

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1362 OF 2014

Shri Sachin Shivaji Kale

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

a/w

WRIT PETITION NO.1369 OF 2014

Smt.Sunanda Rajaram Sanap

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

a/w

WRIT PETITION NO.1533 OF 2014

Shri Sandeep Dashrath More

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Mr.N.V. Bandiwadekar for the Petitioner in all Writ Petitions

Ms.I.K. Calcuttawala, Assistant Government Pleader, for Respondent Nos.1
to 4

Mr.A.G. Kothari for Respondent Nos.5 & 6

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 15th JANUARY, 2015

ORAL JUDGMENT (PER C.V. BHADANG, J.):

1. Heard.

2. All these petitions involve common and connected questions of law and facts and as such, they are being disposed of by this common judgment.

3. The petitioner Sachin Kale in Writ Petition No.1362 of 2014 was appointed by an order dated 19.1.2011 as a full time teacher in the Respondent No.5 school. This was pursuant to an advertisement dated 17.11.2010. The petitioner accordingly joined the service on 20.1.2011. The appointment was against a clear vacancy and on probation for a period of 2 years. The appointment of the petitioner was also duly approved by the respondent No.3. It appears that the Respondent No.3 on scrutiny of the proposal found on 8.6.2011 that the selection procedure followed by the management was proper and as such, the appointment came to be approved. The salary of the petitioner was accordingly released. The petitioner satisfactorily completed the probation period and as such assumed the status of a permanent employee within the meaning of section 5(2) of the Maharashtra Employees of Private Schools (Conditions of

Service Regulations) Act, 1977 (for short, 'Act of 1977').

4. However, it appears that the Respondent No.3 issued two show-cause notices dated 30.10.2013 and 10.12.2013, inter alia, to the petitioner directing him to show cause as to why the approval granted to the initial appointment should not be cancelled / revoked. This was presumably on the ground that the advertisement in pursuance of which the petitioner came to be appointed was defective. The petitioner accordingly remained present before the Respondent No.3 on 18.12.2013 pointing out that his appointment was made after following proper procedure and in pursuance of an advertisement which was duly approved. However, the explanation did not find favour with the Respondent No.3 and by an order dated 19.12.2013, the Respondent No.3 refused to approve the regular appointment of the petitioner on the ground that the advertisement issued by the management was defective and was not in accordance with the provisions of the Government Resolution dated 6.2.2012. That order was received by the petitioner on 2.1.2014 and feeling aggrieved, the petitioner has approached this Court.

5. The petitioner Sandeep More in Writ Petition No.1533 of 2014 has been similarly appointed as a full time teacher in the Respondent No.5

school, in pursuance of the advertisement dated 17.11.2010. This was as per the appointment order dated 14.6.2011 and the petitioner joined service on 15.6.2011. The appointment was on probation for a period of 2 years against a clear vacancy carrying regular payscale. That appointment was duly approved by the respondent No.3 and the salary of the petitioner was also accordingly released. According to the petitioner, he satisfactorily completed the period of probation on 14.6.2013 and assumed the status of a permanent employee under section 5(2) of the Act of 1977. However, the Respondent No.3 issued the 2 show-cause notices dated 30.10.2013 and 10.12.2013 to the management, the headmaster and the petitioner directing them to show cause as to why the approval should not be cancelled presumably on the ground that the advertisement was defective. The petitioner accordingly remained present and showed cause which did not find favour with the Respondent No.3 and by an order dated 19.12.2013, the approval has been refused.

6. The facts in Writ Petition No.1369 of 2014 are more or less similar. The petitioner, Sunanda Sanap, has been appointed as a full time teacher in the Respondent No.5 school by an order of appointment dated 14.6.2011 and she joined the services on 15.11.2011. This was in pursuance of the advertisement dated 17.11.2010. The appointment was

on probation for a period of 2 years against a clear vacancy carrying regular payscale. The appointment also came to be duly approved by the Respondent No.3. The petitioner also satisfactorily completed the period of probation of 2 years and assumed the status of permanent employee under section 5(2) of the Act of 1977 and her salary came to be released accordingly. However, in pursuance of the 2 show-cause notices dated 30.10.2013 and 10.12.2013, issued by the Respondent No.3, the management, the headmaster and the petitioner were asked to show cause as to why the approval should not be cancelled, presumably on the ground that the advertisement was defective. The petitioner showed cause which did not find favour with the Respondent No.3 and by order dated 19.12.2013, the advertisement came to be cancelled and that is how the petitioners are before us.

7. We have heard Mr.Bandiwadekar, the learned Counsel for the petitioners in all the three petitions, Ms.Calcuttawala, the learned Assistant Government Pleader, for respondent Nos.1 to 4 and Mr.Kothari, the learned Counsel appearing for Respondent Nos.5 and 6.

8. It is submitted by Mr.Bandiwadekar, the learned Counsel for the petitioners, that the impugned order is clearly illegal, inasmuch as the

conditions of the advertisement requiring the aspirants to have three years experience cannot be said to be against the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 (for short, 'Rules of 1981'). The learned Counsel submitted that the rules prescribed the minimum qualification and eligibility and cannot derogate from any additional condition as prescribed, if the same is found to be with the objective of scouting for the best talent in order to improve the quality of education being imparted in the school. In short, it is submitted that there is no prohibition which can be read into the Rules of 1981 which would preclude the management from prescribing any condition as to eligibility which may be in furtherance of the objective of improvement of the quality of the education being imparted. The learned Counsel submitted that thus, the advertisement in pursuance of which the petitioners came to be appointed which prescribe the aspirant to have a minimum experience of three years would not render the advertisement to be defective and in that view of the matter, the impugned order which proceeds solely on the ground of the advertisement being defective for prescribing the experience of 3 years, cannot be sustained.

9. On the contrary, the learned Assistant Government Pleader supported the impugned order. It is submitted that the impugned order is

clearly against the provisions / guidelines issued vide the Government Resolution dated 6.2.2012. It is submitted that the condition prescribing the minimum experience would have the effect of cutting off / excluding some of the aspirants in the field and that would render the advertisement vulnerable. It is, therefore, submitted that the impugned order does not call for any interference.

10. The learned Counsel for the Respondent Nos.5 & 6, however, has supported the petitioner. It is submitted that the management was within its bounds and competence to prescribe the minimum experience as a condition of eligibility for applying for the post.

11. We have considered the rival circumstances and the submissions made. It is not in dispute that the only reason for which the advertisement is held to be defective is that it prescribes an experience of 3 years for an aspirant to apply for the post. The impugned order recites that this requirement is not to be found in the provisions of the Rules of 1981 and as such, the advertisement was found to be defective. We do not find that for any such reason, the advertisement can be held to be defective. It is trite that the basic qualification for the post as advertised, is in consonance with the provisions of the Rules of 1981. The only additional aspect which

the management introduced was that the aspirants to have an experience of three years. We find that any such condition, which is in furtherance of the general improvement of the standard / quality of education, cannot be frowned upon on the ground that it is bad being against the provisions of the Rules of 1981.

12. In that view of the matter, we find that the impugned order and the reasoning articulated cannot be sustained. Consequently, the petitions are allowed. The impugned orders are hereby set aside. The respondent No.3 is directed to grant approval to the appointment of the petitioners.

13. Rule is made absolute in the aforesaid terms. No costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)