
(2015) 05 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 5174 of 2004

Vanvaibhav Shikshan Mandal and Others

APPELLANT

Vs

Nasrat Farid Sheikh and Others

RESPONDENT

Date of Decision : 05-05-2015

Acts Referred:

Citation : (2015) 05 BOM CK 0009

Hon'ble Judges : Z.A. Haq, J

Bench : Single Bench

Advocate : Maheshwari, Advocate h/f. A. Parchure, for the Appellant; A.C. Dharmadhikari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Z.A. Haq, J.

1. Heard Shri Maheshwari, the learned Advocate holding for Shri Anand Parchure, Advocate for the petitioners, Shri A.C. Dharmadhikari, the learned Advocate for the respondent No. 1 and Shri A.K. Bangadkar, the learned Assistant Government Pleader for the respondent No. 2.

2. The petition is filed by the management-employer challenging the order passed by the School Tribunal, allowing the appeal filed by the respondent No. 1-employee, setting aside the termination order and directing the petitioner-management to reinstate the respondent No. 1-employee with continuity of service and arrears of salary.

3. The respondent No. 1-employee filed the appeal before the Tribunal contending that he was appointed on 01-10-1993 as Laboratory Attendant, the appointment being in the clear and permanent vacancy. The respondent No. 1-employee contended that by the order dated 01-07-1994 he was appointed on probation for the period of two years and this appointment was also in clear and permanent vacancy and it was approved by the Education Officer by the communication dated 06-03-1996. According to the respondent No. 1-employee,

the school started receiving grants from the State exchequer from 26-06-1995. The respondent No. 1-employee contended that the management had issued an order dated 30-07-1997 on 17-01-1998 treating that the appointment of the respondent No. 1-employee was till 30-04-1998 and after receiving this appointment order, he had made representation to the management demanding the copy of the appointment order dated 01-10-1993 and the copies of the service record from 1995-1996 onwards, however, the management had not given any reply in the matter. The Head Master of the school issued a notice on 31-03-1998 terminating the services of the respondent No. 1-employee from 30-04-1998. The respondent No. 1-employee contended that he had put in more than two years of service in a clear and permanent post and his appointment was approved by the Education Officer and the termination of his services without giving any reason and without conducting enquiry, was illegal and unsustainable in law.

4. The petitioners had filed their reply opposing the claim of the respondent No. 1-employee. The petitioners denied the contention of the respondent No. 1-employee that he was appointed in clear and permanent post on probation by the order dated 01-07-1994. According to the petitioners, the post in which the respondent No. 1-employee was appointed was reserved for "Scheduled Tribe" candidate. However, as the candidate from that category was not available, the respondent No. 1 was appointed on year to year basis. The petitioners contended that the Head Master of the school had committed interpolation in the appointment order on the basis of which the respondent No. 1 claimed that his appointment was on probation. The petitioners stated that the termination of services of the respondent No. 1 were proper as the appointment of the respondent No. 1 was till 30-04-1998.

5. The respondent No. 2-Education Officer filed reply stating that the communication dated 06-03-1996 showing that the appointment of the respondent No. 1 was approved for two years from 26-06-1995 was wrongly issued and therefore, it was modified and another communication was issued on 02-07-1998 to the effect that the appointment of the respondent No. 1 was approved for the period from 26-06-1996 till 30-04-1997. The Education Officer also contended that the post in which the respondent No. 1 was appointed was reserved for "Scheduled Tribe" candidate and the respondent No. 1 could not have been appointed in that post according to the roster point.

6. The Tribunal after considering the pleadings of the parties and the documents filed on the record, by the impugned order, allowed the appeal in terms of the order as stated earlier. The petitioners being aggrieved by the order passed by the School Tribunal has filed this writ petition.

7. After hearing the learned Advocates for the respective parties and examining the record of the writ petition, I find that the respondent No. 1 undisputedly worked in the school administered by the petitioner No. 1-society from 01-10-1993 till 30-04-1998. The petitioners have not been able to controvert the

claim of the respondent No. 1 that he was given the appointment order dated 01-07-1994 for the probation period. It is undisputed that the Education Officer, by the communication dated 06-03-1996, had granted approval to the appointment of the respondent No. 1, for the probation period. The submission made on behalf of the petitioners and the respondent No. 2-Education Officer that the decision of the Education Officer granting approval to the appointment of the respondent No. 1 on probation period was modified by the communication dated 02-07-1998, in my view, is inconsequential inasmuch as the above referred communication is subsequent to the issuance of the termination order. The services of the respondent No. 1 were terminated by the notice dated 31-03-1998 with effect from 30-04-1998. It cannot be accepted that the services of the respondent No. 1 were terminated in anticipation of the issuance of the communication dated 02-07-1998 modifying the order of approval to the appointment of the respondent No. 1.

8. The Tribunal has exhaustively considered the contention of the petitioners and the respondent No. 2-Education Officer on the point that the post in which the respondent No. 1 was appointed was reserved for "Scheduled Tribe" candidate. In paragraph Nos. 6 and 7 of the impugned order, the Tribunal has recorded the findings of fact that the management has not been able to substantiate that the appointment of the respondent No. 1 was made in the post reserved for the "Scheduled Tribe" candidate. It is recorded that the management has not produced the roster and any other documentary evidence to substantiate the above contention. The petitioners have not been able to show that the findings of fact recorded by the Tribunal suffer from any illegality or perversity. The appointment order dated 01-07-1994 does not show that the appointment of the respondent No. 1 was in the post reserved for "Scheduled Tribe" candidate. The notice issued by the Head Master of the School on 31-03-1998 terminating the services of the respondent No. 1 emphasised on the fact that the proceedings filed by the Clerk/Peon were pending before the School Tribunal and if the decision in those matters went against the management, then the services of the junior-most employees will have to be terminated. It is further stated in the above mentioned notice dated 31-03-1998 that if the decision of the Tribunal went in favour of the management, then the management would consider continuing the respondent No. 1. Though it is stated in the above mentioned communication that the appointment of the respondent No. 1 was temporary, till 30-04-1998 and in the post reserved for "Backward Class" candidate, the tenor of the above mentioned notice shows that the petitioners tried to create grounds for terminating the services of the respondent No. 1. I do not see any reason to interfere with the findings of fact recorded by the Tribunal.

9. The Tribunal has also exhaustively dealt with the point raised by the petitioners that the appointment of the respondent No. 1 was on year to year basis. The findings are recorded by the Tribunal in paragraph Nos. 9, 10 and 11 of the impugned order. The conclusions of the Tribunal that the point raised by the management in this regards is after thought, are based on proper

appreciation of the material on the record and it cannot be said that the findings of fact recorded by the Tribunal suffer from any patent illegality or irregularity which necessitates the interference by this Court in the extra ordinary writ jurisdiction.

10. This Court, by the order dated 21-12-2004, admitted the writ petition and rejected the prayer of the petitioners for interim order. The petitioners had filed Civil Application No. 1405 of 2005, again praying for interim order on which an order was passed on 09-08-2005 observing that the application was misconceived and the application was dismissed. This Court directed the management to send the bills regarding the salary of the respondent No. 1 to the Education Officer, who in turn was directed to take consequential steps in the matter. The respondent No. 1 came to be reinstated in the School.

11. In view of the above, I see no reason to interfere with the impugned order. The writ petition is dismissed. In the circumstances, the parties to bear their own costs.