

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3350 OF 2000

Palus Shikshan Prasarak Mandal .. Petitioner
vs.
Arun Ramchandra Yadav & Ors .. Respondents

Mr. S. G. Deshmukh for Petitioner.
Mr. Kuldeep Nikam for Respondent No. 1.
Mr. Shekhar Bhise – AGP for Respondent No. 2.
Mr. N. V. Bandiwadekar for Respondent No. 4.

CORAM : M. S. SONAK, J.
DATE: 13 MARCH 2015

P.C. :-

1] This petition is directed against the judgment and order dated 6 May 2000 made by the School Tribunal, Kolhapur allowing the appeal instituted by the respondent no. 1 against the termination of his services by the petitioner w.e.f. 30 April 1996. The impugned order, grants the respondent no. 1 reinstatement along with incidental benefits such as continuity of service, increments etc.

2] The respondent no. 1 came to be appointed as Instructor in Plant Protection in pursuance of advertisement dated 13 May 1995. The advertisement indicated that the post was reserved one. There was also a note which indicated that in case backward class candidates with requisite experience are not available, candidates

with less experience or candidates from other categories would be considered for appointment for a period of one year. The respondent no. 1, is admittedly not a candidate belonging to the reserved category. However, by appointment order dated 19 June 1995, the respondent no. 1 was appointed to the post in question. The appointment order at clause 2 states that the appointment is on probation for two years for a period from 19 June 1995 to 30 April 1997. However there is a note at the foot of the appointment order which states that the appointment is purely temporary in replacement of ST candidate for one year only. The note further states that if ST candidate is available, the services of the respondent no. 1 will be terminated on the same date.

3] On 6 January 1996 the Deputy Director of Vocational Education and Training granted approval to the appointment of the respondent no. 1 only on clock hour basis by relying upon certain instructions dated 26 September 1995. Later on, however, i.e. by communication dated 1 July 1996, the Deputy Director of Vocational Education and Training granted approval for the appointment of the respondent no. 1 for the academic year 1995-1996 only. The letter dated 1 July 1996, again has a note at its foot stating that as per circular dated 27 July 1995, it is necessary to fill up a backlog of reservation as on 1 April 1995 by 30 April 1996.

4] The services of the respondent no. 1 came to be terminated by notice dated 27 March 1996 effective from 30 April 1996. Soon thereafter, i.e. on 26 May 1996, the petitioner issued yet another advertisement, inviting applications for the said post, once again specifying that the post was reserved post and that if candidates from reserved category are not available, then candidates from other category would be considered for appointment for a period of one year. The respondent no. 1, applied for considering of his candidature, in pursuance of advertisement dated 26 May 1996. Such candidature was considered, however, since candidate from reserved category i.e. the respondent no. 4 was available, the said respondent came to be appointed to the concerned post. The respondent no. 1, after some marginal delay appealed to the School Tribunal against the termination of his services w.e.f. 30 April 1996. The School Tribunal by the impugned order has allowed the appeal, setting aside the termination and directed reinstatement with incidental benefits. Hence, the present petition.

5] Mr. S. G. Deshmukh, the learned counsel for the petitioner submitted that the School Tribunal in making the impugned order has laid undue emphasis on the circumstance that the appointment order did made reference to appointment of the respondent no.1 on

probation for a period of two years. Mr. Deshmukh further submitted that the School Tribunal exceeded its jurisdiction in examining whether, in terms of the roster, the post to which the respondent no. 1 was appointed was indeed a reserved post or not.

6] Mr. Kuldeep Nikam, the learned counsel for the respondent no. 1 submitted that the advertisement never indicated that the post was a reserved post. In any case, the advertisement was vague and ambiguous. In such circumstances, the School Tribunal was justified in making reference to the actual roster maintained by the petitioner and determine that the post in question was not at all a reserved post. Mr. Nikam further submitted that the appointment order, very clearly has stated that the appointment was on probation for a period of two years. The sanction or approval by the Deputy Director of Vocational Education and Training is quite irrelevant and the same can never be made the basis for termination, as has been held by this Court in the case of *Anil Bhanudas Shedge vs. Subhashnagar Education Society & Ors.*¹ Mr. Nikam on the aspect of importance of roster in determining whether vacancy was a reserved one or not, placed reliance upon the decision of the Division Bench of this Court in the case of *Shri Baburao Amrutao Kharekar vs. The State of Maharashtra & Ors.*² Finally, Mr. Nikam

1 2010 (5) Bom. C.R. 680

2 1997 (2) Bom. C.R. 447

submitted that there is no perversity in the impugned order and therefore this Court ought not to interfere with the same.

7] Mr. Bandiwadekar, the learned counsel for the respondent no. 4, adopted the submissions made by Mr. Deshmukh and further pointed out that since the respondent no. 1 had taken his chance by applying in pursuance of the second advertisement dated 26 May 1996, the respondent no. 1 ought not to be directed to reprobate and question the non selection or for that matter the termination of his services. Further, Mr. Bandiwadekar submitted that the respondent no. 1 in his memo of appeal had virtually conceded the position that the post was a reserved one and that several efforts have been made by the petitioner to fill the same through a reserved category candidate.

8] Rival contentions now fall for my determination.

9] The School Tribunal has no doubt laid considerable emphasis upon the portion of the appointment order dated 19 June 1995, which states that the appointment was on probation for two years. In my judgment, this was not correct. The advertisement did indicate that the post was a reserved post. The note at the foot of the advertisement also indicated that in case reserved category

candidates are not available, candidates from other categories would be considered for appointment for one year. Further, and more importantly, the note at the foot of the appointment order, in clear and unambiguous terms stated that the appointment was purely temporary pending appointment of ST candidate and for one year only. If ST candidate is available, then the services will be terminated, on the same date. In the context of such clear and unambiguous entries, both in the advertisement as also the appointment order, the School Tribunal was not right in proceeding on the basis that the respondent no. 1's appointment was on probation for a period of two years.

10] Though, it is true that the services of the respondent no. 1 could not have been terminated merely on the ground that there was no approval for his appointment beyond the period of one year, nevertheless, the approval granted by the Deputy Director of Vocational Education and Training does assume significance because such approval was for academic year 1995-96 only. This corroborates with the entries in the appointment order. Further, the approval makes reference to circular dated 27 July 1995 and instructs the necessity of filling up the backlog of reservation by 30 June 1996. The approval, has to be seen in the context of the note in the appointment order dated 19 June 1995, which had made it

clear that the appointment is purely temporary and for a period of one year only. All these circumstances, if cumulatively considered, leave no manner of doubt that the appointment of the respondent no. 1 was purely temporary for a period of one year and until candidate from reserved category is selected and appointed.

11] By notice dated 27 March 1996, the respondent no. 1 was informed that his services would stand terminated on 30 April 1996. During this period of one month, there was no reaction from the respondent no. 1. Further, on 26 May 1996, advertisement was issued by the petitioner inviting applications to fill up the post from which the respondent no. 1 had been terminated. Again, there was no adverse reaction from the respondent no. 1. Rather, the respondent no. 1, applied for selection in pursuance of such advertisement dated 26 May 1996. The candidature of the respondent no. 1 was considered, however the respondent no. 4, is a reserved category candidate came to be appointed. This is a relevant circumstance, which establishes that even the respondent no. 1 was aware that his initial appointment was against a reserved vacancy and consequently the appointment was purely temporary and for a period of one year only.

12] In so far as the roster is concerned, at the outset, it does

appear that as against the name of the respondent no. 1, it is stated that he is the general category candidate. However, the entries in the roster are by no means clear. In any case, considering the material on record, in the form of advertisement, appointment order and approval order, it was really not open to the School Tribunal to base its decision on the basis of some ambiguous entries in the roster. Accordingly, on the basis of such entries in the roster, no case could be said to have been made out by the respondent no. 1 that the post in question was not at all a reserved post or that the appointment was not against such reserved post.

13] In the case of *Baburao* (supra), the advertisement had not indicated that the post was reserved. Similarly, the appointment order also did not make any mention that the same was against a reserved post. In fact the appointment order also did not indicate that the appointment was for a temporary period of only one year. In these circumstances, the Division Bench of this Court held that reference to roster was vital and if the roster indicated that the post was not a reserved post, the necessary credence had to be given to this vital circumstance. In the present case, as noted earlier, the advertisement, appointment order and the approval order make reference to the post being reserved and the appointment being temporary and for a period of one year only. Accordingly, the

decision of the Division Bench, cannot be of assistance to the case of the respondent no. 1.

14] Therefore, upon cumulative consideration of the aforesaid facts and circumstances, in my judgment, the impugned order is liable to be set aside and is hereby set aside. Rule is made absolute in terms of prayer clause (b). There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka