

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.2101 OF 2014

Sughra Bano Ibrahim

-vs-

Rafi Amhed Qidwai Memoreial Education Society, Chandrapur, Thr. President

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri P. N. Shende, Advocate for petitioner.

Shri A. V. Khare, Advocate for respondent No.1.

Smt Neeta Jog, Advocate for respondent No.3.

CORAM : A.S.CHANDURKAR, J.

DATE : JULY 31, 2015

The petitioner has challenged the order passed by the School Tribunal dated 22/11/2013 answering the preliminary issue and on that basis dismissing the appeal.

It is the case of the petitioner that she was qualified to be appointed as a primary teacher and was duly selected pursuant to the recruitment process that was complied as per the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. It is her further case that she worked from 01/07/1980 to 28/03/1995 after which her services were terminated. The averments regarding the mode of recruitment are made in paragraph 1 of the appeal.

In reply, the Management took the stand that the petitioner was never appointed on probation and she was temporarily appointed. These averments are in paragraph 10 of the written statement. The School Tribunal after framing the preliminary issues came to the conclusion that the appointment of the petitioner was not in accordance with provisions of Section-5 of the said Act and therefore proceeded to dismiss the appeal.

Shri P. N. Shende, learned counsel for the petitioner submitted that preliminary issue No.2 as regards appointment being made after following the due process was in fact not required to be framed as it was not the case of the petitioner that she was appointed temporarily. According to the learned counsel the pleadings of the parties did not give rise to said issue and therefore the School Tribunal erred in framing said issue and thereafter dismissing the appeal on that count. He submitted that a certificate dated 18/04/1990 mentioned that the petitioner was serving from 01/11/1980 to 30/04/1989. He further submitted that in terms of the judgment in ***Sadhana Jadhav Vs. Pratibha Patil Mahila Mahamandal 2013(2) Mh.L.J. 484***, all issues are required to be decided at the same time without trying some of them as preliminary issues.

Shri A. V. Khare, learned counsel appearing for respondent No.1 and Smt. N. Jog learned counsel for respondents No.3 supported the impugned judgment. It was submitted that the issues were rightly framed on the basis of pleadings of the parties and in absence of either the advertisement or the appointment order, the dismissal of the appeal was justified.

The pleadings of the parties indicate that the petitioner has asserted in paragraph 1 of the memorandum of appeal that she was appointed after complying with the provisions of the said Act. These assertions have been denied in paragraphs 1 and 10 of the written statement. The pleadings therefore gave rise to Issue No.2 which was accordingly framed. After considering the material placed on record it was found by the learned Presiding Officer that there was no advertisement placed on record, there was no permission to fill in said post and there was no appointment order issued to the petitioner. It further found that merely on the basis of certificate dated 18/04/1990 the petitioner could not be permitted to claim that she was appointed after following the due process. On that basis Issue No.2 was answered in the negative.

The Division Bench in *Sadhana Jadhav* (supra) has observed that all issues framed should be decided at the same time without trying some of them as preliminary issues. In the present case, it cannot be said that any prejudice has been caused by deciding Issue No.2. In fact only after said issue would have been answered in the affirmative that it would have been necessary to consider the other issues. Issue No.2 itself having been answered in the negative, the question of considering other issues did not arise. Hence observations in aforesaid judgment do not apply to the facts of the present case. The impugned order therefore has been passed on the basis of material available on record and there is no jurisdictional error. The writ petition is therefore dismissed. No order as to costs.

JUDGE