

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.903 OF 1998

Smt.Maya Kissan Tayade,
Age-34 years, Occu-Nil,
R/o Dr.Ambedkar Nagar, Raver,
Dist.Jalgaon

PETITIONER

VERSUS

1. Chairman,
SardarVallub-bhai Patel Vidyalaya,
Parisar Shikshan Prasarak Mandal,
Ainpur, Tal.Raver, Dist.Jalgaon,
2. Education Officer (Secondary)
Zilla Parishad,
Jalgaon.
3. The Head Master,
Sardar Vallub-Bhai Vidyalaya,
Ainpur, Dist.Jalgaon

RESPONDENTS

Mr.M.M.Bhokarika, Advocate for the petitioner.
Mr.A.G.Talhar, Advocate for respondent Nos. 1 to 3.
Mrs.V.A.Shinde, AGP for respondent No.2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/08/2015

ORAL JUDGMENT :

1. This petition was Admitted by order dated 18/07/1998. No interim relief was granted to the petitioner while admitting this petition. She is, therefore, out of employment for the past 21 years.

2. Mr.Bhokarikar, learned Advocate for the petitioner contends that she had applied pursuant to an advertisement. She was appointed against a permanent vacant post on probation. Vide appointment order 02/01/1994, she joined the respondent on 15/01/1994. She was illegally terminated in June 1994 after 5 months of service.

3. The petitioner preferred an appeal before the School Tribunal, which was registered as Jalgaon Appeal No.51/1996 u/s 9 of the M.E.P.S.Act, 1977. By judgment and order dated 04/12/1997, the appeal was dismissed.

4. Mr.Bhokarikar strenuously submits that the respondent employer could not have appointed the petitioner only for the academic year 1993-94. She should be deemed to have been appointed on a permanent vacant post. She should be deemed to have been confirmed in employment by virtue of section 5(2) of the said Act. The termination of the petitioner in June 1994 is with oblique motives. She belongs to the Scheduled Cast Category and as per the roaster, she needs to be continued in employment. The employer has adopted unfair tricks to frustrate the rights of the petitioner.

5. He further submits that this Court in the matter of High School Education Society and another Vs. Presiding Officer, School Tribunal and another, 2005(2) BCR 773 and in the matter of Yogeshwar Vikas Sanstha and others Vs. Rajendra T. Shinde and another, 2008(1) BCR 297, has concluded that it is not open to the Management to circumvent the law by giving an appointment for less than 2 years in violation of Section 5(2) of the Act.

6. He, therefore, submits that the impugned order dated 04/12/1997 be quashed and set aside and the petitioner be reinstated in employment from June 1994 with continuity and full back wages.

7. Mr. Talhar, learned Advocate on behalf of the respondent / Management has supported the impugned judgment. He submits that the petitioner was engaged only for a short duration from 15/01/1994 till the end of the academic year 1993-94. The appointment order clearly indicates that she was temporarily engaged and was intimated that pursuant to the expiry of the period of engagement, she would be terminated without notice. She accepted the said order and on the condition of being engaged for a temporary period, has joined service.

8. He submits that she was neither selected for filling in a permanent vacant post, nor was she appointed on probation. He submits that a regular advertisement was published on 02/06/1994 after her tenure came to an end. The petitioner was never engaged in response to any advertisement.

9. I have considered the submissions of the learned Advocates and the cited reports.

10. I am in respectful agreement with the view taken by this Court in the matter of High School, Education (supra) and Yogeshwar Vikas Sanstha case (supra). In both these cases, the issue was as regards engagement as against a vacant post. It was held that the employee was appointed on probation and the termination was not stigmatic. The order of reinstatement with full back wages granted to the employee by the School Tribunal was quashed and set aside by this Court in the High School Education case (supra).

11. In the Yogeshwar Vikas Sanstha case (supra), the said employee was appointed as against a clear permanent vacancy. It was pointed out from the appointment order that she was engaged for a period of one year. This Court, therefore, concluded that the initial

period of 2 years as a “Probationer” cannot be done away with.

12. In the instant case, the petitioner was appointed for the remainder portion of the academic year 1993-94 from 15/01/1994 onwards. After about 5 months, she was terminated. Neither before the School Tribunal, nor before this Court has the petitioner established that she had applied pursuant to an advertisement indicating that the establishment desired to fill in a permanent vacancy. In fact, it is seen from the order of appointment that the petitioner had made an application dated 10/10/1993 and she was considered for a temporary engagement till the end of the academic year 1993-94 w.e.f. 15/01/1994.

13. In the light of the above, it is evident that the petitioner had not applied for employment pursuant to an advertisement. There is no evidence placed before the School Tribunal or before this Court to indicate the existence of an advertisement, a selection committee and the approval by the competent authority in the light of the post being vacant and sanctioned. In fact, the approval of the Education Officer placed on record indicates that the same has been granted only upto the end of the academic year 1993-94 for the few months, for which the petitioner was engaged.

14. As such, I do not find that the impugned judgment and order of the School Tribunal could be termed as perverse or erroneous. The impugned judgment does not call for an interference.

15. This petition, being devoid of merits, is dismissed. Rule is discharged.

(RAVINDRA V. GHUGE, J.)