
(2014) 02 BOM CK 0330
In the Bombay High Court
Case No : Writ Petition No. 416 of 2013

Sunil	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Citation : (2014) MCR 692

Hon'ble Judges : Mohit S. Shah, CJ. and N.W. Sambre, J.

Bench : Division Bench

Advocate : Shri R.J. Godbole, Advocate, for the Petitioner; Shri K.G. Patil, AGP, for the Respondent Nos. 1 & 2; Shri R.M. Giri, Advocate h/f Shri A.Z. Zaidi, Advocates, for the Respondent Nos. 3 & 4

Final Decision : Allowed

Judgement

Mohit S. Shah, C.J. (Oral) - Heard learned counsel for the petitioner, learned AGP for the respondent nos.1 & 2 and learned counsel for the respondent nos.3 & 4.

2. Rule. Rule made returnable forthwith and taken up for final disposal with the consent of learned counsel for the parties.

3. In this writ petition under Article 226 of the Constitution of India, the petitioner challenges the rejection of proposal for grant of approval to his services, by the impugned order dated 7.9.2012 passed by the respondent no.2 - Education Officer (Secondary), Zilla Parishad, Ahmednagar.

4. The petitioner was appointed as an Assistant Teacher in New English School, Mhalas Pimpagaon Tq.Newasa (KH) Dist.Ahmednagar with effect from 13.06.2008 on probation for a period of two years. The post was reserved for a scheduled tribe candidate, but the petitioner does not belong to scheduled tribe category. The petitioner does belong to OBC category. The petitioner's services came to be terminated on 06.02.2012. The petitioner challenged his termination before the School Tribunal and the School Tribunal, Solapur, vide judgment and order dated 29.06.2012 allowed the petitioner's appeal and directed the school

management to reinstate him as Assistant Teacher with continuity of service and full back wages from the date of his termination till reinstatement. The school management complied with the order dated 29.06.2012 of the School Tribunal, reinstated him in service and requested the respondent no.2 - Education Officer (Secondary), Zilla Parishad, Ahmednagar, to grant approval to the petitioner's appointment. However, the Education Officer again vide order dated 07.09.2012 rejected the application for approval on the ground that the post is reserved for a scheduled tribe candidate.

5. The petitioner has, therefore, challenged the aforesaid order dated 07.09.2012 of the Education Officer (Secondary), Zilla Parishad, Ahmednagar, at Exhibit A in this writ petition.

6. Learned counsel for the petitioner has invited our attention to following finding given by the Tribunal in the order dated 29.06.2012 :-

"9 The appellant has produced on record the appointment order for the probation period from 13.6.2008 to 13.6.2010. IT is to be noted here that when a candidate from reserved category is not available, in that case candidate from other category can be appointed on yearly basis, however, in the present case, the management has appointed the appellant for a period of 2 years, his appointment is for non-availability of the candidate from S.T. category, the appellant belongs to O.B.C. category. The appellant came to be terminated on 6.2.2012, it means after the completion of first 2 years as contended by the appellant, he was again appointed as Asst. Teacher in response to the advertisement dated 24.4.2010. The advertisement produced at Exh.17 shows that they were issued every year from 21.5.2004 up to 14.5.2009. Despite these advertisements the R/M has not been able to appoint the candidate from S.T. category, therefore, the appellant being a candidate from O.B.C. category, he is entitled for the said appointment and, therefore, the appointment of the appellant is not illegal, hence, I answer my findings to point No.1 in the affirmative."

7. Learned counsel for the petitioner submits that in view of above factual background and Rule 9(9)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, the petitioner is entitled to continue in service. The said Rule 9(9)(a) provides as under:-

" 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 ya candidate not belonging to the Backward Classes."

8. Learned counsel for the petitioner also relies upon following two judgments of this Court:-

1. Arti Vithalrao Warkhede v. Education Officer (Secondary) & others. (Maharashtra Education Cases, 191)

2. D.G. Ruparel College v. State of Maharashtra & others. (Maharashtra Education Cases, 1741)

9. In the aforesaid cases, this Court has applied the provisions of Rule 9(9)(a) and held that when a vacancy is reserved for a Backward Class Candidate belonging to a particular category and such a candidate of that Backward Class is not available, then the employer school is obliged to appoint a Backward Class Candidate belonging to any other recognised Backward Class category in the said post, and by virtue of Rule 9(9), that candidate shall be entitled to be regularly appointed on the said post.

10. In view of the aforesaid decisions, it is clear that the petitioner's case is squarely covered by the decisions in his favour. In the case of D.G. Ruparel College (supra), this Court has relied upon decision of the Supreme Court in Shakuntala Ganpatrao Shirbhate v. Industrial Weaving Co-op. Society & others (AIR 1994 SC 36). The case is squarely covered in favour of the petitioner. We have, therefore, no hesitation in allowing this writ petition.

11. We accordingly allow this writ petition, quash and set aside the impugned order dated 07.09.2012 passed by the respondent no.2 - Education Officer (Secondary), Zilla Parishad, Ahmednagar, and direct the said respondent to follow the provisions of Rule 9(9)(a) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and to grant approval to the petitioner's appointment on the basis of the said Rule, as applied by this Court in the aforesaid decisions. It is further clarified that the approval shall be granted with effect from the date of the petitioner's initial appointment i.e. 13.06.2008.

12. Rule is made absolute accordingly with no order as to costs.