Court has observed that the Management of any school is entitled to appoint a person who belongs to backward classes, if suitable candidate is not available from a particular category for which the post is reserved. However, such appointment is not expected to be temporary as held in Shakuntala's (supra) case. The stipulation, that the post could be filled temporary on a year to year basis, does not apply to candidates who belonged to backward classes and who fill the post belonging to the reserved category, although they do not belong to that particular reserved category.

9. Similar view has been expressed by this Court in the matter of (The Maharashtra Shikshan Sanstha and Anr. v. The Presiding Officer, School Tribunal and Ors.) reported in 2007 (1) Bom.C.R. 688(N.B.) : 2007(2) All.M.R. 269.

10. In the instant matter, respondent-employee is belonging to VJNT category and was appointed to fill in the vacancy earmarked for Scheduled Tribe category candidate. Initial appointment of respondent-employee is not, therefore, permissible on year to year basis and shall be construed as a regular appointment. Considering the law laid down by the Apex Court, which has been followed by this Court in the authorities cited above, the view adopted by the Presiding Officer, School Tribunal while allowing the appeal, need not be interfered with.

11. It is an admitted position that respondent-employee is out of employment on

completion of initial period of appointment. It is also admitted that respondent-employee has not rendered services to the Institution. The Institution, therefore, cannot be burdened with the salary of respondent-employee. It also transpires that during the intervening period, the Management had to engage another employee to carry out functions of respondent-employee. It has also been brought to my notice that during the intervening period, respondent-employee has secured employment, though on temporary basis, with other educational institution and copy of the order of approval, in that regard, is tendered along with affidavit tendered on behalf of petitioner-Management. It transpires that the Education Officer has accorded approval to the appointment of respondent-employee in one Renuka Devi Higher Secondary School. Name of respondent-employee also appears in the list of employees employed by the said institution. Taking into consideration this aspect, it does appear that during the intervening period, respondent-employee was gainfully employed. The order passed by the School Tribunal directing petitioner-Management to pay back wages to the respondent-employee, therefore, will have to be quashed and set aside.

12. In the result, writ petition is partly allowed. The order passed by School Tribunal on 29.2.1996 in Appeal No. 147 of 1993 in respect of payment of back wages to respondent-employee stands quashed and set aside. Rest of the order passed by School Tribunal is maintained.

13. Rule is accordingly made partly absolute. There shall be no order as to costs.