
(1998) 11 BOM CK 0017
In the Bombay High Court
Case No : W. P. No. 144 of 1994

Smita Subhash Bhagat

APPELLANT

Vs

Director of Education, Goa and others

RESPONDENT

Date of Decision : 05-11-1998

Acts Referred:

Goa, Daman and Diu School Education Act, 1984 — Section 20

Citation : (1998) 11 BOM CK 0017

Hon'ble Judges : R. K. Batta, J;J. A. Patil, J

Bench : Division Bench

Advocate : D. B. Ambekar, for the Appellant; H. R. Bharne, Government Advocate and S. N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

R. K. Batta, J.—The petitioner passed M.Com. in Second Class from Goa University in April, 1991 and was appointed as Teacher Grade 1 in respondent no. 2 Holy Trinity Higher Secondary School on purely temporary basis in the leave vacancy of one Mrs. Valsamma Mathai with effect from 16-9-1991 to 14-12-1991. Subsequently, pursuant to the advertisement issued by the School, the petitioner appeared for interview for the post of Teacher Grade I and vide Order dated 11-12-1992 she was appointed with effect from 9-11-1992 purely on temporary basis till the last working day of the academic year 1993-1994, or till the case of Mrs. Valsamma Mathai is finalised. The appointment of Mrs. Valsamma Mathai who had been earlier appointed to the said post was not approved by respondent no. 1 Director of Education as she did not possess minimum qualification required for the post, as a result of which her services were ordered to be terminated with effect from June, 1989. The said Mrs. Valsamma Mathai filed Writ Petition No. 249/90 challenging her termination. The Writ Petition was admitted, but no interim relief was granted. For the academic year 1989-90 and partly for the academic year 1990-91 one Yeshwant Sawant was appointed as Teacher Grade II to succeed Mrs. Valsamma Mathai. In the

meantime, vide Order dated 24-2-1992, issued u/s 20 of the Goa, Daman and Diu School Education Act, 1984 the Management of the School was taken over by the Government for a period of three years. Initially Shri Angelo Pimenta, Principal, Government Higher Secondary School, Baina. Goa was appointed as Authorised Officer on behalf of respondent no. 1 to discharge the duties under the Act and the Rules, but subsequently Shri P. D. Kolambkar, Assistant Director of Education took over the charge from Shri Angelo Pimenta with effect from 18-2-1994. It is in these circumstances that the appointment Order dated 11-12-1992 appointing the petitioner purely on temporary basis was made. By communication dated 10-4-1993, the respondent no. 3, Principal of the School, informed the petitioner that the matter of her appointment was referred to the Authorised Officer who had informed that the appointment of the petitioner would cease from the last working day i.e. from 17-4-1993. The petitioner made representation dated 14-4-1993.

2. Subsequently vide Order dated 9-6-1993, the petitioner was once again appointed purely on temporary basis to the post of Teacher, Grade I with effect from 7-6-1993 till the last working day of the academic year 1993-94 or disposal of the Writ Petition of Mrs. Valsamma Mathai whichever is earlier. In pursuance of the said communication, the petitioner reported for duty to respondent no. 3 who asked her to produce medical certificate for employment since she was in advance stage of pregnancy. She produced certificate dated 15-6-1993 from Dr. Deepak D. Lawande, but was not permitted to join duty and the petitioner made a representation on 17-6-1993.

3. In the meantime, an advertisement was issued in Navhind Times dated 13-7-1993, advertising the said post of Teacher Grade 1 for which interview was held on 20th July, 1993. The petitioner participated in this interview, but one Miss Derina Dourado was selected and appointed to the post of Teacher, Grade I who is respondent no. 4 in this petition. The said respondent no. 4 joined duty on 26-7-1993. The petitioner represented to respondent no. 3 on 30-7-1993, as well as to the Minister for Education. Ultimately, the petitioner was appointed with effect from 1-2-1994 and her appointment was once again made purely on temporary basis till the last working day of the academic year 1993-1994, or till the disposal of the Writ Petition of Mrs. Valsamma Mathai whichever is earlier. The petitioner joined duty on 7-2-1994 and after joining filed this Writ Petition on the grounds that her initial appointment should have been on regular basis on probation in accordance with Rule 83 of the Goa, Daman and Diu School Education Rules 1986 (hereinafter called the 1986 Rules) and that the Memorandum dated 10-4-1993, discontinuing her services as well as subsequent letter of fresh appointment dated 1-2-1994, were liable to be quashed. According to the petitioner, her appointment had to continue till the decision in the Writ Petition filed by Mrs. Valsamma Mathai and the same could not be made under the Act or the Rules, restricted to the end of vacation each time. The petitioner therefore seeks directions of this Court to treat her appointment to the post of Teacher Grade 1 from 9-2-1992 as regular appointment and that she be paid

salary for the period of artificial breaks resorted to by the respondents. It may be mentioned here that the petitioner started working in Pope John XIII Higher Secondary School at Quepem as Teacher Grade I on full time basis with effect from 20th June, 1995.

4. Learned Advocate Shri Ambekar, appearing on behalf of the petitioner, submitted before us that the petitioner does not press her claim for regular appointment as such, but her claim in this petition is restricted now to the wages for the period during which artificial breaks were given by the respondents since now the petitioner is already working on full time basis in another School. The main submission of learned Advocate Shri Ambekar is that under the Rules no temporary appointment can be made and all appointments have to be made on probation in accordance with Rule 83 of the 1986 Rules. It is true that Rule 83 provides that every employee shall, on initial appointment be on probation, for a period of two years which may be extended by appointing authority by another year and the services of the employee may be terminated with one month's notice without holding any inquiry during the period of probation if the work and conduct of the employee during the said period is not, in the opinion of the appointing authority, satisfactory. It is pertinent to note that the question of appointing a person on probation would arise only when an appointment is made on regular basis against a clear vacancy and the purpose of appointing a person on probation is to ascertain his suitability against a clear vacancy which will be available in the event of completion of probation. In the case under consideration no clear vacancy was available since Mrs. Valsamma Mathai who was earlier holding this post had filed a Writ Petition in the High Court which had been admitted and Rule had been issued. This Writ Petition was dismissed only on 19th July, 1995 and it would be only thereafter that a clear and regular vacancy would be available for appointment on regular basis against the said post. Even otherwise, sub-rule (3) of Rule 83 of the said Rules specifically provides that nothing in this Rule shall apply to an employee who has been appointed to fill a temporary vacancy or any vacancy for a limited period. Thus, there is a clear provision that appointments can be made to fill temporary vacancy or any vacancy for a limited period in which case there is no need to make any appointment on probation.

5. Learned Advocate Shri Ambekar had relied upon number of rulings in support of his submission that the appointment of the petitioner was required to be made on regular basis in accordance with Rule 83 of the said Rules and the respondents have illegally given artificial breaks in her appointment so as to deprive her of the salary for the period of vacation and even thereafter by wrongfully not allowing the petitioner to join duty even though the medical certificate had been produced by the petitioner.

6. The rulings upon which reliance has been placed by learned Advocate for the petitioner in support of his submissions are :-

National Education Society's High School and Junior College vs. Mrs. Lulommol

Monachary. 1987 (2) BCR 521. Mrs. Geeta Bhaskar Pendse vs. The Principal, Ayurved College, Sion and others, 1990 12 BCR 586 . Rattan Lal and Others Vs. State of Haryana and Others, , and Rajbinder Singh vs. State of Punjab and others, 1988 (Supp) SCC 428. The first two rulings of this Court deal with situations where permanent vacancies were available and the appointments were made against permanent vacancies. In the case under consideration, we have already pointed out that no clear regular vacancy was available due to the Writ Petition filed by Mrs. Valsamma Mathai which had been admitted by this Court. Therefore, the rulings of this Court, upon which reliance has been placed would not be attracted to the facts and circumstances of the case under consideration. The appointment of the petitioner could thus be only on temporary basis and it could obviously not be made on probation as contended by learned Advocate Shri Ambekar. The rulings of the Apex Court upon which reliance has been placed deal with the situations where, as a matter of normal practice, appointments of Teachers were being made on ad hoc basis/temporary basis at the commencement of the academic year which would stand terminated before the next summer vacation, as a result of which the appointees were deprived of the salary of summer vacation. It was on account of this practice that the Apex Court had directed that the appointments could not be made in the circumstances on temporary basis till the end of vacation so as to deprive the appointees of the salary of summer vacation. These rulings would also not be attracted to the facts and circumstances of the case before us since as we have already pointed out no clear or regular vacancy was available, as a result of which no appointment on probation under Rule 83(1) could have been made. Therefore, we do not find any merit in this challenge of the petitioner.

7. Even otherwise, we do not find that this is a fit case for exercising our jurisdiction. The petitioner accepted the appointment on purely temporary basis vide Order dated 11-12-1992, without any demur which was purely on temporary basis till the last working day of the academic year 1991-1992, or till the case of Mrs. Valsamma Mathai was finalised. When her services were discontinued vide Order dated 10-4-1993. she never approached this Court claiming that her appointment was made under Rule 83(1). but on the contrary made a representation in pursuance of which she was again given appointment vide Order dated 9-6-1993, purely on temporary basis till the last working day of the academic year 1993-94 or disposal of the Writ Petition of Smt. Valsamma Mathai whichever is earlier. The petitioner reported to the Principal in view of the said letter, but the Principal told her to produce medical certificate of fitness since she was in advance stage of pregnancy. The petitioner did produce a certificate dated 15-6-1993, from one Dr. Deepak Lawande, but that certificate did not certify that the petitioner was fit to discharge her duties even in spite of her advance stage of pregnancy. The certificate only stated that the petitioner is under ante natal care and is fit for teacher's job only which certificate was rightly not accepted by the Principal. The post was accordingly advertised and interview was held on 20th July, 1993. One Miss Derina Dourado was selected

and appointed as Teacher Grade I and she joined duty on 26-7-1993. The petitioner neither approached this Court when the post was advertised nor after the appointment of Miss Derina Dourado, but made representation to the respondents including the Minister for Education and it appears, that on the intervention of Minister for Education that a post was created in order to accommodate the petitioner since no post existed at that time against which she could be appointed. The order of creation of additional post for Teacher Grade I on temporary basis till academic year 1994 issued by P.D. Kolambkar, Asstt. Director of Education is at page 113 of the record. In pursuance of creation of this additional post, the petitioner was once again appointed vide Order dated 1-2-1994 purely on temporary basis till the last working day of the academic year 1993-94 or till the disposal of the Writ Petition of Mrs. Valsamma Mathai, whichever is earlier. The petitioner accepted this appointment and then filed this petition which shows that the petitioner wanted to have some foothold first and then only resorted to the remedy of Writ Petition which smacks of lack of bona fides on her part in approaching this Court. We have already pointed out that the petitioner accepted not only the first appointment vide Order dated 11-12-1992, but also appointment vide Order dated 1-2-1994 knowing fully well that the appointment was only upto the end of the concerned academic year without any demur. Even though no post was existing, additional post was created to accommodate the petitioner. Even then the petitioner approaches this Court in the year 1994 after accepting appointment under Order dated 1-2-1994 claiming that her first appointment vide Order dated 11-12-1992, should have been on regular basis. The petitioner is certainly guilty of laches in seeking redressal of her grievances and, as such, we are not inclined to grant any relief to the petitioner under the circumstances. There will be no question of applicability of section 73(4) of the 1986 Rules to extend the rule of deemed approval since the approval in this case was only for the purpose of temporary appointment in a vacancy which was not clear vacancy. The rulings on deemed approval reported in Vithoba V. Bagali and others vs. The Director of Education and another, 1996 (1) GLT 95 and Shri Anand A. Kanolkar vs. Director of Education. 1996 (1) Goa LT 281, will therefore not be attracted to the facts and circumstances of the case nor the same can be applied to the case under consideration.

8. For the aforesaid reasons, we do not find any merit in this petition and the petition is hereby dismissed with no order as to costs. Rule stands discharged accordingly.