

(2016) 07 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 7136 of 2015

Syed Asad s/o. Syed Yusuf

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act,
1977 — Section 5

Citation : (2016) 6 BCR 544 : (2016) 3 LLJ 547

Hon'ble Judges : Mr. S.S. Shinde and Mr. Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. Rahul P. Dhase, Advocate, for the Appellant; Mr. S.D. Kaldete, AGP, Mr. S.V. Deshmukh, Advocate, Mr. S.M. Kulkarni, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Mr. S.S. Shinde, J.—Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. The background facts leading for filing the Writ Petition are as under:

It is the case of the petitioner that the petitioner filed Writ Petition No.6236/2013 (Syed Asad s/o. Syed Yusuf v. The State of Maharashtra & others), seeking directions to the respondent herein to appoint him on compassionate ground in the place of his father, who died during the course of employment with respondent no.8 College. The said Writ Petition was disposed of by the High Court, thereby giving directions to the respondent management to appoint the petitioner in class-IV category on compassionate ground in the light of the scheme of the Department of Education dated 31.12.2002 and also in view of the directives issued by the Joint Director. Accordingly, the petitioner was appointed

in Class-IV category on compassionate ground on 18.02.2014. The petitioner's proposal seeking approval to his appointment on class-IV post was forwarded to the Education Officer by the respondent management. However, the said proposal was not decided by the Education Officer. Therefore, the petitioner filed Writ Petition No.10524/2014 (Syed Asad Syed Yusuf v. The State of Maharashtra) and in the said Writ Petition the High Court directed Education Officer to consider and decide the proposal on merits. Accordingly, on 26.05.2015 the Education Officer rejected the proposal on the ground that there are 90 surplus teachers and 82 Peons on the role of the Education Officer and in view of the Government Resolution dated 02.05.2012 unless total surplus employees are absorbed, no approval can be granted to the fresh appointment as per the directions given by the State Government. The another ground is given in the impugned communication is that no prior permission of the Education Officer was taken for advertising the post and also for the appointment of the petitioner.

4. The learned counsel appearing for the petitioner submits that in fact the management should have appointed the petitioner in respondent no.8 College, however, they have appointed the petitioner in another school run by the same management.

5. The learned AGP appearing for the respondent ? State relying upon the averments made in the affidavit-in-reply submits that the respondent management does not want to absorb surplus employees, and therefore, instead of appointing the petitioner in respondent no.8 College, the management chose to appoint him in some other school run by the management.

6. The learned counsel appearing for respondent nos.6 to 8 submits that already the proposal is submitted by the management to the Education Officer. The Education Officer has rejected the said proposal on unsustainable grounds. It is submitted that since there was vacancy in another school run by the same management, the petitioner is appointed in another school on the clear vacant post. It is submitted that the appointment of the petitioner is in pursuance of the directions issued by the High Court in Writ Petition Nos.6236/2013, and therefore, the appointment of the petitioner, which is made on clear vacant post in the school run by the respondent management is proper.

7. We have heard the learned counsel appearing for the petitioner, learned AGP appearing for respondent nos.1 to 4, learned counsel appearing for respondent no.5 and the learned counsel appearing for respondent nos. 6 to 8. With their able assistance, perused the pleadings in the Petition, grounds taken therein, replies filed by respective respondents. There are two grounds raised by the Education Officer for not according approval to the appointment of the petitioner on class-IV post in the school run by the respondent management. Firstly, no prior permission was taken for advertising the post on which the petitioner is appointed. In that respect, as it is clear that the Division Bench of the Bombay High Court Bench at Aurangabad in Writ Petition No.6236/2013 (supra) directed the respondent management to give appointment to the petitioner in class-IV

category on compassionate ground in the light of the scheme of the Department of Education dated 31.12.2002 and the directives issued by the Joint Director within period of four weeks from disposal of the said Writ Petition. The Writ Petition was disposed of on 29.01.2014 and the petitioner was appointed on 18.02.2014. Therefore, the ground that no prior permission was taken by the management or advertisement cannot hold good. Secondly, an appointment on the compassionate ground is given so as to give immediate financial aid/ assistance to the family of the deceased employee, who is facing financial crunch/ crisis. Therefore, in the facts of the present case, as already observed, the High Court after considering the hardship faced by the petitioner and keeping in view the relevant scheme laid down in the Government Resolution dated 31.12.2002 and the directives issued by the Joint Director, directed the respondent management to appoint the petitioner on class-IV post. Therefore, in the peculiar facts of this case, the ban imposed by the State Government on fresh recruitment on the ground that there are surplus employees on the role of the State Government, cannot be applied.

8. However, we find considerable force in the arguments of the learned AGP that the petitioner ought to have been appointed on the vacancy available in respondent no.8 College since the petitioner's father was working in the said college, and he died during the course of employment. However, now the petitioner is already appointed on class-IV post in some other school run by the same management. Therefore, the respondent State Government and the Education Officer can strictly apply the said Government Resolution and also the provisions of Section 5 of the Maharashtra Employees of Private Schools (Condition of Service) Regulation Act and Rules, in case the respondent management wishes to fill up the teaching or nonteaching vacant post henceforth.

9. In the light of discussion in the foregoing paragraphs, the impugned communication dated 26.05.2015 is quashed and set aside. The respondents and in particular respondent no.5 is directed to reconsider the proposal for approval to the appointment of the petitioner as Class-IV employee afresh without raising the grounds, which are raised in the impugned communication and take decision on the said proposal, as expeditiously as possible, however, within four weeks from receiving copy of the order passed by this Court. However, we make it clear that we have not entered into the exercise of finding out whether the School where the petitioner has been appointed is being run on the grant-in-aid basis or unaided basis. It is needless to observe that in case the post is on unaided basis, once the approval is granted by the Education Officer, the respondent management will be obliged to pay salary and all other benefits available for the said post, in view of the provisions of the Maharashtra Employees of Private Schools [Service of Condition] Regulation Act and the Rules.

10. The Petition is partly allowed. Rule is made absolute partly in the above terms. No costs.