

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7672 OF 2014

Gokhale Education Society
Prin. T.A. Kulkarni Vidya Nagar
Nasik-422005
(through its Secretary) & anr.

.. Petitioners

vs.

Mrs Kalushe Madhuri Vithalrao & anr.

.. Respondents

Mr. V.S. Talkute for the Petitioners.
Mr. R.C. Sadasivan for Respondent No.1

CORAM : M. S. SONAK, J.
DATE : 09 FEBRUARY , 2015

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, the Rule is made returnable forthwith.

2] This petition, by the College Management takes exception to the order dated 7 April 2014 made by the College Tribunal, Pune, granting ad-interim relief in favour of respondent No.1. The impugned order reads thus

ORDER

"Heard appellant and her Advocate Langote. Impugned order is dated 27-03-2014 and termination is directed wef 30-04-2014. During her service period her proposal is stated to have been submitted to Poona Uni Res No.3 and they have called for appoint letter copy with required correction for giving her approval to the appointment earlier given vide order dated 26-12-2013. Therefore, in my

opinion her interest can be protected by adint order by stay to the impugned Termination dated 27-03-2014 till her application is decided on. Therefore issue show cause to the respondents as to why adint granted stay should not be continued. Returnable on 07-05-2014 alongwith notice of appeal."

3] Upon perusal of the material on record, it transpires that respondent No.1 impugns her termination order dated 27 March 2014. Amongst other grounds, the petitioners contend that the advertisement, pursuant to which the respondent No.1 came to be appointed for a limited period indicates that the vacancy advertised was to one reserved post under the category NT-A. There is no serious dispute that respondent No.1 belongs to category of NT-D. In such circumstances, this Court is of the *prima facie* opinion that there was no justification for grant of any ad-interim mandatory injunction in the matter.

4] Learned counsel for respondent No.1, however, placed reliance upon the provisions contained in Section 4(3) of the Maharashtra State Public Services (Reservation For Scheduled Castes, Scheduled Tribes, Denotified Tribes (*Vimukta Jatis*), Nomadic Tribes, Special Backward Category and Other Backward Classes) Act, 2001 (said Act), which provides that reservation specified for the categories mentioned at Sr. Nos.3 to 6 (both

inclusive), i.e., De-notified (A), Nomadic Tribes (B), Nomadic Tribes (C), and Nomadic Tribes (D) in the table under sub-section (2) shall be '*inter transferable*'. If suitable candidates for the posts reserved for any of the said categories are not available in the same recruitment years, the posts shall be filled by appointing suitable candidates from any of the other said categories. Undoubtedly, this is a contention which shall be taken into consideration at the stage of hearing of the appeal made by respondent No.1. At least *prima-facie* however, even the said provision will apply to a situation where the advertisement itself indicated that if suitable candidates for the posts reserved are not available, then the candidature of the others belonging to inter transferable reserved categories shall be taken into consideration. This is only a *prima facie* observation for the purpose of deciding whether any case was made out for grant of ad-interim mandatory injunction, pending consideration of the appeal.

5] Although the impugned order granted ad-interim relief is liable to be interfered with. It must be noted that till date, respondent No.1 continues in service. However, from the period between 30 April 2014 or 1 May 2014 and 1 February 2015, respondent No.1, has not been paid her salary. It is pointed out that in fact the salary has

not been paid from December 2013 till date, that is for a period of almost 13 months. There is absolutely no justification for non-payment of such salary particularly when there is no dispute that respondent No.1 has been working during the said period.

6] Accordingly, the petitioners are directed to pay to respondent No.1 salary for the period between from 1 December 2013 to 1 February 2015 within a period of eight weeks from today.

7] The impugned order dated 7 April 2014 is hereby vacated. The College Tribunal, looking to the facts and circumstances of the present case, is directed to dispose of the appeal lodged by respondent no.1 expeditiously and in any case within a period of six months from today. Learned counsel for respondent No.1 however, points out that presently there is no Presiding Officer over the College Tribunal. In such circumstances, the appeal should be disposed of within a period of six months from the date when the Presiding Officer is available.

8] It is also clarified that the observations made in this order are only *prima facie* and for the purposes of deciding whether any case was made out for grant of ad-interim order of mandatory nature.

9] All contentions of all the parties are kept open for decision by the College Tribunal on its own merits and in accordance with law.

10] Learned counsels for the parties agree and request the Court to record the respective parties would, in the meanwhile advertise the post of Physics Teacher, making it clear that in case any candidates from NT(A) category are unavailable, then the candidatures of teachers belonging to other reserved categories, would also be taken into consideration. If such advertisement is issued, respondent No.1 would apply for fresh consideration, without prejudice to her rights and contentions in the pending appeal. Learned counsel for the petitioners states that such advertisement will be issued within a period of four weeks from today.

11] Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

(M. S. SONAK, J.)