

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 806 OF 2004

Sheikh Khamroddin s/o Mohoddin, Aged 35
years, Occupation Service, R/o C/o
Afzal Baban Lakhire, At & Po:
Bhadarpura, Tq. Kandhar, Dist. Nanded

Petitioner

V E R S U S

- 1 The State of Maharashtra [Through its
Secretary, Tribal Dev. Department,
Mantralaya, Mumbai-32]
- 2 The Commissioner of Tribal Development,
MS Nasik
- 3 The Additional Commissioner, Tribal
Development, Amravati
- 4 The Project Officer, Integrated Tribal
Development Project, Kinwat, District
Nanded
- 5 Kai. Ulhas Memorial Trust Kandhar
[through its Chairman] Bahadarpura,
Kandhar, District Nanded
- 6 The Headmaster, Sadguru Adiwasi Ashram
Shala, Bahadarpura, Kandhar, District
Nanded

Respondents

Mr. Ajinkya Kale, Advocate, holding for
Mr. S.B. Talekar, Advocate for the petitioner
Mr. S.D. Kaldate, AGP for respondent nos.1 to 4/State'
Mr.U.S. Panpatte, Advocate for respondent no.5 & 6

CORAM : A. V. NIRGUDE &

V. K. JADHAV, JJ.

DATE : 3rd September, 2015

ORAL JUDGMENT [PER A.V. NIRGUDE, J.] :

1. Heard the learned counsel for the parties.

2. ***The facts leading to this petition, are as under:-***

The petitioner, at the relevant time, was working as Hostel Superintendent in Tribal Ashram School in District Nanded. He was appointed on the said post after his selection. Soon after his appointment, his appointment was approved by the Tribal Development Department. In the mean time, the Project Officer/respondent no.4 withheld salary of the petitioner. The petitioner therefore filed Writ Petition No.1503 of 2003 for seeking direction to grant approval to his appointment and for releasing salary. The Court directed respondent no.4 to consider the proposal on its merits and to take a decision. Thereafter, the impugned order dated 25th November, 2003 was passed informing that the appointment of the petitioner cannot be approved because the petitioner did not possess educational qualification of D.Ed. This decision was based on Government Resolution dated 20th September, 2003 making qualification of D.Ed. necessary for the post of Hostel Superintendent. This Government Resolution is issued by the Tribal Development Department. It is said that since the

petitioner worked in Tribal Ashram School, this rule is applicable to his post. The petitioner pointed out that in case of Hostel Superintendent appointed in Ashram School run for non-tribal students, the condition of having D. Ed. qualification has been dropped by the Government Resolution dated 5th February, 2000. The minimum qualification for such post was Higher Secondary School. However, a person having education qualification of B.P.Ed., would be preferred. Fortunately, the petitioner though does not possess D.Ed. Qualification, is possessing B.A. B.P.Ed. qualification.

3. The reply filed by the State of Maharashtra contended that the Government Resolution of 5th February, 2000 is not applicable to the present case because the Government Resolution was applicable to the non-tribal Ashram School employees.

4. The question is whether there can be different rules for same kind of work ? This subject came before the Division Bench of this Court in case of **Sahebrao Karbhari Gunjal and others v. State of Maharashtra and others [2010 [2] Bom.C.R. 165]**. The Division Bench held that since there is no difference in duties allotted to Hostel Superintendents of different Ashram schools run either tribal or non-tribal students, the employees should be treated

equally. If different treatments are given to employees of these two different Ashram schools, it would amount to violation of Article 14 read with Article 31 [d] of the Constitution of India. The relevant paragraphs of above judgment are paragraph nos.9 and 16, which read as under:-

"9. All the activities pertaining to Ashram Schools were initially being looked after by the Education Department of the State of Maharashtra. Subsequently, Social Welfare Department came to be established for looking after these activities. In due course of time, the State thought it fit to have separate departments for the purpose of welfare of the tribals and therefore, after 10.3.1999, Social Welfare Department was carved out from the Education Department. Since then this department was known as VJNT/OBC/SBC Welfare Department [Special Welfare Department]. Subsequent thereto, Social Welfare Department was further bifurcated in Tribal Development Department and Social Welfare Department. The present petitioners are working in the Social Welfare Department. This Department is also called as Social Justice Department. As we have said in earlier paragraphs, these are the various departments run by the State Government with an aim and objective to promote the welfare of the tribals. Needless

to say that all these departments of the State have to be in tune while executing the policies of the State Government."

"16. Turning to the case on hand, they have given details in the amended petition pertaining to their qualification, appointment and their status as a permanent Hostel Superintendents. Such details are given in paragraph No.18-A of the petition. Orders of their confirmation on a particular date/s also have been annexed with the petition. There is no dispute regarding this aspect of the matter. From these details, it appears that the petitioners 1 to 3 are graduates and have also acquired Bachelors Degree in Physical Education. Petitioner No.4 is also graduate and has obtained B.Ed. Qualification."

The above quoted statement of law answers grievance of the petitioner. Therefore, the petition deserves to be allowed in terms of prayer clauses "A" and "E". No order as to costs.

Rule made absolute.

(V.K. JADHAV, J.)

(A.V. NIRGUDE, J.)

