

(2016) 06 BOM CK 0153
In the Bombay High Court
Case No : Writ Petition No. 6606 of 2015

Sonal Govardhan Tiple

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 — Section 5

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

Citation : (2016) 5 MhLJ 656

Hon'ble Judges : B.P. Dharmadhikari and Kum. I.K. Jain, JJ.

Bench : Division Bench

Advocate : Shri Anand Parchure, Advocate, for the Petitioner; Smt. P.D. Rane, AGP, for the Respondent Nos. 1 to 3; Shri Anand Parchure, Advocate, for the Petitioner; Smt. P.D. Rane, AGP, for the Respondent Nos. 1 to 3; Shri Anand Parchure, Advocate, for the Petition

Final Decision : Disposed Off

Judgement

B. P. Dharmadhikari, J.(Oral)—Heard Shri Anand Parchure, learned Counsel for the petitioners and Ms. P. Rane, Ms. A.R. Kulkarni and Shri S.B. Bissa, learned A.G.Ps for respondents.

2. Petitioners are from Yavatmal District and employees of various private management. They have been given employment as Shikshan Sevaks up to June, 2014. Petitioners in Writ Petition No.6612 of 2015 did file a Pursis St. No. 6425 of 2016 to withdraw the petition but later on has chosen to press their challenge.

3. Petitioners question the orders dated 18.11.2015, 20.11.2015 and 26.11.2015 passed by respondent no.3-Education Officer cancelling the approval given to their appointments earlier.

4. Shri Parchure, learned Counsel invites our attention to the impugned orders to

show that the reason for cancellation is - (1) gap of less than 15 days between the date of publication of advertisement and date of interview and (2) non absorption of surplus teachers. He contends that petitioners cannot be blamed for any of these lacunae. He further argues that all petitioners except in Writ Petition Nos. 165 and 232 of 2016 were given approval initially and that approval has been cancelled by the impugned orders. The orders do not show proper application of mind.

5. Learned A.G.Ps., appearing for respondents are relying upon the reply affidavit filed by respondent nos. 2 and 3 in the matter. They point out that the terms and conditions stipulated in the communication dated 13.06.2014, were not satisfied, no steps to absorb surplus teachers were taken; directly and hurriedly direct recruitment was resorted to. According to them, in this situation, employment provided is not in accordance with the mandate of Article 14 of the Constitution of India, and therefore, approval given earlier has been cancelled.

6. It is further pointed out that at the relevant time an officer from lower cadre was officiating as Education Officer, who misused his position and power. Appropriate departmental action has been initiated against him in the matter.

7. This Court has on 15.03.2016 passed the following order :

"Learned AGP is seeking time to file reply. Advocate Parchure, points out that before appointments required prior permission from Education Officer was obtained and then recruitment as per law has been undertaken. According to him, thereafter approval has been questioned on the ground that surplus teachers were available. During hearing, it has become clear that in a PIL this Court had directed respondent no.1 to make operational a website which can be used by surplus teachers as also management. Advocate Parchure submits that website was made operational some time in the year 2014.

In this situation, we direct respondents to file their reply pointing out (1) how the said website was used while granting permission to petitioner to proceed further with the recruitments & (2) the procedure followed while permitting the management to advertise the vacancy.

List after three weeks."

8. Shri Parchure, learned counsel submits that in PIL he is appointed as Amicus to assist the Court. The PIL was before this Court on 16.06.2016, and has been adjourned for one week.

9. In PIL, compliance with the directions issued to provide website where all vacancies, as also available surplus teacher can be correlated, is being looked into. Here, though the communication dated 13.06.2014 sent by the Deputy Secretary of State of Maharashtra to Commissioner (Education) stipulates that all surplus teachers must first be absorbed. According to the impugned order and also looking to the reply, such teachers have not been so absorbed. Perusal of the reply affidavit shows that according to respondent nos. 2 and 3, as per staff

approval for academic Session 2012-13, 1 assistant teacher was surplus and is not absorbed till date. For academic year 2013-14, there were 152 surplus teachers in Yavatmal Districts and out of 152 surplus teachers, 105 surplus teachers have been absorbed, while 67 are still waiting for absorption. Obviously there is some arithmetical or factual error somewhere.

10. Perusal of reply itself shows that on 09.05.2014, while seeking leave to fill in the vacancies, the Deputy Director had stated that there were no surplus teachers available to teach English, Maths and Science in Yavatmal District. Permission given on 13.06.2014 is in the light of this communication.

11. In the impugned order, there is no specific observation that the surplus teachers to teach subjects for which petitioners have been appointed as Shikshan Sevaks were/are available.

12. This Court has found that for absorption of surplus teachers, there is no question of maintaining any District wise list. A surplus teacher is paid his salary through public revenue and he is getting it without work. As such he is, under law, obliged to report at the place where ever the work is available in the State of Maharashtra. The direction given or the impugned order does not point out whether in State of Maharashtra, surplus teachers for subjects English and Maths are not available. In PIL, this issue is also involved.

13. Here taking over all view of the matter we find that prima facie petitioners cannot be blamed for the state of affairs. They have responded to public advertisement, participated in the selection process and were selected. Thereafter they have started working. Though by the impugned order, approval given to them has been cancelled, their management and petitioners are before this Court. Shri Parchure, learned counsel submits that in this situation, even in absence of any interim orders of this Court, management have permitted respective shikshan sevaks to work. We accept this position.

14. It is, therefore, apparent that the situation has been deliberately created by the responsible officers working with respondent no.1 as also respondent nos. 2 and 3. In Public Interest Litigation, a statement was made that website would become operational from March, 2015, but till date no such website has been prepared. In the result, the officers permit recruitment to be made and the Managements recruit the new employees. Public money continues to be spent on paying salary to the surplus teachers who are happy to get it without any work.

15. Any Teacher's organisation or surplus teachers have no reason to complain. May be few of them are working elsewhere and earning more. The persons like the petitioners who procure employment are given approval and thereafter it is being recalled. This is second or third time that such controversy is placed before us with same defence. We, therefore, hold the officers of respondent nos.1, 2 and 3 responsible for loss of public revenue.

16. The impugned order nowhere expressly observes that, for teaching those

subjects for which the respective petitioners have been given approval and permitted to work surplus teachers are available. It was obligatory on part of respondent no.3 to at least bring on record the fact that surplus teachers to fill in those vacancies were always available.

17. Our attention is drawn to the fact that, in Writ Petition Nos.165 of 2016 and 232 of 2016, the petitioners have not been given initial approval and hence, their prayer is to direct the Education Officer to consider the proposals forwarded by their Managements. In Writ Petition Nos. 6611 and 6620 of 2015, the salary only for one month has been paid to the concerned petitioners. In rest of the petitions no salary whatsoever has been paid i.e from the date of employment till the date those petitioners are working without any salary.

18. We, in this situation, quash and set aside the impugned orders. We direct respondent no.2 to hold proper enquiry into the matter to find out whether the petitioners and/or their Managements have acted in collusion with the concerned Education Officer against whom action has been initiated by respondent no.1. The respondent no.2 shall also find out whether the surplus teachers were available for filling in the vacancies which are occupied by the petitioners. This exercise shall be completed within a period of four weeks from today.

19. As the petitioners are continued in service, hence, we permit them to continue accordingly. We direct the respondents to arrange to pay their salary of three months immediately and in any case, within a period of one month from today.

20. Respondent no.2 shall at the end of enquiry pass suitable orders about grant or rejection of approval to the employment of all the petitioners including the petitioners in Writ Petition Nos. 165 of 2016 and 232 of 2016. The further continuation of the petitioners in service shall depend upon the said decision. Contingent upon the said approval, we also grant the petitioners/employees liberty to claim their salary from their respective Managements. If approval is granted, the Management shall be free to claim reimbursement from the Government. If the approval is not granted, the salary shall not be reimbursed.

21. We also direct the respondents that hereinafter no 'no objection' for recruitment or permission to effect direct recruitment shall be granted except with express certification by the Deputy Director of Education of concerned division stating that no surplus teachers to teach the concerned subjects are available for absorption in State. This order shall be circulated by the respondent no.1 to all its Deputy Directors as also to all its Education Officers and also to all its Managements within a period of 15 days from today.

22. With these directions, we dispose of all these petitions. No costs.