

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2598 OF 2003

Mrs. Lata Pawar	..	Petitioner
vs.		
Dr. D. Y. Patil Educational Academy & Ors.	..	Respondents

Ms Varsha Palav for Petitioner.
Mr. K. S. Bapat with Mr. Neel Helekar for Respondent Nos. 1 and 2
Ms Vaishali Nimbalkar – AGP for Respondent No. 3.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 20 February 2015

Date of Pronouncing the Judgment : 25 February 2015

JUDGMENT :-

1] By this petition, the petitioner questions the order dated 21 November 2002 made by the School Tribunal dismissing her appeal against the termination of her services from the respondent no. 2 school on 26 March 2002.

2] The petitioner was appointed as an Assistant Teacher in the school on 7 June 1993 and thereafter promoted as Head Mistress on 2 July 1998. Some time in the year 1999, the petitioner was reverted from the post of Head Mistress to that of an Assistant Teacher. The petitioner instituted an appeal no. 106 of 1999 against her reversion, which was dismissed by the School Tribunal by order

dated 5 March 2001. Thereafter, by order dated 26 March 2002, the petitioner's services as an Assistant Teacher also came to be terminated.

3] The petitioner, initially instituted the writ petition no. 3253 of 2002 impugning the termination order dated 26 March 2002. On the ground that alternate remedy is available to the petitioner under the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act 1977 ("MEPS Act, 1977"), the petition was not entertained but the petitioner was granted a liberty to prefer such appeal. The petitioner accordingly instituted appeal no. 70 of 2002, which has since been dismissed by the School Tribunal vide impugned order dated 21 November 2002. Hence, the present petition.

4] The School Tribunal, in the impugned order has held that the respondent no. 2 school is a 'primary school'. The essential qualification for appointment as Assistant Teacher in such primary school is D.Ed. and not B.Ed. Since the petitioner never possessed such essential qualification, termination order dated 26 March 2002 cannot be faulted. The School Tribunal placed reliance upon the decision of the Full Bench of this Court in the case of *Jayashree Sunil Chavan vs. State of Maharashtra & Ors.*¹

1 2000 II CLR 415

5] Ms Varsha Palav, the learned counsel for the petitioner basically made two submissions in support of this petition:

(A) That respondent no. 2 school, which operated classes from Std. I to VII was not a 'primary school', but the same was a 'secondary school'. In respect of secondary schools, the training qualification essential is B.Ed and not D.Ed. Since the petitioner fulfilled such qualification, the School Tribunal erred in relying upon the decision in the case of *Jayashree Chavan* (supra) and denying relief to the petitioner;

(B) In the alternate, even assuming that the respondent no.2 school was a 'primary school', the petitioner was entitled to relief in terms of the government resolutions applicable to primary schools operating classes from Std. I to VII. The government resolutions, in such situation, provide that at least 25% of the posts must be filled from out of trained graduate teachers i.e. teachers having qualification of graduation and B.Ed. This issue was specifically raised before the School Tribunal, but has not been answered. In this regard, reliance was placed upon the government resolutions as well as the decision of the Division Bench of this Court in the case of *Kondiba s/o. Dattarao Mirashe vs. State of Maharashtra & Ors.*²

² 2003 (2) Mh.L.J. 432

6] Mr. Bapat, the learned counsel for the respondent nos. 1 and 2 submitted that the petitioner's appeal no. 70 of 2002 was not at all maintainable before the School Tribunal because the school in question was governed by the provisions of the Bombay Primary Education Act, 1947 and not the MEPS Act 1977. In this regard, Mr. Bapat placed reliance upon the decision of the Full Bench of this Court in the case of *Komal Rugwani vs. State of Maharashtra & Ors.*³

7] Without prejudice to the aforesaid, Mr. Bapat further submitted that the school in question was a 'primary school' and therefore qualification of D.Ed was a must, both in terms of the Rules as also the decision of this Court in the case of *Jayashree Chavan* (supra). Further, in appeal no. 106 of 1999 instituted by the petitioner to question her reversion from the post of Head Mistress, the petitioner had conceded to the position that the respondent no. 2 school was indeed a 'primary school'. In so far as the petitioner's second contention is concerned, the learned counsel submitted that there was no material on record which would establish that there was no compliance with the government resolutions providing for 25% of the posts being graduate trained teachers. Further, the learned counsel pointed out that the petitioner, from the date of her

3 2011 (4) Bom. C.R. 459

termination, has been working as Head Mistress in another school and this fact was suppressed by the petitioner at the time of instituting the present petition. For all these reasons, the learned counsel submitted that this petition may be dismissed.

8] The rival contentions now fall for determination.

9] At this stage, it is not possible to accept the petitioner's contention that the respondent no. 2 school is a 'secondary school' and not a 'primary school'. There is no material placed by the petitioner to establish the aforesaid position. The circumstance that the school in question, operates classes from Std. I to VII, by itself is not sufficient to conclude that the same is a 'secondary school'. Besides, the School Tribunal, in its judgment and order dated 5 March 2001 in appeal no. 106 of 1999 has virtually recorded a concession on behalf of the petitioner that the school in question was a 'primary school' and on the said basis the decision in the case of *Jayashree Chavan* (supra) was attracted to the facts and circumstances of the case. Primarily on the said basis, the petitioner's appeal no. 106 of 1999 questioning her reversion from the post of Head Mistress came to be rejected. The said decision was not even challenged by the petitioner. Accordingly, there is no merit in the first contention raised by and on behalf of the petitioner.

10] In so far as the second contention is concerned, reference shall have to be made to the government resolutions beginning from 14 November 1979. The same, at least *prima facie* appear to apply to primary schools which operate classes from Std. I to VII. This Court, in the case of *Kondiba Mirashe* (supra), having analysed the scope of such resolutions, has held that the scheme contained therein cannot be said to have been over ruled either by any subsequent government resolutions or for that matter the decision of this Court in the case of *Jayashree Chavan* (supra). The scheme, contemplates filling up of at least 25% of the posts in such schools by graduate trained teachers i.e. teachers who may have qualifications of graduation and B.Ed. and not D.Ed. The relevant observations in the case of *Kondiba Mirashe* (supra), read thus :

"7. We are then required to consider the status of the classes from 5th to 7th standards, inasmuch as, whether they are called as primary schools or secondary schools. These classes are permitted to be attached either to the primary schools and/or to the Secondary schools. If the existing primary school has classes from 1st to 4th standards, the classes from 5th to 7th standards are granted by way of natural growth and no permission is granted for conducting the school only for the standards between 5th and 7th and as such these classes are required to be attached either to the primary or to the secondary schools. Section 2(7) of the Bombay Primary Education Act defines the term "child" and it means a boy or a girl whose age is not less than six and not more than fourteen years at the beginning of the school year. As per Section 2(8) of the Act, the term "Director" means the Director of Education. It is, thus, obvious that the said Act encompasses the education of the children between the age of 6 and 14 years. A Full Bench

of this Court, in the case of *Suryakant Sheshrao Panchal Vs. Vasantrao Naik Vimukta Jati, Bhatkya Jamati Adarsh Prasarak Mandal and others*, [2003(3) Mh.L.J. 659 (FB)] noted that a primary school is normally from 1st to 7th standards. However, a primary school from 1st to 4th standards is called as Level-I and primary school from 5th to 7th standards is called as Level-II. Even if the classes of 5th to 7th standards are attached to a Secondary school run by the Municipal Council/Corporation, the section of 5th to 7th standards will have to be called as primary section (Level-II). In the Policy Statement of Education Reconstruction in Maharashtra published in February 1970, the Government had announced its policy decision that a programme for attaching classes of standards from 5th to 7th standards to secondary schools should be undertaken and accordingly vide Government Resolution dated 27th September 1971, the Government directed that a secondary school, which fulfills the conditions laid down therein would be considered for being granted permission to open and attach classes of standards 5th to 7th. One of the conditions was that the school had a trained Graduate Head Master and other adequately qualified staff. It was further directed that the requirements of teaching staff for these classes permitted to be opened from the academic year 1972-73 should be calculated in accordance with the provisions of Rule 73 of the Secondary Schools Code and out of such requirements, only 25% of teachers must be Graduate or trained Graduate i.e. after every 3 under-Graduate trained teachers employed, one may be a Graduate trained teacher. This limit was required to be applied even in case of the secondary schools which were allowed to open the classes of standards 5th to 7th. This concept was further regularised and clearly propounded by the next Government Resolution dated 21st May, 1979 and were made applicable to the schools run by the Municipal Councils vide Government Resolution dated 14th November, 1979. By this Government Resolution dated 14.11.1979, the Government had decided to remove the anomaly and, therefore, prescribed a common policy relating to the facilities and staffing pattern provided to the classes of 5th to 7th standards attached to the secondary schools as well as to the primary schools run by the local self Government. More so, there was a difference in the staffing pattern. In order to bring parity, it was decided that in respect of 5th to 7th standards, teachers should be sanctioned in the ratio of 1.3 per class. It was also resolved that out of every 4 sanctioned teachers, 1st 3 teachers should possess

educational qualifications of S.S.C. & D.Ed. and the 4th teacher should be a Graduate with B.Ed./D.Ed. Accordingly, 25% of the posts of teachers for 5th to 7th standards were converted from S.S.C. + D.Ed. to Graduate + B.Ed./D.Ed. and they were given higher pay scale in two stages. It is admitted that the petitioner is employed in Sangamwadi Primary School which has classes from 1st to 7th standards and, therefore, he would be governed by the policy laid down by the State Government vide Government Resolution dated 14.11.1979 and subsequently followed all along in respect of the schools run by the Municipal Councils.

8. Consequent to the decision of a Full Bench of this Court in the case of Jayashree Sunil Chavan Vs. State of Maharashtra and others, reported in 2000 (3) Mh.L.J. 605, the Government issued the Resolutions dated 25th October 2000 as well as 7th November, 2001, by directing that the trained Graduates appointed for the classes between 5th and 7th standards ought to possess the D.Ed. qualifications instead of B.Ed. degree. In fact, this decision of the Full Bench did not overrule the scheme of the State Government to appoint trained Graduate teachers for the classes between 5th to 7th standards and it only dealt with the qualifications required for a trained teacher in the primary schools. Different Division Benches of this Court had taken a contrary view regarding the eligibility of Graduates with B.Ed. degree for appointment as trained primary teachers. The Full Bench held that for appointment as primary school teacher D.Ed. is a necessary qualification and the teachers holding B.Ed. degree would not qualify for such an appointment. Notwithstanding the said view, the policy of the State Government, as announced vide Government Resolution dated 14.11.1979 and as continued thereafter, was not affected by the Full Bench decision of this Court. The Government Resolution dated 12.11.2001 came to be challenged in Writ Petition No.3564/2002 and the same has been stayed by this Court. We will have, therefore, to hold that the policy of the Government announced vide Government Resolution dated 14.11.1979 continues to apply for the primary school from 1st to 7th standards run by the Municipal Council and thus an Assistant teacher who possesses B.A.B.Ed. qualifications and teaches in the schools imparting education from 5th to 7th standards is a trained teacher and, therefore, is entitled to be appointed as a Head Master.....”

11] The aforesaid decision in the case of *Kondiba Mirashe* (supra) was approved by the Hon'ble Apex Court in the case of *State of Maharashtra & Ors. Vs Tukaram Tryambak Chaudhari & Ors.*⁴

12] In view of the aforesaid, the School Tribunal was required to consider the petitioner's contention based upon the government resolutions as well as the decisions in the case of *Kondiba Mirashe* (supra) and *Tukaram Chaudhari* (supra). It is not possible for this Court to consider such contention in the first instance. This is because the same would involve enquiry into several factual aspects. It is the case of the respondents that the government resolutions have been complied with. Further, in order to enable the petitioner to avail the benefits of government resolutions, it shall have to be seen whether the petitioner was a senior most teacher in the said category. There is also the issue of the petitioner's alleged gainful employment, which will again involve adjudication into factual aspects. In this view of the matter, there appears to be no option other than to remand the matter to the School Tribunal for fresh consideration. For this purpose, the impugned order dated 21 November 2002 shall have to be at least partly set aside and appeal no. 70 of 2002 shall have to be restored to the School Tribunal for decision in the light of observations made in this judgment and

4 (2007) 9 SCC 201

order. However, there is no necessity to disturb the Tribunal's direction to pay the petitioner six months salary (pay and allowances) by way of compensation, in case the same has not been complied with till date.

13] Mr. Bapat contended that appeal no. 70 of 2002 was not at all maintainable before the School Tribunal, since primary schools are not governed by the provisions of the MEPS Act 1977. At this stage, it is too late to entertain such a contention. In the first place, such an objection was never raised by the respondent nos. 1 and 2 in appeal no. 106 of 1999 instituted by the petitioner questioning her reversion before the School Tribunal. Secondly, the petitioner's earlier writ petition no. 3253 of 2002 was disposed of by this Court by observing that the petitioner can resort to alternate remedy by way of instituting an appeal under the MEPS Act 1977. At this stage also, objection based on alternate remedy may have been raised by the respondent nos.1 and 2 or in any case the respondent nos. 1 and 2 did not urge that such remedy was not available to the petitioner. Thirdly, the Bombay Primary Education Act 1947, which according to Mr. Bapat governs the conditions of service of employees of primary school has since been repealed by the Right of Children to Free and Compulsory Education Act 2009 and the Rules made thereunder. In fact, this Court in the case of *Latika*

*Rajaram Mane vs. State of Maharashtra & Ors.*⁵ has held that under Rule 20 of the Maharashtra Right of Children to Free and Compulsory Education Rules 2011, a primary school teacher can maintain an appeal before the School Tribunal constituted under the MEPS Act 1977 and further the provisions of Rule 20 would have a retrospective effect. This Court has further held that the Full Bench of this Court in *Komal Rugwani's* case (supra) had considered the position in law as it obtained prior to the enforcement of the 2009 Act. The framing of Rules under the Right to Education Act by the State Government has fundamentally altered the situation. The forum of School Tribunal is now provided to employees of primary schools in the State of Maharashtra who are aggrieved by any of the decisions of the management regarding their conditions of service and in regard to matters referred to in Rule 20. For all these reasons, it is not possible to entertain Mr. Bapat's contention that the petitioner's appeal no. 70 of 2002 was not at all maintainable before the School Tribunal.

14] Accordingly, this petition is disposed of with the following order :

(A) The impugned order dated 21 November 2002 in appeal no. 70 of 2002 is set aside. However the direction to pay the petitioner six months salary (pay and

5 2013 (4) ALL MR 59

allowances) by way of compensation is not disturbed. If however the Tribunal comes to the conclusion that any additional relief is due to the petitioner, then the Tribunal shall make appropriate adjustments by taking into consideration such compensation amount;

(B) The petitioner's appeal no. 70 of 2002 is restored to the file of the School Tribunal. The School Tribunal is directed to hear and decide the said appeal, in accordance with law, as also the observations made in this judgment and order;

(C) The School Tribunal to hear and dispose of the petitioner's appeal no. 70 of 2002 as expeditiously as possible and in any case within a period of six months from today;

(D) Parties to appear before the School Tribunal on 9 March 2015 at 11 a.m.;

(E) Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(F) All parties to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)